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Dangerous Deals: A Case Study of NAFTA as a Criminogenic Policy

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DANGEROUS DEALS: A CASE STUDY OF NAFTA AS A CRIMINOGENIC POLICY

by

Daniel J. Patten

A dissertation submitted to the Graduate College
in partial fulfillment of the requirements
for the degree of Doctor of Philosophy
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Daniel J. Patten, Ph.D.

Western Michigan University, 2017

This study examines the creation of a criminogenic policy, NAFTA, and its subsequent social harms that primarily impacted poor rural farmers and indigenous people in Mexico. Previous research into state-corporate crime has focused on crimes committed by one state and one corporation, while little research has investigated the commission of crimes by more than one state operating in collusion. Previous research on human rights violations has emphasized genocide and physical integrity rights, while this study raises attention to “lesser” human rights violations such as abusive working conditions, lack of political participation in policy formation, and limited access to clean air and water. Criminogenic policies can contribute to these forms of human rights violations, and offer one avenue for studying the relationship between states. Using criminogenic policy as a guiding concept, this study asks and begins to answer at least three questions: (1) Can policies (e.g., treaties, declarations, conventions, charters, etc.) legally created cause social harm (crime/human rights violations)?; (2) Are some policies criminogenic based on how they are formed?; and (3) Was NAFTA criminal and/or criminogenic?

Utilizing case study method, this study employs an analytical framework for studying criminogenic policies to the case of NAFTA. This framework is informed by four primary bodies of literature including state-corporate crime, world-systems analysis, social structure of accumulation theory, and neo-Gramscian work on the transnational capitalist class. Numerous

sources including academic journals, newspapers, historical archives, meeting memos, recorded phone conversations, NGO reports, and governmental documents are used to reconstruct the time before, during, and after the NAFTA negotiations and their subsequent social harms.

The results from this study indicate that members of a transnational capitalist class spanning North America including political leaders, business elites, prominent intellectuals, media pundits, and members of international financial institutions heavily influenced the creation of NAFTA. The TCC actively blocked public participation in NAFTA, and Mexico desperate for foreign investment gave larger concessions than either the United States or Canada. In the over twenty years since NAFTA, various social harms have affected primarily rural farmers and indigenous people in Mexico. Of these effects, this study documents the poverty, inequality, un- and underemployment, harsh working conditions, lax workers' rights and protections, displacement, product-dumping, improper removal of toxic wastes, deforestation, water shortages, soil erosion, air and water pollution, exploitation of guest workers, and drug-, border-, and immigration-related violence in Mexico as a result of NAFTA. This study charges that NAFTA is criminal and/or criminogenic on three counts violating the UN International Bill of Human Rights: (1) the NAFTA negotiation process was criminal and criminogenic for its undemocratic structure, influence of the TCC, and oppression of opposition groups, (2) the written text of NAFTA was criminal and criminogenic for its failure to include human rights protections; and (3) NAFTA was criminogenic for the various listed social harms that occurred as a partial result of NAFTA.

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LIST OF ACROYNMS

AIDS – acquired immune deficiency syndrome

ANGSA – Aseguradora Nacional Agrícola y Ganadera, Sociedad Anomina (National Agriculture and Livestock Insurance Company)

ASERCA – Agencia de Servicios a la Comercialización y Desarrollo de Mercados Agropecuarios (Agency of Services for Commercialization and Development of Agricultural Markets)

BANRURAL – Banco Nacional de Crédito Rural (National Bank of Rural Credit)

BCNI – Business Council on National Issues

BOD – biochemical oxygen demand

CANACINTRA -- Cámara Nacional de la Industria de la Transformación (National Chamber of Industry and Labor)

CCE – Business Coordinating Council

CDP – Committee for Popular Defense

CEC – North American Commission on Environmental Cooperation

CEO – chief executive officer

CIA – Central Intelligence Agency

CIRI – Cingranelli and Richards (2010) Human Rights Data Project

COECE – Coordinadora de Organismos Empresariales De Comercio Exterior (Business Coordinating Council for Foreign Trade)

CONASUPO – Compañía Nacional de Subsistencias Populares (National Company of Popular Subsistences)

CTE – Coalition for Trade Expansion

CTM – Confederación de Trabajadores de México (Confederation of Mexican Workers)

CUFTA – Canadian-United States Free Trade Agreement

List of Acronyms – Continued

DEA – Drug Enforcement Administration

DFS – Dirección Federal de Seguridad (Federal Directorate of Security)

DINA – Dirección de Inteligencia Nacional (National Intelligence Directorate)

ECE – Evaluation Committee of Experts

ENGO -- environmental non-governmental organization

EPA – Environmental Protection Agency

ESG – Escola Superior de Guerra (Superior War College)

EZLN – Ejército Zapatista de Liberación Nacional (Zapatista Army of National Liberation aka Zapatistas)

FBI – Federal Bureau of Investigation

FDI – foreign direct investment

FDN – National Democratic Front

FIRA – Fideicomisos Instituidos en Relación con la Agricultura (Trust Funds for Rural Development)

FSLN – Frente Sandinista de Liberación Nacional (Sandinista National Liberation Front aka Sandinistas)

G7 – The Group of Seven

GATT – General Agreement on Tariffs and Trade

GDP – gross domestic product

GM – genetically modified

GMO – genetically modified organism

HRV – human rights violation

HSBC – Hong Kong and Shanghai Banking Corporation

ICCPR – International Covenant on Civil and Political Rights

ICE – U.S. Immigration and Customs Enforcement

List of Acronyms – Continued

ICESCR – International Covenant on Economic, Social, and Cultural Rights

IRCA – Immigration Reform and Control Act

HIV – human immunodeficiency virus

IFI – international financial institution

IMF – International Monetary Fund

ISI – import substitution industrialization

MEXUS – Mexico-U.S. Business Committee

MIR – Movimiento de Izquierda Revolucionaria (Revolutionary Left Movement)

NAAEC – North American Agreement on Environmental Cooperation

NAALC – North American Agreement on Labor Cooperation

NAD Bank – North American Development Bank

NAFTA – North American Free Trade Agreement

NASA – National Aeronautics and Space Administration

NFTC – National Foreign Trade Council

NGO – non-governmental organization

OAS – Organization of American States

OECD – Organization for Economic Cooperation and Development

PAN – Political Action Party

PEMEX – Petróleos Mexicanos – the Mexican state-owned petroleum company

PMS – Mexican Socialist Party

PQLI – Physical Quality of Life Index

PRD – Democratic Revolutionary Party

PRI – Institutional Revolutionary Party

PROCAMPO – El Programa de Apoyos Directos al Campo (Program of Direct Support Payments to the Countryside)

List of Acronyms – Continued

PRONASOL – Programa Nacional de la Solidaridad (Solidarity Program)

PSE – Economic Solidarity Pact

QCA – qualitative comparative analysis

RGJ – Revolutionary Governing Junta

RMALC – Red Mexicana de Acción Frenete al Libre Comercio (Mexican Action Network on Free Trade)

SAP – structural adjustment program

SECOFI – Secretaria de Comercio y Fomento Industrial (Mexico’s trade ministry)

SSA – social structure of accumulation

TCC – transnational capitalist class

TNC – transnational corporation

TPP – Trans-Pacific Partnership

TRIPS – Agreement on Trade-Related Aspects of Intellectual Property Rights

UDHR – Universal Declaration of Human Rights

UN – United Nations

USAID – United States Agency for International Development

USDA – United States Department of Agriculture

USTR – Office of United States Trade Representative

WTO – World Trade Organization

WWF – World Wildlife Fund

CHAPTER 1

INTRODUCTION

After years of negotiation, on January 1, 1994, the North American Free Trade Agreement went into effect in Mexico. In response, the Zapatista Army of National Liberation (EZLN aka the Zapatistas) declared war against the Mexican government in one of the most intense and extreme responses to a free trade agreement. Given the magnitude of this level of response to the implementation of NAFTA, there was a stark polarization among the population over NAFTA. EZLN leadership sought to speak on the behalf of the entire country's indigenous people and subsistence farmers, despite being headquartered in Mexico's most southern region of Chiapas (Marcos 2004; EL Kilombo Intergalactico 2008). The conflict between Mexico's indigenous population and the ruling class dates back to conquest of the Spanish *conquistadoras* led by Hernán Cortés around 500 years ago, yet this conflict intensified when the Zapatista movement strongly opposed President Salinas' reform of Article 27 of the Mexican Constitution. This 1992 reform put an end to land reform by allowing privatization of *ejidos* known as community or public landholdings. Effectively, this reform privatized communal lands and criminalized some *ejidatarios* as land-squatters. In other words, *ejidatarios* did not own the land formerly, but did have the right to cultivate it prior to the 1992 reform. The EZLN was a major critic of this reform and the overall movement towards a neoliberal globalized economy, particularly NAFTA as a major policy intended to achieve this goal (Barry 1995; Suchlicki

1996). The opposition of NAFTA was so strong that the Zapatistas formally declared war on the Mexican government.

NAFTA has been the subject of widespread scrutiny including numerous scholarly studies, NGO reports, and journalistic accounts that document a wide range of outcomes attributable to NAFTA. These outcomes run the gamut from economic growth to destruction of agriculture. Objective assessment of NAFTA and its implications is difficult because most sources tend to be partisan – either for or against NAFTA. In this dissertation, I will make use of the tremendous amount of literature on NAFTA to investigate its effects on Mexican citizens, primarily its indigenous population and individuals in the agricultural sector. I focus on these effects specifically, since this is where critiques of NAFTA have been most vocal in displaying their disapproval. If social scientists are tasked with giving voice to the disadvantaged, then critics of NAFTA, found in Mexico, must be heard and their arguments objectively evaluated rather than dismissed or ignored without thorough investigation. Critics of NAFTA have identified several social harms attributable, at least, in part to the implementation of NAFTA. The list is quite long, but a few of these social harms include widespread poverty, particularly in rural areas (World Bank 2005; Gonzalez 2011; Public Citizen 2014); increased unemployment (Wise 1998; Trading Economics 2016); slumping real wages (Wise 1998; Trading Economics 2016); large scale displacement (Bacon 2014a); mass migration to the United States and violence along the border (Bacon 2008; 2013); deteriorating labor conditions (Salas, Campbell, and Scott 2001); weakening of union membership and activity (Human Rights Watch 1996; 2001); civil unrest by groups such as the Zapatistas that has been met with violence by the state (Knoll 2014); intense violence associated with the rise of the drug trade that employs many displaced

Mexicans (Watt and Zepeda 2012); and escalated environmental pollution and destruction (Gallagher 2004).

The central focus of this dissertation is on the social harms related to the agricultural sector in Mexico, stemming from the implementation of NAFTA (Rivera, Whiteford, and Chávez 2009). The NAFTA-induced changes in the agricultural sector include a series of other social harms such as soaring food prices, particularly corn or corn based foods (Fox and Haight 2010); use of dangerous insecticides (Gonzalaez 2011); malnutrition resulting from exposure of citizens to a neoliberal diet (Otero, Pechlaner, and Gurcan 2015); contamination of groundwater from agricultural runoff (Gonzalez 2011); loss of Mexican food sovereignty (Otero 2011); deleterious effects of U.S. food dumping (Wise 2009); and job loss and displacement of rural farmers in Mexico (Public Citizen 2001). These social harms in the agricultural sector have contributed to and compounded several of the other more general social harms stemming from implementation of NAFTA. The destruction of the agricultural sector has contributed to illegal immigration, individuals joining the ranks of the informal economy, especially the drug trade, and other issues of displacement and mobility. In addition, Mexico's loss of food sovereignty and widespread poverty created dangerous conditions during the global food price hikes in 2007-08. Resistance movements have formed due to several of these conditions and created a turbulent dynamic between disgruntled citizens and state agents. Both economic and political stability are at stake in Mexico, and the United States has recently engaged in security-based negotiations with Mexico with these two goals in mind.

NAFTA-induced Social Harms as Crime

Given that I intend this dissertation to make a contribution to the field of criminology, a brief explanation of the classification of these NAFTA-induced social harms as crime and human rights violations (HRVs) is crucial. Criminologists view crime as both harmful and blameworthy (see Agnew 2011). However, the goal of this dissertation is not to simply document the consequences of NAFTA as blameworthy harms and thus criminal. It goes further to reclassify these crimes as HRVs. A criminological focus on HRVs is not necessarily novel, but criminologists redefining crime in this way is new ground.¹ Mainstream criminologists (see Agnew 2011) have criticized Schwendinger and Schwendinger (2001) as subjectively redefining particular crimes as HRVs. Nevertheless, the Schwendingers view HRVs as inextricably linked with crime that undeniably fall in the realm of criminology. According to Schwendinger and Schwendinger (2001: 85):

All persons must be guaranteed the fundamental prerequisites for well-being, including food, shelter, clothing, medical services, challenging work, and recreational experiences, as well as security from predatory individuals or imperialistic social elites. These material requirements, basic services, and enjoyable relationships are not to be regarded as rewards or privileges. They are rights!

Thus, consistent with this view, “in the process of redefining crime, criminologists will redefine themselves, no longer to be defenders of order but rather guardians of human rights” (Schwendinger and Schwendinger 2001: 89). It seems very clear to them that any definition of crime should not be bounded by the legal code. However, the primary criticism with the HRV approach is that human rights are not well defined (see Agnew 2011). Agnew suggests that criminologists may disagree on the definition of human rights, and any research taking this approach must provide a clear definition of HRVs. Agnew sees international law as providing

¹ Several other criminologists have used similar human rights approaches (Barak 1994; Green and Ward 2004; Hillyard, Pantazis, Tombs, and Gordon 2004; Passas and Goodwin 2004; Pemberton 2007).

this definition, although this approach can be criticized as bounded by law despite its transcendence of domestic law. In addition, he criticizes the Schwnedingers for not providing a list of HRVs. A complete list of violations considering the Schwedingers' more expansive definition of HRVs would be quite extensive, and they understandably did not attempt to make a comprehensive list.

International Law and the Definition of Crime and Criminogenic

In an attempt to appease critics such as Agnew, I adopt the stance of Rothe, Mullins, and Sandstrom (2009) on attributing HRVs to policies, particularly economic policies. Specifically,

The direct manipulation of a state's economic processes and ownership structures violates core human rights standards, especially as embodied by the 1974 Declaration on the Establishment of a New International Economic Order (UNGA 3201/s-vii), the Convention on Economic, Social and Cultural Human Rights (2003), the Committee on Economic, Social, and Cultural Human Rights, the Maastricht Guidelines (1997), and the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights Agreement (2003). In this light, the economic manipulations promoted by the World Bank and IMF look far more like neocolonial intervention strategies than philanthropic assistance to global neighbors in need. These manipulations constitute a forceful and direct resubordination of postcolonial economies to former colonial powers and markets. Though it could be argued that global economic reorganization in the postcolonial environment has resulted in the reestablishment of informal colonial relations, structural adjustment programs serve to formalize and crystallize these relationships (Rothe et al. 2009: 82).²

Thus, Rothe et al. (2009) view many of the World Bank and International Monetary Fund (IMF) policies as predatory agreements that coercively reconstruct developing nations' economies.

Although these policies may differ from state bilateral and multilateral agreements, Rothe et al.'s argument is crucial to this dissertation because they emphasize the imbalanced nature of these

²² See the several bodies of international law listed (Maastricht Guidelines 1997; UN 1966b; 1974; 2003) and the Committee on Economic, Social and Cultural Rights' website at <http://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx>.

agreements and, more importantly, they classify these types of agreements as either being or contributing to HRVs.

Unfortunately, Rothe et al. (2009), as well as others (Green and Ward 2004; Hillyard, Pantazis, Tombs, and Gordon 2004; Passas and Goodwin 2004; Pemberton 2007), tend not to provide a comprehensive list of what is and is not a HRV. However, they list several bodies of international law that are useful in providing the groundwork for a more concrete operationalization of HRVs. Although a thoughtful discussion on the definition of human rights can be fruitful, I will not attempt to create the desired comprehensive list of HRVs, but this dissertation should help define HRVs. HRVs will be understood as blameworthy harms using the several bodies of international law as guidelines for difficult judgement calls.³

The United Nations (UN) Universal Declaration of Human Rights (UDHR) should be added to the previous list of international laws (UN 1948). The UDHR established a worldwide definition of human rights that researchers began using to operationalize human rights (Claude and Jabine 1986). Claude and Jabine (1986) identify three distinct categories of HRVs: security and integrity rights (also known as physical integrity rights), civil and social rights, and socioeconomic rights including wealth distribution, standard of living, and unemployment. Of the three categories, most countries keep records on social indicators that are classified under socioeconomic rights. For example, health indicators such as the infant mortality rate and life expectancy are often recorded by countries around the world. On the other hand, states tend not to keep records on indicators in the other two categories, especially when governed by repressive regimes. Despite data on social indicators being recorded, they are often not viewed as

³ The United States often leaves international human rights bodies of law unratified (e.g. ICESCR), but this analysis holds to the definition of crime as blameworthy harms. Thus, the United States does not have to ratify these bodies of law to be labeled criminal.

indicators of HRVs. Thus, a high infant mortality rate, although classifiable under a violation of socioeconomic rights, typically is not discussed as a HRV. However, the current dissertation expands beyond the traditional exploration of HRVs to include all three types of HRVs described by Claude and Jabine (1986), thus filling a gap in the human rights literature.

Since the words crime, criminal, and criminogenic will be used throughout this dissertation, it is important to clearly define them upfront. Most importantly, crime is defined succinctly as blameworthy harm in line with many critical criminologists (Agnew 2011). More specifically, crime is used in this dissertation as an extension of Iadicola and Shupe's (2013) definition of violence. Thus, crime can be defined as "any action, inaction, or structural arrangement that results in physical or nonphysical harm to one or more persons" regardless of legality (Iadicola and Shupe (2013:26). Furthermore, crime is willful, not necessarily intentional, possibly justified by the actor(s), and perhaps unrecognized as violence by the perpetrator or victim. Any use of the word criminal relates to this definition of crime. Thus, to say something is criminal, simply means that it violated the standard of crime laid out here. Finally, the definition of criminogenic also derives from this definition of crime. Something that is criminogenic is so because it creates conditions that do or are likely to lead to criminal outcomes. Like crime, something that is criminogenic is made criminogenic willfully, potentially without intent, possibly justified by the actor(s), and perhaps unrecognized as crime by either the perpetrator or victim. Therefore, a criminogenic policy is a policy that willfully creates the conditions conducive for criminal outcomes. The following chapter takes this up again and specifies the use of the term policy.

Theoretical Contribution to Criminology

This dissertation examines the construction of NAFTA and its effects. Instead of simply asking the question, “Did NAFTA have negative effects on Mexican citizens?” I ask, “is/was NAFTA a criminogenic policy?” In other words, did economic and political elites from both the United States and Mexico formulate and come to an accord on NAFTA’s parameters with an understanding of the high likelihood for social harms due to the structure of NAFTA? This concept of a criminogenic policy is novel and contributes to the criminological literature, specifically research on state-corporate crime, for a variety of reasons.

First, and most importantly, it fills a major gap in the literature that fails to investigate state crimes where more than one state is criminally responsible. Virtually all of the state-corporate crime literature make some use of Kramer and Michalowski’s (2006) integrated theoretical model of state-corporate crime, or Rothe and Mullins (2009) extension of this model. Using these models as a framework for analysis, state-corporate crime research tends to focus on either a government, corporation, or both in collusion in committing a crime. *One* state is typically considered criminal. However, given the advent of neoliberal globalization and the interweaving of political, economic, and cultural systems internationally, *two* (or more) states could and have committed crimes collectively. Therefore, like traditional state-corporate crime theory that explains the conditions under which a state and a corporation can collude to commit crimes, this dissertation expands this tradition to allow for the investigation of multiple states colluding to commit crime.

Second, the concept of criminogenic policy provides one avenue for studying multiple participating criminal states. Policy becomes a useful unit of analysis for this type of research. The crimes of globalization literature has studied the social harm impacts of policies

implemented by the World Bank and IMF, as described earlier in Rothe et al.'s (2009) study. Although the approach I use is not completely new, it expands beyond these international institutions to look at bilateral (or multilateral) negotiations between states that create and implement policy that produces social harm, in general, and HRVs, in particular. In other words, policy provides a public source for tracing bilateral (or multilateral) relationships as it is a byproduct of these relations. Unlike the crimes of globalization literature, then, this dissertation focuses on the bilateral relationship between Mexico and the United States through the study of NAFTA's formation and implementation.

Third, the balance or imbalance of power between the two (or more) states whose relationship is under investigation is paramount for studying criminogenic policy. In the case of the United States and Mexico, there is an imbalance of political, economic, and cultural power that must be considered when interested in the policy that is created based on these countries' agreements. This dissertation incorporates Wallerstein's (1974; 2004) world-systems analysis into state-corporate crime research to uniquely assess policy formation and its consequences as potentially harmful given the power imbalance between the United States and Mexico.

Lastly, this dissertation adds to criminologists' attempts at expanding the definition of crime to include HRVs (Barak 1994; Schwendinger and Schwendinger 2001; Green and Ward 2004). Most obviously, investigating policy as a HRV, or major factor causing HRVs, is unique. Economic policy that restructures the marketplace can have profound effects on workers in the country(ies) that the policy affects. Therefore, instead of looking at joblessness, underemployment, and widespread hunger as unavoidable catastrophes, these can be classified as HRVs arising from economic policy agreements. In other words, these criminogenic policies occupy a new territory in criminology worthy of investigation. This study will test the

boundaries of what mainstream criminologists consider crime. Similarly, the definition of HRVs is also expanded in this dissertation, and will be discussed in the next section.

Contributions to the Human Rights Literature

Scholars of human rights who study HRVs have drawn two conclusions that have been particularly harmful to any further research on HRVs (Hafner-Burton 2014; Regilme 2014). Both are discussed in more detail in the theoretical chapter and are referred to as logics of the human rights literature. The first is the “failed state” logic that suggests that HRVs are primarily the result of “failed states” or states that lack the ability to establish social, political, and cultural equity, an unbiased criminal justice system, and state of security for its citizens. Thus, these researchers often categorize weak states as failed when they do not have a strong military or police force to maintain the rule of law. In this dissertation, I refute this logic because it often classifies HRVs as non-systematic, accidental, or unfortunate events. Instead, I emphasize that any weak state explanation is harmful since it releases the state from any culpability it may have in the commission of HRVs. Furthermore, weak states must be understood as weak in relation to stronger states. Policy formation between a strong and weak state may effectively make or keep a state weak due to the power imbalance being embedded in their agreement. My focus on NAFTA provides an opportunity to closely examine this possibility.

The other misleading conclusion of the human rights literature is the “few bad apples” logic. According to this logic, human rights scholars focus on a few bad individuals as being culpable for HRVs without recognizing that there may be criminogenic institutions, organizations, and cultures. Thus, the removal of a “corrupt” state agent who has ordered the use of torture on citizens often has little effect on reducing HRVs because that individual is quickly

replaced and tends to commit similar abuses if the state organization is left unchanged. In other words, individuals' behaviors must be understood within the context of the societal structure, institutional forms, and cultural milieu. These contextualizations should go a long way in illuminating the intricacies of blame for HRVs.

This dissertation contributes to the human rights literature in a few other ways as well. Most importantly, it investigates HRVs that are often times neglected in this literature because of a narrow focus on particular HRVs such as genocide or physical integrity rights (i.e., torture, disappearances, political imprisonment, and extrajudicial killings). Although civil rights and liberties, workers' rights, and women's rights have gained some recent attention (Cingranelli and Richards 2010), they are still underdeveloped, and rights such as those listed by the Schwendingers (2001) including the right to food, shelter, and challenging work, have not been examined. This dissertation provides a deeper look into how these "lesser" HRVs develop in a country. Specifically, NAFTA provides a useful case of a potentially criminogenic policy that established the conditions under which HRVs occurred. Referring to the extended list above of HRVs resulting from NAFTA, at least in part, NAFTA can be viewed as an economic policy that has led to harmful outcomes such as displacement, unemployment, and poverty. Using the interpretation offered by Rothe et al. (2009), this policy ostensibly can be classified as a HRV, or as contributing to HRVs.

Furthermore, this dissertation challenges another potentially dangerous conclusion of the human rights literature perpetuated by human rights organizations. With the primary focus on physical integrity rights, both human rights scholars and non-government organizations (NGOs) tend to conclude that a country is doing well once its physical integrity rights decrease. However, this may be a dangerous conclusion to draw if other, "lesser" HRVs still persist. For

instance, although extrajudicial killings may decrease, widespread poverty may increase. Therefore, to say that a country is to be praised for its human rights record in this example can be counterproductive to making progress on its other forms of HRVs. Would domestic violence scholars conclude that women who are no longer being raped, but are still being beaten, are experiencing an improvement in their daily lives? Perhaps, but the point is there is still work to be done in this area.

Lastly, if nothing else, the current dissertation contributes empirically to this body of literature simply through its documentation of these less-studied HRVs. In addition, investigating how policy can shape HRVs within a country is a useful contribution to the human rights literature. Human rights scholars have alluded to this focus on policy, but no serious studies have examined their impact in *creating* conditions for HRVs. Instead, most of the research on policies has looked at countries signing international bodies of law and their effect on *reducing* HRVs.

Significance of the Study

Given the global impact of economic restructuring, the implications of this study could well go beyond those for NAFTA's effects on Mexico. One of my primary goals is to demonstrate how policies can legally cause various social harms and thus should be labeled criminogenic. If policies are operating within a legal framework, any of their harms are particularly dangerous because they may go unrecognized and/or unaddressed. In addition, the perpetrators or benefactors of these policies may not face any major criticisms. If such policies are understood as potentially harmful, then the significance of this study cannot be understated.

By demonstrating that policies, often arrived at legally, can cause widespread social harm, this dissertation speaks primarily to two groups

First, international law can incorporate the findings of this study to implement more protections for ordinary citizens from the dangerous agreements made between powerful nations and those less powerful in the name of profits. Although it has already been mentioned that certain bodies of international law can be interpreted to encompass economic restructuring, such as in NAFTA, as a violation of international law, international law could be expanded to make the crimes I cover in this dissertation more explicitly illegal. Identifying “legal” harms should be of particular importance to law makers.

In addition to informing international law makers, and perhaps more importantly, this dissertation should contain implications for human rights organizations. Thus, human rights organizations can reshape their institutions to include the HRVs studied here. With the inclusion of these HRVs, human rights organizations can extend the boundaries of what mainstream society deems a HRV. One of the goals of this dissertation is to critique these organizations as not extending their definitions of HRVs far enough, as this can be harmful to victims of “lesser” HRVs. Through changing human rights organizations, international law makers may follow suit and sometime down the road implement concrete changes in human rights through major declarations and treaties.

Research Design

The purpose of this dissertation is to investigate the effects of NAFTA by tracing its formation during the negotiation process, focusing primarily on the relationship between the U.S. and Mexican states, and then documenting the outcomes of NAFTA of its implementation using

case study methods. To achieve this goal, the dissertation includes the following parts. Chapter 2 constructs an integrated analytical model to explore how criminogenic policy can contribute to HRVs. This proposed model borrows from a diverse theoretical literature including state-corporate crime, social structure of accumulation theory, and world-systems analysis. Additionally, I redefine HRVs as crimes to utilize criminological thought when explaining these abuses. Chapter 3 reviews the empirical literature most relevant to this criminological approach to studying HRVs. The crimes of globalization literature offers the most relevant research to this dissertation since it focuses on policy effects on human rights conditions and crime. As stated, much of the work done on HRVs has focused on physical integrity rights, and nine case studies of Latin American countries offer a rich amount of detail on states committing these abuses against their citizens. I briefly review each of these cases, and their findings are instrumental in the design of this dissertation. Chapter 4 critically evaluates case study methods and their suitability for the current dissertation. Then, I provide the research procedure in detail and justify the decisions made throughout the project. Chapter 5 reconstructs the events leading up to NAFTA negotiations. Mexico's social, political, and economic background is detailed to give context to the negotiation process. Chapter 6 focuses on the NAFTA negotiations and its implementation process. A major goal of this chapter is to gain insight into the U.S.-Mexico relationship in order to understand the impacts of NAFTA. Chapter 7 focuses on those impacts with a comparison of Mexican workers' conditions before and after NAFTA, specifically narrowing in on the conditions of Mexican agriculture and indigenous populations. Chapter 8 summarizes the connections between NAFTA and its aftereffects while emphasizing the importance of analyzing this policy as criminogenic. Finally, I conclude with theoretical and empirical contributions, avenues for future research, and limitations of the study.

CHAPTER 2

ANALYTICAL FRAMEWORK FOR STUDYING CRIMINOGENIC POLICIES

Chapter Overview

This chapter begins by critiquing the various logics that inform the human rights literature⁴ in its study of human rights violations (HRVs). Based on my critique, I redefine HRVs to include state or state-corporate crimes or blameworthy harms to make the argument that HRVs are crime. Once this conception of HRVs as state or state-corporate crimes is established, several theories are employed to create an integrated analytical framework for exploring how international policy impacts HRVs and this policy formation and implementation can be viewed as state or state-corporate crime. The proposed analytical framework is primarily informed by state-corporate crime theory, world-systems analysis, social structure of accumulation theory, the concept of the transnational capitalist class. Each of these diverse theoretical perspectives offers something different in helping to explore HRVs and their relation to policy creation. The foundation of the proposed analytical framework involves international state relationships and the bilateral creation of policy. These policies are essential for study as they are products of international relationships, and in turn potentially create conditions and circumstances under which HRVs are committed. This chapter introduces each connected piece of the proposed

⁴ The human rights literature refers to a wide body of research encompassing empirical findings from the economic, international relations, political science, and peace studies literatures. A majority of these studies are quantitative investigations of PIRs while ignoring many other HR such as civil rights and liberties, workers' rights, and women's rights. See Hafner-Burton (2014), Regilme (2014), and Giuliani and Macchi (2014) for extensive overviews of this literature.

analytical framework while drawing connections between them. Lastly, the chapter will conclude by reiterating the entire framework and summarizing its parts and connections. Before continuing it may be helpful to view this framework in its entirety. The proposed analytical framework can be seen in Figure 2.1.

Human Rights Violations as State Crimes

Failed State Logic

An underlying logic found throughout much of the human rights literature is that of failed states which are often blamed for HRVs (Skocpol 1985; Frynas 1998; Ruggie 2006; 2009; 2010; Englehart 2009). In other words, a state's inability to secure some level of social and political equality, uphold the rule of law and impartiality, and protect its citizens against abuses, especially HRVs, are the primary reasons for a state to be defined as a failed state. Failed states are also viewed as governments that lose control of the population. Although the human rights literature provides many mixed results, two pervasive conclusions continually surface: (1) democracy provides a buffering effect against HRVs (Risse 1995; Russett 2005; Davenport 2007a; Callaway and Matthews 2010); and (2) conflict, whether it is internal or external, increases the likelihood of HRVs (Rasler 1986; Davenport 2007b; Shor et al. 2014; Hafner-Burton, Hyde, and Jablonski 2014). Both of these findings are incorporated in failed state logic. The inability to secure democracy or ongoing political instability can be viewed as failures of the state that lead to HRVs (Poe and Tate 1994; Davenport 1996; Zanger 2000; Harff 2003). Conflict can oftentimes be framed within a "breakdown of law" argument, as HRVs result from a weak state capacity to resolve or contain conflicts (Rasler 1986). Yet, the reason for a state's

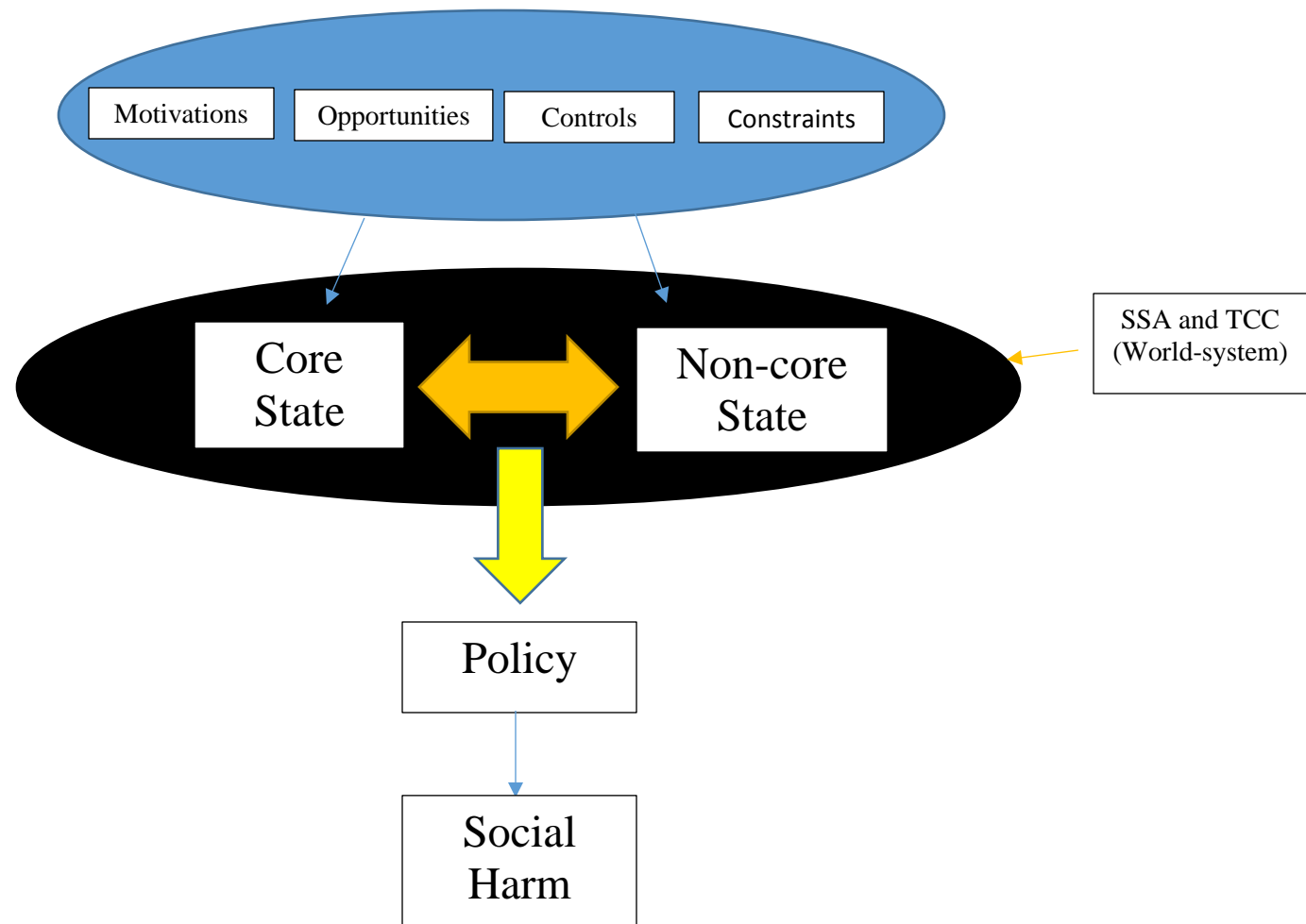


Figure 2.1 Analytical Model for Studying Criminogenic Policies

weak capacity should be questioned. When the state is in an unbalanced relationship with another, the stronger state may be responsible for maintaining the weaker state's capacity.

The pervasive logic of failed states argues that HRVs are caused by the failure of states due to the inability of the state in some facet, but this logic works against a more profound and nuanced understanding of HRVs and their causes. This logic sees HRVs as non-systematic, accidental, or unfortunate events which leads to ignoring intentional commission of HRVs by individuals, corporations, or states that in turn benefit from these abuses. With the propagation of this logic in academia, perpetrators of HRVs may avoid culpability for otherwise blameworthy harms by avoiding detection. In other words, when purposeful, systematic HRVs are defined as accidental or unavoidable, the perpetrators and benefactors of those violations are freed from criminal culpability and left to potentially recommit similar offenses. The failed state logic must be replaced by a more accurate depiction of how and why these abuses are committed in order to hold violators of human rights accountable.

The first step in moving beyond the failed state view of HRVs as accidental and unfortunate events is to redefine HRVs as crimes. Interestingly, criminologists have not often sought explanations for HRVs, but they have still studied HRVs, most notably genocides (Hagan, Raymond-Richmond, and Parker 2005; Hagan and Raymond-Richmond 2009; Winton 2011; Olusanya 2013; Pruitt 2014; 2015). Furthermore, these criminologists tend to use international law as the basis for determining criminal activity that includes HRVs. It certainly is not hard to make the argument that HRVs, especially physical integrity rights violations, are crimes when considering treaties such as the International Covenant on Civil and Political Rights (ICCPR; UN 1966a) and the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (UN 1984) which both state that torture is a violation of international

law. In addition, the Universal Declaration of Human Rights (UN 1948) has inspired several human rights treaties and declarations that have established the importance of HRVs.

For this dissertation, the definition of crime can be expanded further to include acts that may be legal—but cause serious injury—by defining crime as “blameworthy harms,” as is typical in the state-corporate crime literature. Defining crime as blameworthy harm is essential because law is constantly in flux, and the hope is that harmful acts where someone is culpable will be made illegal. The ambiguity of blameworthy harm has been questioned (Agnew 2011). The existence of harm is to a certain extent determined by the researcher, and HRVs are often encouraged to be used as an indicator. Fagan (2005:1) offers another useful definition of a HRV as anything that disrupts “the necessary conditions for leading a minimally good life.” Thus, in this study, HRVs will be defined as crimes that violate international law or blameworthy social harms.

Social Harm as Violence

Before progressing, it is useful to briefly expand on this dissertation’s use of the terms crime, blameworthy social harm, and HRVs by using Iadicola and Shupe’s (2013: 26) definition of violence described as “any action, inaction, or structural arrangement that results in physical or nonphysical harm to one or more persons.” Violence (and by extension crime/HRVs) is willful, not necessarily intentional, possibly justified by the actor, perhaps unrecognized as violence by the perpetrator or victim, and universal. Such a definition allows an investigation into the accidental and unfortunate (unintentional) to explore willful accidents where the accident prone circumstances may have been created by willful intentions. When dealing with crimes of the state that may be surreptitious or categorized as unintentional or unfortunate, such as the

socially harmful effects of a policy, Iadicola and Shupe's definition of violence is useful because it goes beyond interpersonal violence and institutional violence to include structural violence that occurs when the hierarchical ordering of individuals in a society is in the process of being established, maintained, extended, or reduced. Policies may impact these structural arrangements and thus contribute to social harms. Lastly, they discuss the triadic relationship of violence, inequality, and human freedom. The three have dialectical relationships—violence and inequality are positively correlated; violence and freedom are negatively correlated; and inequality and freedom are negatively correlated. This triadic relationship allows for predictions that increased inequality and decreased human freedom will likely increase HRVs.

“A Few Bad Apples” Logic

Many researchers studying HRVs have used principal-agent theory which contends that principals and agents often have conflicting goals and both can pursue their own selfish interests (Arrow 1985). Much attention is then focused on agents acting in their own self-interest leading to the conclusion that there are some “bad agents” operating for a “good principal.” This misdirection of culpability underlined in principal-agent theory highlights a second misleading suggestion that individuals must be punished with no need to address criminogenic institutions, organizations, or even the cultural zeitgeist. Corporate crime analysts have well debunked the “few bad apples” logic by demonstrating that corporate crime can, in fact, best be viewed as the result of cost-benefit analyses made by CEOs and other executives and managers (Paternoster and Simpson 1996). Morality and legality tend not to be weighed heavily in this rational calculus (Vaughan 1998). Corporate crime specialists have therefore argued that corporations must be held accountable as organizations rather than removing the few “bad” individuals

(Braithwaite and Fisse 1990). Otherwise, these individuals will be replaced with new individuals who, immersed in the corporate culture, will act in similar ways as the supplanted “bad” individuals (Friedrichs 2010). In the middle of the twentieth century, Sutherland (1949) established that corporations were repeat offenders, finding that 97.1 percent of the 70 largest corporations in his day were repeat offenders. With high rates of repeat offending, it should be clear that something other than individual agents should be viewed as culpable for corporate crime whether it be corporations, capitalism, or the culture of competition.

Organizational theory also helps to explain corporate and state-corporate crime by identifying corporations or governments as organizations highly resistant to change and primarily interested in self-preservation (March and Olsen, 1984; Avant, 1993). When the self-preservation of organizational theory is applied to governments and corporations within a global capitalist system designed around “profit or perish,” it is less surprising to discover the lengths that these organizations are likely to go to survive. Morgan (1997) uses analogies such as machines, organisms, brains, and cultures to describe organizations and how they are something greater than, or at least different than, the sum of their individual parts. Therefore, removing a small part of an organism, does not stop the organism, but rather that part is either replaced or its role is taken over by another part. In other words, the removal of the “bad apples” will not correct the systemic issues deeply embedded within the state, corporation, or other organization that lead to corporate or state-corporate crime.

In an extension of the “few bad apples” perspective, Bohara et al. (2008) argue for analytically approaching HRVs as policies that may be implemented by states to achieve selfish goals and manage the population. Understanding HRVs through policy formation is crucial for this dissertation, as one state’s influence over another can be discovered through treaties and

agreements made between those countries, and these policies can then lead to HRVs. Bohara et al. (2008) *do not* explicitly label HRVs as crimes, but *do* establish a framework for understanding them as intentional and purposeful. They also described the “collusive principal” that explains cases where states may employ particular agents to pursue the interests of the state, but also allow the government to place blame on them if their actions draw negative attention. In other words, states may minimize risk by hiding behind “bad individuals” directing attention away from the state as criminal itself, while also maximizing benefit via these agents’ actions.

State-Corporate Crime

One professor of international law, Susan Marks (2011), wishes to advance the theoretical explanation for HRVs by abandoning the “few bad apples” and “failed states” perspectives while replacing them with what she calls “planned misery.” Using the planned misery perspective, she sees the actions taken by states as both willful and anticipating subsequent HRVs. Under such a paradigm, these actions can otherwise be categorized as blameworthy harms or state/state-corporate crime. With HRVs more appropriately categorized as crimes, criminological theories can be used to help explain HRVs. Specifically, the state-corporate crime literature is most apt to provide this explanation.

Criminologists focusing on state-corporate crime often directly study HRVs without necessarily using that language and, as stated before, tend not to engage the body of literature studying causes of HRVs. Nonetheless, these criminologists, such as Ronald Kramer (2010a) and Martha Huggins (2010), use criminological theory to explain the bombing of civilians and institutionalized torture respectively. Both of these are HRVs, specifically physical integrity rights violations consisting of extrajudicial killing and torture, both of which are investigated in

the human rights literature. Although much of the previous research on HRVs from the human rights literature has focused on the state, corporations have recently received more attention (see Giuliani and Macchi 2014). The state-corporate crime literature argues that states and corporations must be studied together because the interaction between them often leads to social harm and analogous social injury, or, in the words of Kramer and Michalowski (2006: 20):

State-corporate crimes are illegal or socially injurious actions that result from a mutually reinforcing interaction between (1) policies and/or practices in pursuit of goals of one or more institutions of political governance and (2) policies and/or practices in pursuit of the goals of one or more institutions of economic production and distribution.

For example, Dawn Rothe (2006) demonstrates how this intersection creates a mutually beneficial coalition between the corporation and the state using the example of the U.S. military in Iraq and the Haliburton Corporation.

Kramer and Michalowski's (2006) integrated theoretical model of state-corporate crime is essential to the current study. More than any other model, their theoretical framework has provided a comprehensive and expansive explanation of why states and/or corporations conduct harmful behavior and oftentimes in cooperation. Their complete model appears in Table 2.1. This model offers several levels of analysis including the macro (institutional environment), meso (organizational), and micro (interactional) which allows for the study of relationships that exist both horizontally between states and corporations, for instance, and vertically between the levels of analysis examining how corporate culture may impact the interactions of employees. There are also three catalysts for action in the model—motivations, opportunities, and controls—that all influence the likelihood of a state-corporate crime being committed. Similarly, this can be applied to HRVs as it has been established that these are state or state-corporate crimes, often intentional, and thus perpetrators of HRVs, whether states, corporations, or both, likely have motivations for committing these abuses, the opportunity available to do so, and a lack of

Table 2.1. Kramer and Michalowski's Integrated Theoretical Model of State-Corporate Crime

<i>Levels of Analysis</i>	<i>Catalysts for Action</i>		
	Motivations	Opportunities	Controls
Institutional Environment	Culture of Competition Economic Pressure Organizational Goals Performance Emphasis	Availability of Legal Means Obstacles and Constraints Blocked Goals/Strains Availability of Illegal Means Access to Resources	International Reactions Political Pressure Legal Sanctions Media Scrutiny Public Opinion Social Movements
Organizational	Corporate Culture Operative Goals Subunit Goals Managerial Pressure	Instrumental Rationality Internal Constraints Defective SOPs Creation of Illegal Means Role Specialization Task Segregation Computer, Telecommunication, and Networking technologies Normalization of Deviance	Culture of Compliance Subcultures of Resistance Codes of Conduct Reward Structure Safety and Quality Control Communication Process
Interactional	Socialization Social Meaning Individual Goals Competitive Individualism Material Success Emphasis	Definitions of Situations Perceptions of Availability and Attractiveness of Illegal Means	Personal Morality Rationalizations and Techniques of Neutralization Diffusion of Responsibility Separation from Consequences Obedience to Authority Groupthink

controls preventing them from violating human rights. Moreover, HRVs will likely be committed by actors who are motivated and have opportunities to violate human rights while facing few or no controls that can prevent them from committing these abuses.

The three catalysts for action must be understood in relation to each other within each level of analysis. Motivations are directly linked to the goals of a particular state or corporation. The motivation to achieve goals “by any means necessary” leads to the possibility of highly motivated organizations or individuals conducting harmful acts. The unrestrained pursuit of goals can lead in turn to criminal activity at all three levels of analysis: (1) individuals (micro level) may harm others in route to achieving their goals; (2) organizations (meso level) may implement injurious policies or their actions might hurt others and they may influence their employees or members through their emphasis on cultural goals to put their organization before the safety of others; and (3) the institutional environment (macro level) can create an atmosphere of individualism and greed that engenders callous and detrimental behavior by individuals and organizations operating within it.

Opportunities are equally important in explaining state-corporate crime in the integrated model. Opportunities are bifurcated into legitimate and illegitimate means. The access to these means is important in relation to goal attainment. On the one hand, the model postulates that crime is unlikely to occur when goals can be met with legitimate means and those means are readily available to the organization. On the other hand, crime is more probable under two scenarios: (1) goal attainment is blocked through the use of only legitimate means, illegitimate means can meet these goals, and the organization has access to the illegitimate means; or (2) legitimate means may meet the goals, but the organization lacks access to these means and instead has access to illegitimate means capable of achieving the same goals. The access to

legitimate or illegitimate means is important at all three levels of analysis as well. The institutional environment may shape the level of cultural acceptance of organizational deviance, the use of illegitimate means may become normalized within particular organizations, and individuals may experience pressure to use illegitimate means and receive rewards for using them.

Controls encompass both the presence and absence of public scrutiny and official legal sanctions for deviant organizational behavior. Again, the institutional environment may be a culture of regulation dedicated to keeping powerful organizations in check, or one of deregulation allowing organizations to self-regulate. Each type of environment will likely impact organizations operating in them where self-regulating organizations may be more inclined to be more lenient on themselves when pursuing goals unless strong social movements or public scrutiny pressures them away from deviance. Lastly, members of organizations become aware the punishment attached to different behaviors and may bend the rules where it has been routinely accepted and rewarded.

Since the inception of the Kramer and Michalowski (2006) model, several state-corporate crime researchers have utilized it to analyze and explain crimes of the powerful, but others have also attempted to expand the original model. Most notably, Rothe and Mullins (2009) expand the original model by splitting the control catalyst for action into controls and constraints, and adding a fourth level of analysis by separating the institutional environment into the international level and the state/structural level (See Table 2.2). Rothe and Mullins note that their model, although seen as an extension of Kramer and Michalowski's framework, does not strive for empirical prediction. Instead, they present it as a tool for in-depth case exploration. Their conception of the catalysts for action slightly differs from the original state-corporate crime

Table 2.2 Rothe and Mullins Integrated Theory of International Criminal Law Violations

<i>Levels of Analysis</i>	<i>Catalysts for Action</i>			
	Motivations	Opportunities	Constraints	Controls
International Level	Political Interests Economic Interests Resources Ideological Interests	International Relations Economic Supremacy Military Supremacy Complementary Legal Systems	International Reaction Political Pressure Public Opinion NGOs/Social Movements Oversight	International Law International Sanctions Economic Institutions
Macro Level (State/Structural)	Structural Formations Economic Pressure Political Goals Ethnogenesis Anomie	Availability of Illegal Means Control of Information Propaganda Structure of Government	Political Pressure Media Scrutiny Public Opinion Social Movements Rebellion	Legal Sanctions Domestic Law
Meso Level (Organizational)	Organizational Culture and Goals Authoritarian Pressures Reward Structures	Communication Structures Means Availability Role Specialization	Internal Oversight Communication Structures Traditional Authority Structures	Formal Codes of Conduct
Micro Level (Interactional)	Socialization and Psychological Frame of Agent Individual Goals and Ideologies Normalization of Deviance Definition of the Situation	Groupthink Diffusion of Responsibility Perceived Illegal Means	Socialization Obedience to Authority	Legitimacy of Law Perception of Reality of Law Application Personal Morality

model. Motivations can fall into one of two categories, either internal desires (e.g., political or economic interests) or external factors driving the actors towards a particular behavior (e.g., economic pressures, organizational culture). External factors can influence internal desires. For instance, a corporation operating within a highly competitive capitalist marketplace may be driven to accept and internalize the logic of “profit or perish” incorporating it into its business practices and business culture. Or, it is also possible that internal desires of a particular organization can be forced into the global environment creating an external impetus for other actors’ behaviors. For example, the U.S. struggle for economic supremacy has led to a particular form of capitalism shaping the global economic system which, in turn, creates economic pressures on various states and corporations worldwide. Opportunities are conceptualized as in the original model with a primary focus on legitimate and illegitimate means, but power relationships are emphasized in the model. Controls are defined as complete blockages to a criminal act when criminal sanctions or penalties are an inevitable result of crime (i.e., domestic or international law, legal sanctions). Constraints are conceived as obstacles to successful commission of a crime (e.g., public opinion, political pressure, international reactions). In other words, controls have the potential to stop crime from happening, while constraints are more like roadblocks that must be circumvented by a criminal actor that only slow or reduce, but do not prevent, criminal behavior.

Multiple State Crime Commission?

Although Rothe and Mullins (2006; 2009) included the international level to create a model more applicable for analyzing state crime in non-Western states where economic motives are not the driving force of state crimes, it can still be useful when applying it to the U.S. state to

understanding how the U.S. state with its vast resources, unlike most other states, can influence the international level. This makes the expanded model more appropriate for this dissertation since a primary focus is at the international level and specifically how powerful states (the United States in this case) can influence weaker, less powerful states leading to HRVs. Such an understanding of this influence is contrary to the “failed state” and “a few bad apples” perspectives. Rothe and Mullins (2009) even critique the criminological literature addressing HRVs for this shortcoming. Specifically, they criticize Harff’s (2005) theory of genocide for not including international level variables such as “economic collapse or high rate of indebtedness to foreign powers,” “postcolonial conditions,” and “global economics.” Where this dissertation attempts to fill a void in this literature is by bringing in international level variables, generally motivations and opportunities. Controls and constraints at the international level will also be explored, but already have been a recent focus in the human rights literature (Lutz and Sikink 2000; Calvano 2008; Jetschke 2010; Simmons and Danner 2010; Hafner-Burton 2014).

In the original state-corporate crime model, Kramer and Michalowski (2006) distinguished between two types of state-corporate crimes: (1) state-initiated corporate crime and (2) state-facilitated corporate crime. The key distinction is the relationship between the state and the corporation during the commission of a crime, social harm, or analogous social injury. When corporations conduct culpable and injurious acts under government supervision, in collusion with the state, or with simply tacit governmental approval, the crime is said to be state-initiated. State-facilitated corporate crime arguably highlights the state as less criminally liable since governments are not directly initiating criminal activity, but instead failing to provide effective oversight of corporate criminality either intended or unintended, or overlapping goals have inhibited the state from meaningful oversight and enforcement. One of the first case studies

employing the state-corporate crime model investigated the explosion of the *Challenger* space shuttle (Kramer 1992). Instead of concluding that it was an unfortunate accident which was the consensus at the time, it can be classified as a state-initiated corporate crime in which the state agency, NASA, awarded a government contract to a private corporation, Morton Thiokol, to build the rocket boosters that ultimately caused the explosion. Morton Thiokol, in collaboration with NASA made several budget cuts and expedited the launch date due to political pressure leading to the catastrophic explosion resulting in the death of all seven crew members. This is a case of state-initiated corporate crime because the state's actions influenced the hasty behavior of a corporation resulting in a blameworthy harm.

Another classical case study exemplifies a state-facilitated corporate crime. Auletto and Michalowski (1993) documented a major industrial fire that took place in 1991 at a chicken processing plant in Hamlet, North Carolina owned by Imperial Food Products Inc. A hydraulic line exploded spraying flammable oil onto open gas flames under chicken frying equipment in the factory causing a fast-spreading fire that resulted in the death of twenty-five workers and another fifty-six injured. Although the immediate cause of the fire was the explosion of the hydraulic line, the deaths and injuries were not directly due to the fire, but were in fact caused by Imperial Food Products managers padlocking the majority of exits, including fire exits, throughout the building as a company policy to prevent employee theft. Due to these actions, many workers were trapped inside the structure unable to escape the fire. In addition, it was later found that there were systematic oversight failures partially responsible for the deaths and injuries of these workers. A common theme found in the United States was revealed in North Carolina that little state funding was going to programs that would protect worker safety such as the Occupational Safety and Health Program, and instead were flowing to businesses or policies

that favored the interests of corporations over workers. Moreover, U.S. Department of Agriculture inspectors failed to report the padlocked doors, despite being required to do so, and the local government failed to require the plant to be brought up to code when the roof had been replaced shortly before the fire happened. This case represents a state-facilitated corporate crime because, rather than the state directly being involved in the blameworthy harm, all three levels of government allowed for such a crime to be committed due to their gross negligence.

More recently, the state-corporate crime literature has shifted to studying international state crimes. Chambliss, Michalowski, and Kramer's (2010) edited volume, *State Crime in the Global Age*, documents a wide variety of international state and state-corporate crimes. This dissertation continues that trend while also introducing new forms of state-corporate crimes. State-corporate crimes have been distinguished as being either state-facilitated or state-initiated. However, if we raise state-corporate crime to the international level, as has already been done, more than one state may be involved. Examination of the dynamic of two states involved in the commission of crime necessitates new categories of state-corporate crime. Thus, international state-corporate crime can be classified into four categories: (1) international state-facilitated corporate crime, (2) international state-initiated corporate crime, (3) international state-facilitated state crime, and (4) international state-initiated state crime.

The first two categories are simply the original distinctions at the international level. Thus, a state in one nation either facilitates or initiates state-corporate crime in another country. The original research in state-corporate crime looked at the relationship of states and corporations within the same country such as the Imperial Food Products fire that investigated a U.S.-based corporation, North Carolina state government, local government, and U.S. national government (Aulette and Michalowski 1993) and the *Challenger* explosion that involved a

federal government agency, NASA, and U.S. corporation, Morton Thiokol (Kramer 1992). An international state-facilitated corporate crime includes both a state and corporation, however the corporation is not headquartered in the state involved. Typically, a multinational corporation is headquartered in one country, but operates in several others. Thus, a subsidiary company may operate internationally adding another layer of complexity to the originally conceived definitions of state-initiated or state-facilitated corporate crime. Shell Nigeria—an oil company operating in the Niger Delta in Nigeria—provides an example of international state-facilitated corporate crime (Zalik 2004). Shell Nigeria is a subsidiary of Shell Oil Company headquartered in Houston, Texas, in turn, Shell Oil Company is a subsidiary of Royal Dutch Shell headquartered in The Hague, Netherlands. Much of the oil and its profits were extracted from Nigeria, distributing little to none of the profits to Nigerian citizens, while ecological destruction was taking place. Social unrest arose due to these conditions, and violent security forces protected the oil company's property supported by the Nigerian military. The violence surrounding the oil business was destructive, threatening the oil supply and creating scarcity that actually maximized profits that, in turn, contradicted an incentive for proper oversight and control of the violence. These overlapping goals of the Nigerian state and Shell inhibited proper oversight resulting in an international state-facilitated corporate crime, in this case, the Nigerian state-facilitated crimes of the multinational corporation Shell.

Similarly, an international state-initiated corporate crime may include a state and a corporation from different countries. Both the state and corporation may be from the same country but cooperate to commit a crime in another country. For example, there has been much discussion since World War II on war-profiteering involving the military-industrial complex where the U.S. state invades another country during war time. Rothe (2006) argues that

Haliburton's role in the Iraq War alongside the U.S. military constitutes both a state-facilitated and state-initiated corporate crime. Thus, the U.S. invasion of Iraq provided Haliburton with the opportunity for "over-costs, overcharges, failure to provide services charged for, and kickback profits" and Dick Cheney was able to coordinate these systematic crimes via his established role as Vice President and his former role with Haliburton (Rothe 2006: 236). Thus, the U.S. state initiated and facilitated the crimes of Haliburton in Iraq.

The third and fourth categories are more unique because they describe crimes that have at least two states as the central actors in commission of a crime that is international by definition. The state-corporate crime literature has focused much attention on how the state and the corporate sector collaborate in crime commission. However, with the rise in popularity of studying international state-corporate crimes, it is essential to incorporate a second state in the model as both states may play an integral role in either initiating and/or facilitating commission of a crime. In particular, the relationship between two states is at the center of the proposed analytical framework for understanding HRVs, primarily those suffered by citizens of developing or third-world nations. For example, the relationship between the U.S. and the Mexican states must be taken into account when explaining some HRVs occurring in Mexico. Several Latin American case studies will be explored in the next chapter, but a couple will briefly be mentioned here to demonstrate the dynamic of two states involved in HRVs. In Uruguay, for example, both the Brazilian and the U.S. states were involved with the Uruguayan state in committing HRVs (Heinz and Fruhling 1999). Violent oppression was used against members of the labor movement and Communist Party in Uruguay. The U.S. state provided military intelligence, armed warfare tactics, and the training of torture techniques used by the Uruguayan state against its own citizens when they opposed the established government. U.S.

direct involvement in the HRVs in Uruguay constitutes an international state-initiated state crime, while U.S. failed to address the atrocities occurring since they served U.S. national interests can be classified as an international state-facilitated state crime.

A clearer example of an international state-facilitated state crime is when one country has the ability and opportunity to prevent the commission of a crime, or the harm it causes, and stands idly by, likely benefiting from the crime committed. For instance, the case study of El Salvador (Gómez 2003) documents the extreme governmental violence taking place that targeted leftist political groups. This strategy benefited the United States through restructuring the economy of El Salvador. At a time when the violence escalated, refugees were being killed and tortured for attempting to leave El Salvador, and those lucky enough to reach the United States were sent back to El Salvador by the U.S. government allowing, in all likelihood, for their deaths and torture to continue resulting in an international state-facilitated state crime.

World-Systems Analysis

Although world-systems theory does not typically occupy a space in state-corporate crime analysis, with the introduction of international state-facilitated and -initiated state and state-corporate crime, using this theoretical approach provides contextual understanding of international state relationships. World-systems analysis is not a theory, but rather a framework to analyze global phenomena (Wallerstein 1974; 2004). World-systems theory shifts from a focus on nation-states to a “world-system” as the primary unit of analysis used to understand social influences and change. Although nation-states are viewed as less important than the world-system, they are still largely involved in world-systems analysis. Wallerstein separates countries into three groups—core, semi-peripheral, and peripheral countries. The focus is on

how these countries interact and move from one category to another under the predominant world-system. The overarching world-system, according to Wallerstein, is the global capitalist economy which is delineated by the global division of labor distinctively categorizing the three types of countries. Core nations have highly-skilled workers, advanced technology, and attract lucrative capital investment, while the other nations are characterized by low-skill, laborious production, and oftentimes are highly involved in the primary sector of extracting natural resources. The relationship between non-core and core nations is structured in such a way to allow for core nations to exploit peripheral nations for their cheap labor and natural resources, while peripheral countries remain dependent on capital investment from core nations. Hegemons are described as the (to some extent) rulers of the world, who make the rules under the current world-system. Interestingly, nation-states are attributed to being hegemons with the United States being the most recent and current hegemonic power.

World-systems analysis is essential for the current dissertation since the primary unit of analysis transcends the nation-state. Somewhere between the world-system and the nation-state are bilateral relationships of theoretical interest to world-systems theory. Of particular interest are relationships between core nations and semi-peripheral or peripheral nations. World-systems theory helps explain the economic relationship between these nations, but struggles to expand beyond the economic, and certainly does not attempt to explain crime or social harms like HRVs. The current dissertation uses this framework to explore how these unbalanced economic relationships may lead to other social outcomes, such as shaping the type and intensity of HRVs occurring in a nation. In other words, HRVs in a peripheral nation may be in large part shaped by the disadvantageous economic association it holds with a (or multiple) core nation(s). Thus, world-systems analysis complements international state-initiated and -facilitated state crimes,

particularly when the commission of crime involves an economic motivation, which is quite common.

As stated, the United States will be analyzed as the core nation in this dissertation. However, according to Wallerstein himself, the United States occupied a unique position differing from all other core nations. The United States is identified as a hegemon which refers to a situation when “one state combines economic, political, and financial superiority over other strong states, and therefore has both military and cultural leadership as well ... hegemonic powers define the rules of the game” (Wallerstein 2004: 94). Before proceeding, it is important to sort out a few other definitions central to world-systems analysis. A world-system is “a system *that* is a world” and “the unities of social reality within which we operate, whose rules constrain us” (Wallerstein 2004: 98). Two types of world-systems are identified: world-empire and world-economy. Both have multiple cultures and the primary difference between them is that a world-economy has multiple political centers, while a world-empire has only one. World-empire is typically used when studying historical pre-capitalist systems, thus it is not important to the dissertation. Wallerstein states that there is no world-empire currently, only a world-economy represented by global capitalism. The world-economy is defined as the global capitalist economy in which the United States is a hegemon. There may be multiple political centers, but if the influence of one (or more) is such that other countries lose legitimacy, then these particular countries are of key importance. Hegemonies may have a sphere of influence that transcends the nation-state, encompassing a relatively large region of the world without covering the entire globe. The U.S. hegemonic sphere of influence likely includes most of the Western Hemisphere which will become clearer in the next chapter covering several Latin American countries. In the end, like Wallerstein, this dissertation views the United States as occupying a more powerful

position than the average core nation, and this is central to the understanding of any international state-initiated or -facilitated state crime where there is an interaction between the United States and another nation, particularly semi-peripheral and peripheral nations.

Policy

As stated earlier, the relationship of states is of central importance to the current study. Although isolating bilateral state relationships is artificial in that these relationships take place within the context of global multilateral relationships, focusing on bilateral relationships offers a method of investigating the influence of one nation on another. The proposed analytical framework centers around these bilateral relationships, in particular the relationship between core and non-core nations as defined by world-systems analysis. Policy becomes essential to any investigation of state relationships because policy is often the outcome, product, or manifestation of such relationships. Arguably, the best way to study state relations is through policy formation, whether they are bilateral or multilateral agreements in the form of treaties, declarations, conventions, charters, etc. Such a strategy is akin to foreign policy analysis popular in political science. The word policy will be used as an umbrella term to refer to this large body of international agreements. Since policy is formalized, and often public documents are released outlining them, more information on their formation is available. Contrarily, if one were to study international state relationships without focusing on policy, they may rely on alternatives such as memos, meeting notes, emails, and other evidence of communication between states which is extremely difficult to obtain, thus often leaving much to speculation. Although policy is a paramount unit of analysis when studying these bilateral state relationships, too much emphasis must not be placed on policy to the point that the bilateral relationship is completely

characterized by one policy agreement. Thus, it is essential to contextualize the policy by documenting events before, during, and after such an agreement.

The present study proposes to focus on policies that have harmful consequences. Industries are described as criminogenic when companies within them feel pressured to adopt criminal business practices primarily to compete against other companies in the industry (Bradshaw 2012). These business practices then lead companies to systematically violate environmental laws and regulations. Similarly, states are subjected to intense economic pressures and strains by the highly competitive global capitalist marketplace. Since the state is primarily tasked with creating legislation that is conducive for the ease of capital accumulation (more on this later), they tend to push for policies that benefit capital while causing harmful effects to members of the working class. Due to the unbalanced nature of policy negotiation, the most disadvantaged individuals within a non-core country tend to experience these deleterious effects such as exposure to toxic waste, unsafe work environments, a lack of medical care, removal from lands or displacement, and abject poverty among others, although this does not mean that the average citizens of the core nation may not suffer social harms as well. Several Latin American cases studies will demonstrate the direct repression, often overt, of people by their own governments in the next chapter (Hey 1995; Heinz and Fruhling 1999; Gómez 2003). In the human rights literature, HRVs are similarly studied for the most part as overt HRVs such as physical integrity rights violations, but it is the stance of this dissertation that many HRVs often are less visible and justified to the point of invisibility.⁵ For example, torture is a visible HRV to the extent that the act of torture can be seen, while poverty brought by unjust policy could be a HRV, but the social forces leading more people into poverty are not visible like the

⁵ See Iadicola and Shupe's (2013) discussion on institutional and structural violence.

act of torture. Crimes by liberal democracies are often the most invisible (Green and Ward 2000). Moreover, liberal democracies may, more so than other forms of governments, have to exert more influence over popular ideologies of resistance to preserve their positions of power, all the while maintaining secrecy. Investigating crimes of liberal democracies, deHaven-Smith (2006) noted that they are likely to be highly surreptitious crimes due to the sensitivity of state officials to public perception, unlike leaders of autocratic governments. Furtive crimes of high ranking elected officials have long been quickly dismissed with little investigation and labeled conspiracy theories. These harder-to-detect forms of HRVs can be studied through the investigation of criminogenic policies, in their formation and consequences. Much of the focus of this dissertation is on criminogenic policies and their harmful effects.

Through the study of policy, one can observe if these bilateral or multilateral agreements have led to any HRVs or created the circumstances under which they are likely to occur. Given the unbalanced nature of the international relationships, the core nation bears more of the responsibility for the agreement. State-corporate crime theorists would also describe these relationships as unbalanced (Kramer and Michalowski 2006; Rothe and Mullins 2009). The imbalance relates to the opportunities, controls, and constraints present within each country. Core nations would be understood as having more opportunities to negotiate policy that will be conducive to meeting their goals, and higher motivations for negotiating such a policy. Controls such as international law (e.g., UN Security Council) and international financial institutions (e.g., World Bank) are heavily influenced by core nations, therefore these controls would have less ability to inhibit core nations from enacting criminogenic policy. Moreover, core nations are less affected by constraints such as public opinion or international reaction due to the abundance of resources controlled by core nations capable of disseminating favorable information regarding

their actions. On the other hand, non-core nations are defined by their lack of opportunity, and are more responsive to controls and constraints. Thus, any policy between these two types of nations likely reflects more of the core nation's interests; and if any harmful externalities exist, they are most likely felt by the least powerful populations within the non-core nation. Policies may lead to HRVs unintentionally, but it has been discussed that violence (or crime) can be unintentional (Iadicola and Shupe 2013). In fact, these criminogenic policies are not likely to be intentionally harmful, but given the pressures placed on the core state to negotiate a policy that strengthens its economic position within the global economic network, the core nation is more likely to ignore, or not seriously consider, the potential harms of an economically-beneficial policy. Thus, a policy will tend to be created when the primary goals are considered met, while other tangential goals such as human rights are secondary and may be lost in the negotiation process. The important characteristic of these policies is that they are willful, and as discussed, the core nations (and even the non-core nations) may willfully pressure for the enactment of criminogenic policies. These policies are often derived under particular historical circumstances influenced by the current social structure of accumulation (also to be discussed in a later section). The benefactors of these policies cannot be left to hide behind the logic that these policies may have unintended consequences (such as HRVs) when there are systemic patterns of such policies having similar outcomes.

Normalization of Deviance

Another important concept in the state-corporate crime literature is “normalization” of deviance. Vaughan (1996) applied this concept to the *Challenger* explosion case describing NASA's organizational culture as uncritical of deviant behaviors occurring within the

organization. In other words, behaviors, actions, and beliefs that would otherwise be defined as deviant became accepted as normal after repeated occurrences with no negative consequences, thus leading to the “normalization” of said behaviors, actions, and/or beliefs. When deviant behaviors have been normalized, actors no longer weigh the costs and benefits of such action because it is now defined as normal operating procedure by members of the organization. To give an example of how normalization has been applied to crimes of the powerful, the decision and war strategy to bomb civilians has been explained by the process of normalization (Kramer 2010a; 2010b; Kramer and Kauzlarich 2011).

Kramer (2010a: 121-127) outlined three factors that can be attributed to the normalization of the bombings of civilians: (1) “the social construction of the morality of war goals”; (2) “weapons technology, military planning, and technological fanaticism”; and (3) “the laws of war: the absence of enforcement and the legitimization of violence.” All three of these factors may be used to explain the normalization of other crimes as well. The social construction of morality is important, not just for war goals, but other goals that can be accomplished through the commission of state-corporate crimes. Focusing primarily on World War II, Kramer describes the U.S. military strategy to prioritize the lives of American troops by focusing attention on them and directing it away from enemy troop or civilian deaths. With such a strategy, civilian life in nations invaded by the United States has callously been neglected while an apotheosis of American troops has overshadowed any concern for others. Brigadier General Jacob E. Smart exemplifies the construction of morality of war goals in an interview with Conrad Crane (2000), stating, “But of course there is morality in war. But it takes a lower priority than surviving. It takes a lower priority than winning ... The innocents suffer far more than the perpetrators.” In

line with morality, sides of war are often times simplistically labeled “good” and “evil” demarcating the allies of war from the enemies.

In addition to being applicable to bombing of civilian or other war crimes, the social construction of morality is important to understanding HRVs as well. For instance, communism was often times labeled “evil” in many Latin American countries throughout the 1960s, 1970s, and 1980s (Hey 1995; Heinz and Fruhling 1999; Gómez 2003). Consider the word “rebel” as an example. It, in and of itself, establishes a negative connotation to groups of people who disagree with the government and act in such a way to change policy. Such strategic use of language and social construction of morals led many individuals in these societies to join in on the demonization of the so-called rebels’ behaviors to the point that the rebels were subjected to extreme abuses, such as killing and torture that were normalized.

Development of new and sophisticated weaponry has also contributed to the normalization of state crime, particularly aerial bombardment of civilians and other war crimes (Kramer 2010a). There is no better example than the Korean War to demonstrate this point. Korea is described by Crane (2000) as being the first real American air-war where predominant battles were fought with aircraft, but more importantly, massive bombing campaigns were used to win the war. The immense devastation from the numerous bombs dropped on Korea resulted in complete obliteration of cities and the highest ratio of civilian-to-military personnel deaths of any American war (Cummings 2010). Phrases such as “precision bombing” and “collateral damage” have slipped into the military’s and civilian’s cultural vernacular to euphemize the atrocities of the destruction carried out by this sophisticated weaponry. Drones appear to be one of the most recent affixations of technological superpower to eliminate terrorism while

downplaying the potential and actual harms caused by employing such destructive technology (Johnston and Sarbahi 2015).

The applicability of use of technology to understand commission of HRVs should not be difficult, as physical integrity rights violations such as extrajudicial killings are often done via drone strike which has become a normalized method of fighting terrorism (Rothe and Collins 2014). More interestingly, HRVs, such as infringing on workers' rights, can also be normalized through a fascination with technological advance. The Paducah Gaseous Diffusion Plant offers a unique example of a corporation that committed violations against workers and the environment, exposing them to radioactive material (Bruce and Becker 2007). The state also played an integral role in providing lax oversight, while also directly investing in the corporation's activities. This plant was involved in enriching uranium for nuclear power and weapons of warfare. The state relied on the plant for supplying uranium-rich weapons for military defense purposes resulting in many instances of little-to-no regulation of worker safety. As precautions were ignored and hazardous materials were mishandled by workers, several complications, including death, arose as about one in ten employees were exposed to 20 times more radioactivity than the, now known, limit of exposure considered safe. The exposure of workers to this radioactive material can be understood as being normalized, influenced through a cultural dependence on, and captivation with, technological progress in general, and not just specifically geared towards military developments.

Lastly, the absence of law enforcement or weak punishments meted out by police or regulatory agencies can result in normalization of deviant behavior. In other words, if deviant behavior is never punished or officially labeled deviant, it becomes normalized. A cursory glance of U.S. history exemplifies how U.S. military violence has become normalized by

successfully escaping any punishment for transgressions, and for the most part, minimizing any deviant label. Aerial bombardment has become normalized by the lack of enforcement of international law, thus failing to hold American leaders accountable for their war crimes (Kramer 2010a). Kramer highlights the amorphous phrase, “military necessity,” which has provided an exploitable loophole in international law. The United States has relied on this phrase to allow for the bombing of foreign civilians as legal and acceptable when it is deemed necessary to ensure the safety of the greatest number of civilians, typically Americans. As these crimes are committed repeatedly without criminal sanctions, they become normalized since no regulating institution is reacting to them as deviant. International law also encompasses crimes other than war crimes and can be expanded to explain HRVs. The habitual violation of international law by the U.S. government is well documented (see Boggs 2010) and plays a large role in normalizing criminal behavior. Ultimately, any crime that is not labeled, treated, and punished as a crime will ultimately become normalized over time.

Normalization plays an integral role in the legitimization of criminogenic policies. Patterns of criminogenic policy formation become normalized after similar policies are passed and the ideologies informing these policies become institutionalized. Over time, key players in policy formation neglect the potential harmful effects of their policies because other countries are creating or agreeing to similar policies. Furthermore, there is virtually no criticism coming from powerful policymakers and also no criminal sanctions. The extensive social expenditure cut requirements attached to loans by the World Bank provides an example of how the United States, through its influence on an international financial institution, the World Bank, pressured a series of countries to the point that the stipulation of slashing social expenditures was a normalized process to qualify for receiving loans. All the while, the most disadvantaged

individuals in these indebted countries suffered from HRVs, such as reduced or no access to health services.

Political Economy of Human Rights Violations

Social Structure of Accumulation Theory

Since inequality is closely related to violence (Iadicola and Shupe 2013), any astute investigation of HRVs must make inequality a central point of study. Most important are the institutional and structural levels of violence both domestically and internationally since these forms of violence are largest in scope and magnitude, and serve to maintain the unequal hierarchical structural arrangements. Arguably the most influential social institution is the economy, and thus an investigation on how the economy contributes to violence, both at the institutional and structural levels, is paramount. Furthermore, a major focus must be on policy and how it organizes the economic structure that in turn creates conditions for violence. The neoliberal economic movement is an essential target of study since it has tremendously influenced the ideologies that reinforce the hierarchical divisions of society, and has spurred a large growth in inequality (Kotz 2015). Since social structure is a primary focus of any sociological investigation, neoliberalism will be investigated using the theoretical lens of social structure of accumulation (SSA) theory. Although SSA theory has not typically been used to study crime or HRVs, given the interconnectedness of inequality and HRVs, it is important to the proposed analytical framework.

According to SSA theory, an SSA is a set of economic institutions and principles established to facilitate the ease of accumulating capital over time that creates conditions favorable for amassing capital rapidly in a capitalist economy and/or the global capitalist marketplace (Gordon, Edwards, and Reich 1982; Kotz, McDonough, and Reich 1994;

McDonough, Reich, and Kotz 2010). Economic institutions established within an emerging SSA must provide opportunities for capital investment, economic stability, and, most essential, increasing profits. Several elements of each SSA are of key importance to SSA theory, some of which are capital-labor relations (and even capital-capital relations), the role of the state in the economy, the corporate sector (and in particular, the financial sector), the shape of the global economy, and any political coalitions.

The most recent SSA is neoliberalism noted as lasting from 1979-2008, arguably even longer (Kotz 2015). The simple definition of neoliberalism includes three types of policies: liberalization (deregulation), privatization, and stabilization. Yet, Kotz goes to great lengths to define neoliberalism in much more detail. To summarize, Kotz outlines four fundamental changes that categorize the neoliberal era: (1) the global economy previously influenced by the Bretton Woods system crashed and was replaced by policies that emphasized free movement of capital and goods and an integral role for central banks; (2) the role of the state in the economy drastically shifted to deregulation, tax cuts, and privatization among other policies; (3) unions suffered several defeats as the power shifted more and more disproportionately in the hands of capital rather than labor; and (4) competition intensified in the corporate sector and financial institutions increasingly became more involved in speculative endeavors that appeared more lucrative. Many policies have been created during the neoliberal era and they likely reflect these changes listed by Kotz. For example, policies during the neoliberal age would be more likely to favor capital over unions compared to policies created during a different SSA. Thus, the current SSA is important for understanding policy formation within that particular SSA. Furthermore, world-systems analysis suggests that the world-system of importance is a global capitalist economy with the United States constituting a hegemonic core-nation. Coupling this

understanding with SSA theory, the world-system may better be understood within the context of an SSA. During neoliberalism, the world-system can be said to be a neoliberal global capitalist economy with the United States a center of focus due to its massive hegemonic influence on the global economy. Any policy involving the United States is likely to reflect the goals of neoliberalism (e.g., deregulation, social expenditure cuts, tax cuts for wealthy, and the weakening of unions)⁶ during the timeframe of the neoliberal era.

Transnational Capitalist Class

There is a powerful, amorphous, sometimes faceless group of influential individuals referred to by many names that influences policy formation between nations. Gill (1990) and Sklair (1991) call them the transnational capitalist class (TCC). Cox (1987) investigates a similar group named the transnational managerial class. Gill (1993) later referred to them as an emerging neoliberal transnational bloc. More recently, Ozekin (2014: 94) described them as a transnational historic bloc. The importance of this TCC, or whatever name used to describe them, expands well beyond the scope of this dissertation. Only a small part of the TCC will be referenced throughout this dissertation, primarily individuals connected to the United States and Mexico, and a few Canadians.

The purpose of this section is to present the basic conceptualization of a TCC and how it has come to shape global economic ideology. The concept of a TCC builds on Gramsci's idea of a historic bloc described as "an alliance of different class forces politically organized around a set of hegemonic ideas that gave strategic direction and coherence to its constituent elements" (Gill 2003: 58). Although Gramsci typically thought of hegemony as confined to the capitalist

⁶ See Kotz (2015: 42) for an extended list of the ideas and guiding principles of neoliberalism.

state, Cox (1993: 52) expanded the boundaries of hegemony to include a larger, transnationally influential social structure “expressed in universal norms, institutions and mechanisms which lay down general rules of behaviour for states and for those forces of civil society that act across national boundaries.” Thus, with the advent of neoliberal globalization, a TCC, and the concept of hegemony, transcend the nation-state. As production and capital accumulation have become more transnational within the new economic structural forms, factions of a TCC have emerged from the previous nationally-oriented classes (Robinson 2004). Consequently, global social forces replace domestic social forces characterized by common motivations, identity, and a powerful consensus on the global structure of capitalism unencumbered by national or geographic boundaries. Ozekin (2014: 104) defines the TCC as:

The emerging transnational historic bloc primarily consists of productive social forces and transnational capital itself, but it also includes various economic and political forces whose interests and ideas are deeply committed to the progressive liberalization and integration of global economic system. In this respect, the owners and key executives of transnational corporations and private financial institutions and other capitalists around the world can be viewed at the zenith of an emerging transnational historic bloc.

He continues on to specifically list members of the TCC:

Moreover, the executives of central banks, leading political figures, high officials and civil servants in advanced capitalist countries and some in peripheral capitalist countries can be also regarded as constitutive parts of transnational bloc. The emerging historic bloc also comprises bureaucrats and technicians in the agencies of transnational state structures; such as the IMF, the World Bank and other transnational forums, and a set of charismatic public figures, political leaders and organic intellectuals (e.g., academics, opinion leaders, intellectual elites) who ensure the formation and persistence of the bloc by providing ideological legitimacy and technical solutions to the problems of neo-liberal orthodoxy.

The actors listed by Ozekin are primarily those that state-corporate crime researchers investigate.

If the TCC is influential in shaping policy, then any state-corporate crime framework must consider these connections.

Cox (1983) describes the process by which a TCC is formulated. Once domestic hegemony is established within a particular society, the forces perpetuating and reifying hegemony tend to disperse outward internationally by coalescing with similar social forces found in several nations. As differing ideologies may clash, some come to predominate among the TCC as hegemony becomes global hegemony. Although certain nations may be the “centers” of hegemony by proliferating more members of the TCC, they are not restricted to their domestic or national identities.

To understand the current global hegemony and TCC, consider the competing ideologies of Soviet communism or socialism and U.S. capitalism. Post-WWII, the United States served as a center for the capitalist hegemonic world order, referred to as the Pax Americana (Bowles, Gordon and Weisskopf 1990). The domestic capitalist class in the United States was expanding to form the TCC. At that time, Fordist capital accumulation was built around mass production, the division of labor based on efficiency, and mass consumption (Gill 1990). The economic system also balanced both free trade and government protectionism complemented by a Keynesian welfare state acting as a social safety net against uncontrollable market forces (Ruggie 1982; Gill and Law 1989). The Bretton Woods system institutionalized these U.S.-born economic cornerstones through organizations such as the IMF and World Bank, until in 1971, when the United States ended the gold standard and the world economic system faced a crisis of accumulation as Kotz (2015) would call it.

Summary of Analytical Framework

At this point, all pieces of the analytical framework have been introduced and described. The entire framework can be found in Figure 2.1. To clarify this model, each piece and its role

will be reviewed. First, the model centers around the international state relationship of a core nation and a non-core (peripheral or semi-peripheral) nation. State-corporate crime theory, both the Kramer and Michalowski (2006) and Rothe and Mullins (2009) models, is integrated to explore and explain the behavior of states in these relationships. For instance, each state will have its unique motivations, opportunities, controls, and constraints influencing how it interacts with other states. As noted earlier, these core and non-core state relationships are unbalanced, based on both the state-corporate crime literature and world-systems analysis. World-systems analysis studies these state relationships in the context of the world-system, which is defined as the global capitalist economy (Wallerstein 1974; 2004). Core nations are at the center of this global economy offering them more opportunity and leverage in such negotiations, and they also have an interest in maintaining the world-system. State-corporate crime theorists would also label these relationships as hierarchical since core nations have a greater number of opportunities to achieve their goals (motivations) while facing fewer controls and constraints capable of inhibiting achievement of these goals. Policy, then, is the product of these international state relationships which is enacted in the form of treaties, declarations, conventions, charters, etc. Given the power possessed by the core nation within this unbalanced relationship, extant policy is more likely to reflect the core state's and TCC's interests. In turn, the core state's interests are likely shaped by the current world-system, SSA, and TCC.

Another important component of this analytical model is the impact of the SSA that shapes the economic environment in which these policies are created by influencing the motivations, opportunities, controls, and constraints (Gordon, Edwards, and Reich 1982; Kotz, McDonough, and Reich 1994; McDonough, Reich, and Kotz 2010). For example, the neoliberal era has given rise to deregulation and public ideologies in favor of deregulation that lessen

controls and constraints. Also, neoliberalism has been characterized by shifting the balance of power toward capital and away from labor. Thus, policy within the neoliberal era likely strives for deregulation, shifting power to capital, privatization, and financialization. Neoliberal ideology has become normalized among policymakers. Agents of the state are socialized within the current SSA, and thus create policy that reflects the SSA. Furthermore, the process of criminogenic policy formation becomes normalized among members of the TCC involved in negotiations. Thus, the patterns of inequality and violence as a result of these policies becomes neglected and overlooked when they are not brought to the direct attention of these key players in policy formation. Policy, particularly economic policy, also becomes a way in which members of the TCC can solidify conducive conditions for accumulating capital.

Policy is paramount to the theoretical model because, as suggested, policy can have impacts on HRVs. In other words, policy has effects on violence, inequality, and human freedom among citizens of the states enacting international policy. However, since the relationship more likely reflects the interests of the core nation, citizens of the non-core nation are more likely to experience the negative consequences of criminogenic policies, with the most disadvantaged populations being disproportionately affected. For example, the neoliberal era has witnessed several economic policies and agreements that have created vast inequality in both core and non-core nations. Overall, criminogenic policies are created in bilateral or multilateral international relationships characterized by extreme power imbalances that tend to have deleterious effects on citizens of non-core nations. Policies are official agreements that are often understood as being akin to law. Since criminogenic policies are easier for states to legitimize than overt violent repression, they have been neglected by scholars and not recognized for the harms they cause to citizens. This understanding necessitates the current analytical model.

CHAPTER 3

REVIEW OF THE EMPIRICAL LITERATURE ON HUMAN RIGHTS VIOLATIONS

Chapter Overview

Although research on human rights violations (HRVs) has been conducted in a multitude of fields, this chapter focuses primarily on the criminological research on HRVs. First, the study of HRVs will be connected with criminology given the redefinition of HRVs as crime in the previous chapter. An assessment of the empirical literature on HRVs will follow. It begins with a brief critical review of empirical literature on genocide. Although the current dissertation will not cover genocide, research on genocide can still offer insights into the study of HRVs. Next, the literature on crimes of globalization will be reviewed. The studies that comprise this literature are most similar to the current study as they focus on how the actions and policies of international financial institutions can lead to HRVs, most notably violations of civil, social, political, and economic rights. Lastly, several extensive qualitative case studies will be reviewed, albeit not conducted by criminologists. For these cases, physical integrity rights violations are tracked within different Latin American countries. Despite the focus on physical integrity rights, several other HRVs can be found in these case studies. However, the extensive detail of these cases provides a comprehensive look into HRVs committed, predominantly by states, in particular countries over extended periods of time. Overall, this chapter examines a wide body of literature covering HRVs, from the most to the least severe forms, and emphasizes criminological explorations.

Criminological Research on Human Rights Violations

Criminologists, such as Day and Vandiver (2000), have argued that criminology has not focused on studying or explaining genocide, or other HRVs, but instead have left the theorizing of genocide to political scientists.⁷ Maier-Katkin, Mears, and Bernard (2009) attempted to bridge the gap between the human rights literature and the criminological literature, but like most theoretical explanations and empirical research on HRVs in the field of criminology, focus exclusively on genocide.⁸ In addition to the focus on genocide, these studies tend to focus on the research question, “Why do otherwise normal people commit atrocities?” akin to Milgram’s (1974) classical experiment of obedience to authority.

Overall, the empirical research on genocide focuses exclusively on the interactional level of the Kramer and Michalowski (2006) and Rothe and Mullins (2009) models. Citizens or state agents may engage in genocidal behaviors due to motivations such as competitive individualism paired with divisions of race, nationality, or religion, an access to illegal means to achieve their goals, and a lack of controls or constraints (e.g., people may rationalize their behaviors based on in-group/out-group dynamics, during genocide responsibility is diffused, and groupthink may inhibit critical thought). When a group of individuals is subjected to HRVs, other citizens may join in the perpetration while other citizens may facilitate HRVs by ignoring their occurrence and allowing them to continue. The empirical literature on genocide can help explain why people come to obey, accept, and replicate authority in the commission of HRVs. Most importantly, this literature can help to understand the interactions between individuals in policy creation and why agents of the state may create policy more likely to have negative effects on particular

⁷ However, Carrier and Park (2013) criticize these claims that criminology only recently has investigated genocide or HRVs.

⁸ See Athens (1992; 1997; 2003), Hagan, Rymond-Richmond, and Parker (2005), Hagan and Rymond-Richmond (2009), Winton (2011), Olusanya (2013), and Pruitt (2011; 2014; 2015).

populations, especially when those populations are part of the “other” group. In other words, the genocide literature can help inform research into the negotiation stages of policy creation to assess if key players in the negotiation process acknowledge potential social harms, and if so, how they address those perceived harms. The neoliberal ideologies have a strong justifying force and tend to favor the groups of ownership and management rather than the working class. Structural violence against natives and local farmers may be justified and viewed as necessary for greater economic progress. Despite the usefulness of the literature on genocide, it is not without its shortcomings. For example, Matsueda (2009) points out that the failure to explore macro-level factors may contribute to genocide and other HRVs. Given the micro-level orientation of genocide research, the crimes of globalization literature found within the state-corporate crime literature offers some of the best empirical explorations of HRVs due to its more macro orientation.

Crimes of Globalization

“Crimes of globalization” research – a phrase coined by Friedrichs and Friedrichs (2002) – is a relatively new body of literature in the broader state-corporate crime genre that focuses on the growing interest in international crimes. Crimes of globalization are associated with “demonstrable harm that results from the policies and practices of the international financial and trade institutions, principally the World Bank, the International Monetary Fund, and the World Trade Organization” (Friedrichs 2007: 10). Given the focus on policy by the crimes of globalization literature, the few studies investigating socially harmful policy effects greatly inform the current research. Since the focal point of this dissertation involves examining criminogenic policies, it is essential to review the empirical findings of this body of literature.

The view of globalization taken by the crimes of globalization literature also informs the current dissertation. Friedrichs and Friedrichs (2002: 15) list four dimensions of globalization; the first two are most pertinent to my study. The first dimension highlights “the growing global dominance and reach of neoliberalism and free-market capitalist system that disproportionately benefits wealthy and powerful organizations and individuals.” Secondly, “the increasing vulnerability of indigenous people with a traditional way of life to the forces of globalized capitalism” is another major focus. An ideology of free-market capitalism and free trade dominates the globalization era; such neoliberal policies that demarcate this era tend to create conditions that establish winners and losers. The benefactors most often are multinational corporations and the sufferers are poor and disadvantaged populations with disproportionately negative effects on indigenous populations in developing nations (Frank 2000). Thus, neoliberal globalization contributes to burgeoning inequality, widespread unemployment, and vast impoverishment (Carrasco 1996; McCorquodale and Fairbrother 1999; Shapiro and Brilmayer 1999). In turn, HRVs may be largely attributable to neoliberal globalization policies and practices. Many studies on crimes of globalization have demonstrated that profits are generally placed before human rights (Falk 1993). Poverty is thus not alleviated but rather reinforced and exacerbated within the political economy of neoliberal globalization (Bracking 2009).

Rothe, Mullins, and Sandstrom’s (2009) study in the crimes of globalization literature focuses on genocide from a starkly different approach than the mainstream genocide literature briefly reviewed above. This study and others in this literature add depth and historical context to genocide research. As noted, the mainstream criminological literature on genocide has focused primarily on explaining why individuals take part in genocidal violence with less attention to the social forces that create macro-level conditions conducive to genocide. Even Pruitt (2011) and

Hagan and Rymond-Richmond (2009) struggled to explain why states commit genocide (even though they study genocides where the state played a major role). Although Pruitt (2014; 2015) discusses triggering catalysts (e.g., internal war, revolution, regime change, or other conflicts) as playing a large role in establishing the conditions for genocide, his work encompasses very little of the historical, social, and economic conditions within a country leading up to genocide. For instance, in the case of Rwanda, Pruitt (2011) traces the roots of ethnic division between the Hutus and Tutsis back to the Belgian colonization, but this colonial influence does not inform his analysis. Contrary to the mainstream approach, the state-corporate crime literature has extended research on genocide to include the social and economic conditions leading up to genocide.

Rothe et al. (2009) researched the Rwandan genocide in an attempt to uncover the conditions spurring the civil war and subsequent genocide. In other words, they sought to identify the triggering catalysts of this catastrophic event. They argue that economic policies of the International Monetary Fund (IMF) and World Bank laid the groundwork for such atrocities to happen. Both these institutions did not purposely seek to spur genocide, but their actions to impose strict conditions on aid packages had devastating effects on the economic environment and undermined Rwanda's economic independence. These institutions placed investor returns before the people of Rwanda by devaluing their currency, privatizing their local marketplace, and slashing social expenditures. The currency devaluation led to soaring inflation and poverty that primarily affected rural areas and farmers. Privatization compounded the issue of poverty since the wealth shifted from the local citizens to U.S. and other Western institutions. Lastly, reductions in social spending further crippled the most impoverished populations in need of assistance. The exacerbated economic inequality gave rise to disgruntled militant groups who began seeking individuals to blame. Overall, these policies created anomic conditions conducive

to extreme genocidal violence. Crimes such as those committed by the IMF and World Bank in Rwanda have been called crimes of globalization. Rothe et al. (2009), as well as other criminologists within the crimes of globalization literature (Friedrichs and Friedrichs 2002; Rothe, Mullins, and Muzzatti 2006; Ezeonu and Koku 2008), have emphasized the importance of international intervention through the use of policies and practices and how this intervention can create conditions conducive for HRVs, making it the most relevant body of literature for the current dissertation.

Another case study, and the original study that gave rise to the study of crimes of globalization, investigated a World Bank-financed dam built in Thailand (Friedrichs and Friedrichs 2002). This study established crimes of globalization as a subfield of state-corporate crime, albeit few criminologists have actually continued the research in this area since its creation. Friedrichs and Friedrichs (2002) used a case study methodological approach while supporting it with participant-observation and interviews. As part of the participant observation, Jessica Friedrichs lived intermittently at a Pak Mun Dam protest village just outside of Ubon Ratchatani, Thailand for four months. During her stay, she interviewed five villagers about their experience relating to the Pak Mun Dam. Interviews were also conducted with local energy officials, World Bank representatives, NGO members, and local academics investigating the issue.

The central argument Friedrichs and Friedrichs (2002) make is that international financial institutions (IFIs) such as the World Bank, IMF, and the World Trade Organization (WTO) have engaged in criminogenic practices and policies within the context of neoliberal globalization, and the case of the Pak Mun Dam is used to buttress their argument. Hydropower development was a large-scale goal of many development projects throughout the 1970s and 1980s. Continuing

this trend, the World Bank approved a loan in 1991 to support the building of the Pak Mun hydroelectric dam in Thailand to increase industrialization. However, they argue that several consequences of the dam construction are criminal.

A large portion of forestland was flooded due to the dam's presence which actually violated the World Bank's own policy of protecting cultural property. This flooding caused the destruction of several edible plants, a variety of mushrooms, and bamboo species consumed by the locals for survival. Stagnant water created by the dam was known to have adverse health effects, but plans to address parasitic river fluke migration were not well implemented. As a result, local residents of the riverfront who relied on the river for drinking, bathing, and other basic necessities were plagued with skin rashes. Fish species declined rapidly after the dam was erected which completely altered the lives of fishermen and the local fisheries that were reliant on this aquatic life for their incomes and subsistence. Physical resettlement was necessary for these individuals and others whose houses or farms flooded. In other areas, the rise in water level has made transportation difficult, also resulting in relocation. The complications leading to displacement have to some degree been addressed since their land has been appraised and compensation has been paid, but it is largely debated as to whether this compensation has been paid to all those who were affected (Friedrichs and Friedrichs 2002).

Many of the individuals who lost their income fled to the urban center of Bangkok, but Bangkok's economy was not able to support such a large number of workers flowing into the city. With the dam causing grievances among the peasants and locals, protests ensued where the Thai police were involved in forcibly removing protesters and arresting a large share (Friedrichs and Friedrichs 2002).

The Pak Mun dam demonstrates one case where the World Bank implemented a developmental plan in Thailand that resulted in a series of HRVs. More generally, the involvement of IFIs in practices and policies that contribute to HRVs can be observed across much of the Third World. IFIs are multinational institutions that claim to represent global interests, but as it can be seen in the Pak Mun dam case, they tend to reflect the interests of the most powerful and wealthy nations, particularly multinational corporations headquartered there. The Friedrichs' (2002) study provides empirical evidence that supports the proposed model in the previous chapter.

Ezeonu and Koku (2008) integrate three key foci of the current dissertation (state crime, structural violence, and neoliberalism) in their study of the HIV pandemic in sub-Saharan Africa. They argue that neoliberal policies contributed to a greater exposure of women to high-risk lifestyle choices, which often resulted in higher probabilities of HIV infection. Unrestrained capitalism is associated with exposing these individuals to greater harm rather than less. For example, Ezeonu and Koku (2008) argue that the Trade-Related aspects of Intellectual Property Rights (TRIPS), created by the WTO, emphasizes the theft of intellectual property over distribution of life-saving drugs, and this has reduced access of those in sub-Saharan African nations to HIV drugs. TRIPS demonstrates the potential harms of a free marketplace. In addition, most HIV prevention in African has attempted to reduce the transmission from mother to child while few efforts have been made to treat the mother.

Beyond TRIPS and its effect on limiting access to HIV drugs, Ezeonu and Koku (2008) mention several factors that have contributed to a rise in risky lifestyles among poor women in sub-Saharan Africa that led to higher rates of HIV infection. First, structural violence in the form of unequal distribution of resources and poverty lead to differing health outcomes. Poverty,

paired with gender inequality, accentuate the incidence and prevalence of infectious diseases among women in sub-Saharan Africa. Second, privatization of the economy – policies advocated by the IFIs – often lead to economic devastation in a number of countries, displacing many people from their previous places of employment (Cornia 2001; De Vogli and Birbeck 2005). This displacement, in turn, leads to newly created male migrant workers who travel farther away from home to find work and to an increase in the number of casual sexual partners resulting in more HIV infections (Anarfi 1993; Anarfi, Appiah, and Awusabo-Asare 1997; Jochelson, Mothibeli, and Leger 1991). Ultimately, the wife back home then contracts the virus as well when the men return. Third, currency devaluation, coupled with privatization, place many women in dire economic conditions that lead them to seek out work in the commercial sex trade to provide for their family. Furthermore, the dire economic conditions also exacerbate the unbalanced gender relations between men and women, leaving women less equipped to engage in safe sex practices. Fourth, health care cuts have dramatically reduced the number of people covered and the quality of health care. Lastly, limitations have been made on U.S. aid packages such as the President's Emergency Plan for AIDS Relief which restricted funds going to organizations dedicated to helping commercial sex workers or clean needle exchange programs (Kamwi, Kenyon, and Newton 2006). When considering these factors, it comes as no surprise that African women account for 70 percent of all women who contract HIV (UNAIDS 2004).

The IMF has used structural adjustment programs (SAPs) as conditional attachments to loans given to struggling countries. Many of the factors studied by Ezeonu and Koku (2008) were conditions attached as SAPs to loans given to sub-Saharan African countries. A common condition of receiving loans is the removal of trade tariffs that ironically were and still are used by the United States to protect its internal economy. The removal of these trade tariffs can

cripple some developing countries' economies as they lack the economic power to compete with developed countries in a global market. The World Bank also offers loans to states with the expectation that they will open their markets. These nations often struggle with debt repayment, which can result in the underfunding of important social programs. For example, Sierra Leone spent almost seven times more money on debt repayment than on its primary schools in 2001 (Buston 2003).

Rothe, Mullins, and Muzzatti (2006) specifically explore the effects of IMF and World Bank loans and their attached SAPs on the sinking of the Senegalese ferry, *Le Joola*, on September 26, 2002. At first glance, this disaster appeared as a traditional state crime or classifiable as resulting from a failed state. The government openly admitted fault and several officials resigned from their positions. Yet, as alluded to earlier, other states, or in this case, IFIs, may be responsible for a state's failure. After thorough investigation, Rothe et al. (2006) discovered that the SAPs placed on the Senegalese government led to spending cuts in various areas, including the transportation budget that directly affected the ferry programs. Given the geographic location of Senegal on the Atlantic coast, ferries were often times the only true choice for travel. The spending cuts reduced the successful navigation and upkeep of the *Le Joola*, and only one rather than two engines was functioning when the ship capsized resulting in the death of 1,863 passengers. Although superficially it may be concluded that the Senegalese state was negligent, Rothe and her colleagues demonstrated that the dominant ideology of western capitalism guided the IFIs to act in the interest of capital, while neglecting to consider the potential harmful effects of its actions on human lives. IFIs are guided by a logic of development of free market capitalism that benefits states that control IFIs the most. In this case, the IFIs were motivated to create a more conducive condition for capital in Senegal by slashing

social expenditures. Thus, categorizing the sinking of the *Le Joola* as an unfortunate accident, or attributing it to the failure of the Senegalese state are problematic for two reasons. First, these understandings are not holistic and are historically inaccurate since they do not consider significant influences external to the Senegalese state. Second, and possibly most important from a criminological perspective, these explanations obscure the criminal liability of more powerful states and IFIs in the sinking of the *Le Joola*. Consequently, the alternative explanations benefit the criminally culpable actors by both allowing them to escape any scrutiny or any real investigation into their role in the social harm, and displacing the blame onto the less powerful states. Interestingly, through a crafty loophole, IFIs are not bound by international law because they are not nations, albeit representing the interests of particular nations and controlled disproportionately by those nations as well. IFIs appear to be a tool by which wealthy nations can achieve economic restructuring in developing countries. Accordingly, they must be understood within this context. In other words, IFIs should not be studied independently from the states that control them as some of the crimes of globalization literature has seemingly done. For the current dissertation, the U.S. and Mexican states are of central importance, but actions of the IFIs will not be ignored given the influence the U.S. state has over these institutions.

Although the crimes of globalization literature has demonstrated IFIs create harmful policies leading to deleterious outcomes, the overemphasis on the IFIs is problematic. Despite the image of IFIs as international representing a multinational perspective, IFIs' practices and policies often reflect the interests of the most developed, rich nations. As previously mentioned, a global capitalist economy fosters an environment in which two nations, differing greatly in economic and political power, create policies that disproportionately affect the most disadvantaged populations in peripheral nations. Similarly, as institutions of globalization, IFIs

have acted in the interest of wealthy, developed nations rather than the global poor. The World Bank and IMF were both creations of the developed world with little to no involvement from developing or Third World countries. Agreements involving the Third World tend to only benefit or serve the interests of local elites in those developing countries. Thus, the proposed analytical model of this dissertation provides a distinct advantage over the approach found in the crimes of globalization literature. States working together in criminogenic bilateral (or multilateral) relations replaces IFIs as the central focus since IFIs are ultimately powered by these inflectional states.

Similarly, Mackenzie (2006) emphasizes that the states responsible for, and in control of, IFIs must be held accountable for IFI actions and policies. In other words, given the amount of power a handful of nations have over these institutions, these states themselves must be the subject of study when interested in the harms produced by IFIs' practices and policies. The IMF and World Bank should not be understood as international democratic institutions despite their rhetoric. Upon investigation, countries hosting the wealthiest economies have secured a large portion of voting rights in these institutions resulting in little need of developing nations to vote along with them (IMF 2016; World Bank 2016). Thus, powerful states with large percentages of voting power (core nations) should be the focus of criminal investigation. Particularly, the United States holds an extremely dominant position in these institutions.

Several reasons demonstrate how powerful states influence and control IFIs. First, both the IMF and World Bank are headquartered in Washington, D.C. while the U.S. Treasury Secretary nominates the World Bank president which happens to always be a U.S. citizen. The IMF director is always a European citizen albeit supported by a serving deputy from the U.S. (Monbiot 2003). Second, the United States has the largest voting portion in these institutions

amounting to about 16 percent of the total vote (IMF 2016; World Bank 2016).⁹ For the majority of IMF and World Bank decisions, a 50 percent majority must be met. Considering these decisions are primarily economic, and the wealthiest nations have the majority of voting power, it is not surprising that decisions are likely made with the interests of developed nations in mind. For instance, nations comprising G7 constitute around 45 percent of the vote. Thus, these seven nations need little support for policies in their interest. Third, for considerably important voting decisions such as an amendment to the World Bank's or IMF's Articles of Agreement, an 85 percent majority is needed in both the IMF and World Bank to implement a policy. Such a high threshold allows the United States to effectively hold a veto power with over 15 percent of the vote in both institutions.

The WTO actually has a more democratic structure where each member holds a single vote. However, researchers have criticized the democracy of the WTO, focusing primarily on the occurrence of “green room” negotiations where superior economic countries meet in private to reach agreements before officially deciding within the WTO (Mackenzie 2006). Furthermore, green room negotiations allowed the economically superior countries to dominate the official WTO negotiations as a bloc drowning out the voices of developed nations (Woods and Narlikar 2001). Regardless of the problems of the WTO, each country possessing a vote is quite an improvement over the IMF and World Bank where 48 sub-Saharan African nations possess 5.35 percent of the World Bank vote only slightly more than Germany's 4.39 percent (Ottenhoff 2011).

⁹ Voting power in the World Bank and IMF can be viewed at <http://www.worldbank.org/en/about/leadership/VotingPowers> and <https://www.imf.org/external/np/sec/memdir/members.aspx> respectively.

The IFIs' practices and policies address interest rates, inflation, trade barriers, and deficits with arguably good intentions, but these procedures fail to consider their effects on poverty, deprivation, illness, and death seriously (Stiglitz 2002; Monbiot 2003; Wallach and Woodall 2004). The myopia of IFI is attributable to the lack of diversity in decision making with nearly only developed nations with any voice in these institutions. For example, the creation of TRIPS by the WTO has empowered drug companies from developed nations to go after the manufacturers of cheap generics in the developing world (Stiglitz 2002). These drugs may even be life-saving drugs, but the WTO emphasizes the theft of intellectual property over distribution of life-saving drugs. Compulsory licensing was later developed to allow nations to circumvent TRIPS in order to produce life-saving drugs when severe health emergencies were declared. However, "TRIPS Plus" was introduced by the U.S. offering investment incentives to WTO members to strongly protect intellectual property rights of U.S. corporations which potentially undermined compulsory licensing (Mackenzie 2006).

Comprehensive Case Studies of Latin American Countries

Several qualitative cases studies crucial to the development of this dissertation have been alluded to throughout this and the previous chapter. These studies cover nine Latin American countries including Guatemala, Costa Rica, Brazil, Uruguay, Chile, Argentina, Cuba, El Salvador, and Nicaragua (Hey 1995; Heinz and Fruhling 1999; Gómez 2003). The goal of this section is to describe how other large-scale case studies on HRVs have been conducted, outline their major empirical findings, and offer criticisms that will be addressed in the current dissertation. Each study will be detailed separately, in chronological order, as each one seems to

improve on the one before it, concluding with general patterns and findings from all of them collectively.

Guatemala and Costa Rica¹⁰

Hilde Hey (1995) conducted a study, in collaboration with the Netherlands Institute of Human Rights, to search for the causes of HRVs, what she calls “gross HRVs” (a 1967 U.N. classification) which are no different from physical integrity rights. She chose Guatemala and Costa Rica because the former was a country with systematic HRVs, while the latter had virtually no HRVs during the time period from 1979-1990. Her search for causes followed the logic of Mill’s (1843) method of agreement and difference which sought to determine the main causes of HRVs by comparing the two nations were in the same region, but differed greatly in their human rights outcomes. Through case study comparison, the differences could be attributed to causes of HRVs. First, Guatemala differed greatly from Costa Rica in that the military dominated political and social life (e.g., influenced elections, declared law, and enforced law), wealth distribution was very uneven despite having a medium level GDP, a majority of the population lived in absolute poverty, and there was limited access to education for most of the population. In contrast, Costa Rica had a social democracy with a substantial welfare system similar to European countries, a much more equal wealth distribution, no far right-wing political parties with any substantial following, and education and health care expenditures were greater than the military budget. The colonial histories of the two countries were also disparate. The

¹⁰ Hey’s (1995) case study method utilizes two types of sources: documentation of the historical developments and inventories of HRVs. Stohl, Carleton, Lopez, and Samuels (1986) and Stohl (1992) provide the inventory of HRVs which accounts for the severity (type), frequency (number), and range (victim) of violations. Another source of importance included reports by Amnesty International, a document containing testimonies on disappearances entitled *Asociación Centroamericana de Familiares de Detenidos-Desaparecidos*, other NGO reports, official documents published by the United Nations, Organization of American States, and the United States, and some interviews were also conducted with members of the Guatemalan armed forces.

Spanish Empire heavily exploited Guatemala for its cheap labor by enslaving its large indigenous population. Costa Rica did not experience this exploitation because of the smaller population.

Hey's (1995) study was informed by three bodies of literature including totalitarianism, state repression, and genocide studies. Previously, theories of genocide focused on ideologies that identify collectivities and often-times label out-groups. Race is a common divisive factor that is applicable to Guatemala where there is a clear racial division between Indians and Ladinos which is in direct contrast to Costa Rica. Furthermore, an ideology of national security creates divisions in Guatemala, while an ideology of social democracy fosters collaboration and unity in Costa Rica. Totalitarianism is considered to be more conducive to HRVs than a more democratic state. Borrowing from Melson (1992), Hey (1995: 10) argues that a "state in crisis" is more determinant of physical integrity rights violations than totalitarianism. A "state in crisis" is defined by internal strife or violent conflict, where violence is often used to resolve the crisis. Guatemala experienced violent conflict during the time of study, while Costa Rica did not. Using theories of state repression (Sloan 1984; Gurr 1986), Hey argues that states are likely to use violence when they lose or lack legitimacy. If states have control over the military, state repression is a cheap way to regain power and legitimacy through a monopoly over use of violence, whereas reform, co-optation, and other non-violent strategies are not realistic techniques for addressing conflict when legitimacy is lost (Gurr 1986). Lastly, Heinz and Fruhling's (1999) research is incorporated into the study since their studies were being conducted at the same time and funded by the same institution as Hey's research. Taken together, Hey constructs a theory of physical integrity rights violations suggesting HRVs are a tool used by states for modifying the behavior of civilians. Thus, governments must recognize or

perceive a threat to their power emanating from the actions of oppositional citizens in order for the state to react with physical integrity rights violations.

Theoretically, Hey (1995) attempted to explain both circumstances (short-term causes) and conditions (long-term causes) of HRVs. Both Guatemala and Costa Rica experienced large labor protests, civil unrest, and overt criticisms of the ruling class, thus these circumstances were not considered sufficient to cause HRVs since Costa Rica did not experience systematic HRVs (only isolated cases of torture were documented). However, only Guatemala experienced violent guerrilla opposition where these guerrilla groups violently opposed military actions and policies. Thus, Hey (1995) concluded violent guerrilla oppositions are a cause of short-term spikes in HRVs.

As for long-term causes (or conditions) of HRVs, Hey (1995) explained systematic HRVs in Guatemala as due to its security forces establishing a dominant power position in society and politics. The military owned several major businesses and allowed only political candidates in favor of military to run for election (they also rigged or fixed elections). Military training and recruitment started at a young age to indoctrinate Guatemalans with anti-Communist sentiments, and systematic brutalization broke down their empathetic nature and human compassion. The National Police, tasked with investigating crime, was controlled by the military and thus did not pursue crimes of the military. Yet, crimes of those perceived as a threat to the military were actively tracked and civil patrols prevented local oppositional movements from forming. The police were severely underpaid and undereducated resulting in a high level of corruption. Death squads were associated with the military (although difficult to establish these ties) and the G-2, the Military Intelligence Agency, acted as the private army of the ruling military (like the CIA in the United States).

Lastly, Hey (1995) argues that two ideologies also served as long-term causes of HRVs in Guatemala. First, the military propagated a strong nationalism sentiment forcing the ladinization (assimilating indigenous groups such as the Mayans to the modern mainstream culture) of indigenous Indians. Indians were also ladinized via a compulsory one-year sentence of military duty. This policy failed as Indians felt isolated and resisted joining the military. Civic action programs also sought to gain favor among the Indians and the populous by implementing social welfare programs. However, such programs also failed to dissuade the Indians from supporting guerrilla groups. The second ideology used by the military was national security. Most of the military's actions were justified in the name of national security. Thus, their use of HRVs to engage in counter-insurgency against guerrillas and anyone who criticized the military was viewed as a war for peace (war against guerrillas). A dwindling legitimacy forced the military to switch ideological strategies. In response, the military established a faux democracy, but this did not occur until the guerrillas were defeated. In Costa Rica, the military did not play a dominant role in running the country and the Costa Rican government made concessions to protesters and critics rather than committing HRVs against them. However, government concessions enabled elites to pursue their interests without opposition. Costa Rica also lacks a large ethnic minority to justify violence in the name of nationalism internally.

Although Hey (1995) briefly mentions relationships between the two countries in her study with United States and their importance was emphasized, very little of her investigation focused on these countries' relationship with the United States. The next case studies bring the United States into the analysis, as will this dissertation. Also, several questions are left unanswered by Hey's study: Why did the military dominant in Guatemala, but not Costa Rica? How are HRVs and economic and social conditions related? Were Costa Ricans accepting the

status quo while Guatemalans challenged it? How do the relationships with the United States differ between Costa Rica and Guatemala? Maybe the most important question is what conditions led to the violent guerilla opposition since Hey deemed this the most important factor impacting HRVs committed by the state in Guatemala? It is possible that economic HRVs such as widespread poverty, rampant unemployment, and the dismantling of unions could have played a role in spurring a violent opposition to the state. This dissertation seeks to expand beyond Hey's focus solely on physical integrity right violations to include these other lesser HRVs that may play a central role in creating the conditions for the gross HRVs studied by Hey. Furthermore, in the era of neoliberal globalization, these economic HRVs may be due in large part to policy formation, particularly free trade agreements such as NAFTA. This dissertation also plans to expand Hey's work beyond a domestic focus to including external factors contributing to HRVs within countries.

Brazil, Uruguay, Chile, and Argentina

Wolfgang Heinz and Hugo Fruhling (1999) published four cases studies as a part of the same publishing series as Hilde Hey (1995), and also sought to explain causes of gross HRVs. The time periods covered in these case studies are 1960 to 1990 in Brazil, Uruguay, and Chile, and 1976 to 1983 in Argentina. Unlike Hey's study, Heinz and Fruhling (1999) analyze each country separately with little comparison between them. Heinz independently investigated Brazil, Uruguay, and Argentina while Fruhling covered Chile. Heinz presents a model for the systematic study of these cases in the beginning of the book. The model consists of four goals: (1) the repression system which includes all perpetrators of HRVs must be uncovered; (2) economic and political policies and the crises of these systems that gave way to systematic

HRVs must be described; (3) the global environment in which the country under investigation exists including foreign influences on internal decision-making elites must be explained; and (4) a composition of the victims of HRVs needs to be constructed. The second and third goals are most useful to the current dissertation as they address the main criticism of Hey's (1995) work. Policies are understood as potentially impacting the conditions under which HRVs are committed, and foreign influences are taken into account when considering HRVs within each of these Latin American countries.

The influence of the United States was often documented throughout these case studies. Although Heinz and Fruhling (1999) do not fully follow their own advice, they encourage an in-depth analysis of the benefactors as well as the victims of HRVs as part of their framework, and deem interconnections of perpetrators and benefactors most important when outlining the repression system. Accordingly, they utilize a historical case study method that includes archival research and personal interviews with military and government officials during the time of repression to describe each case. The case studies focused primarily on description while offering some post-hoc explanations. However, no social theory was discussed or used to guide the project. The main sources of each case study will be listed followed by an overview of the case.

Brazil¹¹

In Brazil, all evidence documented in Heinz's (1999a) case study points to the fact that the military dictatorship had a well-orchestrated plan to eliminate subversives early in their development by collecting information via surveillance on political dissidents and legislated new laws to legally apprehend them. Among the physical integrity rights violations, the military committed political imprisonment and torture most commonly, and military officials were aware of these HRVs. The military viewed these particular violations as effective tools for combatting the guerrilla opposition. Extrajudicial killings and disappearances differed slightly in that they were not part of orders coming down from high-ranking officials. However, they were viewed as a necessary evil by the majority of military leadership and thus tolerated.

The leaders of the military dictatorship used three primary justifications to neutralize HRVs and gain the acceptance of the public. First, they justified HRVs as part of an ideological warfare in response to communist and terrorist action. Leaders argued that if these communist or terrorists were to win, the political and economic system would be destroyed. Similarly, they justified HRVs under the guise of traditional warfare against leftist guerrillas perceived as an internal, violent, and deadly enemy that was dividing the country. The wave of communism throughout the 1950s increased the perceived threat of communism in Latin American countries. Thus, a primary goal became the elimination of the communist sentiment in these countries, and the United States alike, in favor of established internal governments. The successful communist

¹¹ See Heinz (1999a) for full case study. The Brazil case study relied primarily on the "Never Again" project organized by the Archdiocese of Sao Paulo supplemented by the World Council of Churches which consists of 700 military court proceedings from 1964 to 1979. Many political prisoners gave testimonies that were recorded in this project. Several fact-finding reports also proved to be valuable sources. Declassified U.S. documents, first published by Carrollton Press in England, were used to gain information on U.S. involvement in Brazil. Lastly, Heinz (1999a: 4) conducted interviews with "witnesses from the political, academic, political party, human rights, police and military sectors of society."

revolution in Cuba, led by Fidel Castro, increased the level of hysteria towards Communism and spurred the direct use of counter-revolutionary tactics towards all leftist groups. Lastly, the military dictatorship justified HRVs using a national security doctrine, and they described all these acts of violence as a defense of national security. The National Security Doctrine, developed by the Superior War College (ESG), established the first national security state in Latin America. In turn, the military dictatorship to arise out of these circumstances was created to implement a political and economic model based on security and development which was strongly influenced by the United States. The U.S. role in shaping the economic and political model in these countries is a key theme that emerges from these case studies that will inform the current dissertation.

These ideological factors and justifications served to protect the economic policies that were the main motivation for the HRVs. Three economic policies relate to the human rights conditions in Brazil. First, the military dictatorship justified the repression of labor movements under the guise of economic growth as they portrayed labor unions and worker strikes as inhibiting economic growth that would benefit the nation. Second, businesses sought increased profits and the military was able to offer a stable business environment once communist and leftist movements were quashed. The business environment was stable in that workers would not strike to improve their working conditions. A tranquil economic environment allowed foreign direct investment to be protected from the threat of labor unrest. Third, since the economic model clearly benefited the middle and upper classes, it was only a matter of time until the lower classes revolted. HRVs became necessary to repress the lower classes, thus securing the interests of the military, politicians, and business. With these findings, Heinz's (1999a) work improves on Hey's (1995) by contextualizing why violent opposition to a state may arise. With

this more nuanced understanding, one cannot simply say violent opposition to the state leads to the state committing HRVs, which is one of the most frequent findings in the human rights literature. Instead, it should be understood that this violent opposition is often rebellion against poor economic and political conditions as detailed in this case study of Brazil.

Several of these ideological, political, and economic factors were influenced by Brazil's relationship with the United States. The United States trained military and police personnel in Brazil to perform HRVs, specifically much evidence points to the teaching of torture techniques. Furthermore, Brazil received large sums of money in foreign aid from the United States which went to support the military dictatorship in repressing communist and worker movements. In sum, the economic policies discussed greatly benefited U.S. multinational corporations and the U.S. government. Therefore, these policies could be further explored using the proposed analytical framework in this dissertation.

Uruguay¹²

Uruguay's military dictatorship came to power quite differently than in Brazil, Chile, and Argentina. In Brazil and Chile, a conservative military regime overthrew a liberal progressive government and in Argentina and Brazil, and Chile to a lesser degree, military leadership arose out of political and economic chaos. The military dictatorship came to power gradually in Uruguay through consistent pressure on a weak democratically-elected president, Juan María

¹² See Heinz (1999b) for full case study. The primary sources for the Uruguay case study included major publications investigating the political role of the armed forces. The joint commanders-in-chief of the armed forces and the army high command attempted to justify their reasons for intervening politically and seizing governmental power in three books. A fourth publication released later included the admission of some errors by the military high command on the topic of HRVs. Reports by the inter-American Commission of Human Rights, the International Commission of Jurists, and Amnesty International were also key to the study. As was the case with Brazil, the researchers also included fact-finding reports, declassified U.S. documents published by Carrollton Press, and interviews with witnesses from the various sectors of society.

Bordaberry, who supported military leadership. Aware of his growing unpopularity, he sought favor from a popular public institution, the military. Due to a host of conditions including a rising violent guerilla movement, a faltering civilian president, a military battling parliament, and a majority of the population in passivity, the military was able to take power in a totalitarian form, unlike in its neighboring Latin American countries.

The political left was traditionally weak in Uruguay throughout the 1950s and 1960s. Even in 1971, the left received less than a fifth of the vote in presidential elections. Thus, the actual threat of the political left taking control of the country was likely not to blame for the military dictatorship's repressive campaign. Instead, the stagnant economy was assumed to be rectified by a new development model imposed by a new authoritarian political order bolstered by a national security ideology, all spearheaded by the military establishment. In addition, government repression was directed at labor unrest and its connection with armed guerilla movements perceived as threatening to the stability of the country. Another important factor contributing to the HRVs was the radicalization of the police who were targeting the Tupamaros, a leftist guerilla group, and using torture to identify members. As actions on both sides increased, the dispute intensified. When the military entered the conflict, it could only increase the HRVs. Yet, only torture seemed to be systematically built into the strategy of repression. Most disappearances were likely only cover-ups for accidental killings during torture. Uruguay is a relatively small country with a peaceful history and a highly-educated population which likely contributed to the HRVs being milder than in Brazil, Argentina, and Chile. However, even the military officers themselves were shocked by the large number of political prisoners.

The military in Uruguay wished to achieve two important goals: (1) a new political model that included a military-selected presidential candidate and a role for the military in overseeing

the political process, and (2) a new economic model that shifted away from a closed domestic economy based on import substitution to an export economy interwoven with the global market. Both goals were independent, thus repression continued even as the economy changed to meet the second goal. Political corruption opened the opportunity for the military to take on an increasingly involved political role to re-stabilize the nation. In addition, politicians' inability to deal with the Tupamaros, internal security, and economy continued to reinforce the need for political change. With little political experience, the military's victories against the Tupamaros and other guerilla groups provided the support needed to take power. A censorship decree in 1973 provided the secrecy necessary for the military dictatorship to maintain power while committing HRVs.

Training indoctrination likely did not cause military personnel to desire to create a civilian-military regime. Instead, the most important causes of the military's ideological shift were combined elements of a failing, stagnant economy, the political failure to address opposition to the development model without the use of military force, and the 1972 offensive of the Tupamaros. Two weak presidents (Jorge Pacheco Areco and Bordaberry) who had little interest in maintaining democracy also allowed for this shift. Therefore, the conditions leading to HRVs in Uruguay were similar to those in Brazil. The military used both economic and political stability as stated primary goals to justify the HRVs and create the conditions under which violent conflict arose. One particular political group, the Tupamaros, began politically opposing the poor economic and political conditions, but later turned to violence to achieve their goals which played a large role in the violent military response using HRVs as both sides intensified their violence. However, to understand this violence, one must place this violence within its political and economic context. The current dissertation will strive to document the

Mexican state's relationship with groups like the Tupamaros, such as the Zapatistas, since these groups often are considered the strains on the state leading to HRVs.

Brazil and the United States provided the desired models of economic growth and political strategy to Uruguay. Both of these countries helped Uruguay battle against the Communist ideology and labor movement by fostering a strong anti-Communist sentiment. Training, education, and resources were provided to the military and police forces to establish the new political order and subsequent development model while simultaneously repressing any opposition violently. Specifically, the United States offered contributions of intelligence monitoring and counter-insurgency tactics that involved training the Uruguayan military in the use of torture techniques to gain information and facilitate the fight against the rebels. The United States knew about the HRVs in Uruguay, but allowed them to continue until the primary goals were met. Later, the United States disapproved of the HRVs to salvage its public image. The political and economic agreements between the United States, Brazil, and Uruguay benefitted the social elites in each country. Thus, these countries were able to work together in eliminating threats to their shared political and economic goals. This understanding is central to the proposed analytical model I use in this dissertation.

Chile¹³

Since the Chilean case study was conducted by Fruhling rather than Heinz, it differs slightly in approach. Fruhling (1999) was interested in how repressive policy fluctuates within the national climate. His focus was on individuals and groups who create conditions conducive for HRVs and ideological justifications for these conditions made by the state. He began with Eduardo Frei's presidency. Being a moderate, Frei polarized the nation during his presidency, becoming unpopular on both the left and right. With the political poles gaining distance from each other, Salvador Allende was elected. Given the political circumstances, his use of state power to bring socialist change provoked a conglomeration of opposition among the right, middle-class, Christian democrats, judiciary, and military. Political polarization along with the Cuban revolution, socialist talk of armed revolution, and U.S. propaganda motivated support for a military coup against Allende's administration. A political crisis concerned the middle and upper classes who felt that armed revolution could endanger their safety. Allende's economic policies created food shortages and hyperinflation, which compounded the political crisis and instilled fear in the middle- and upper-classes that the left wished to establish a "popular dictatorship." Although after the coup, many original supporters questioned their decision to overthrow a democratic president and feared authoritarian rule might prevail.

The military had a predisposition toward anti-communism even in the early 1900s and the United States influenced these tendencies further by using propaganda to describe

¹³ See Fruhling (1999) for full case study. The most important source for documenting the HRVs was the newspaper *La Tercera de la Hora* since it was considered the most accurate. Information published by Vicariate of Solidarity and the Chilean Commission on Human Rights was also included. One fact-finding truth commission report including 2,279 cases of abuse, *Informe de la Comisión Nacional de Verdad y Reconciliación*, was essential for listing the HRVs due to its substantial number of interviews conducted with victims' families. Fruhling (1999) also conducted original interviews with human rights lawyers, scholars of repression, retired military officers, and other individuals involved in the repressive process.

communism as the biggest threat to Latin America. To ease these fears, the United States, largely responsible for them, offered training and resources for counter-insurgency tactics and forces. The military was reluctant to use force to oust a democratic president and were adamant at providing external protection rather than internal security. However, three years into Allende's presidency, enough supporters were gathered in order to successfully execute the coup. A growing distrust of politicians was a key factor in garnering support for the coup. Also, Allende decreased funds to the military to pay for expanding social programs – this was viewed as a threat to the military establishment despite the fact that Allende raised the salaries of the armed forces. A potential conflict with neighboring Peru was also viewed as a probable reason the military considered and ultimately carried out the coup. Lastly, fear of a civil war between the military and leftist groups also provoked the coup, and this fear was driven by propaganda floating in the military circle that exaggerated the strength of these guerrilla groups.

During the coup, the presidential palace was bombed and a declaration of war was made by the military against leftist groups. Plan Z that suggested the Unidad Popular were preparing to execute a coup to eliminate high-ranking military officers was disinformation that exacerbated the anti-communist sentiment among the military. The total war strategy intimidated the leftist opposition, silenced public criticism, and led to high rates of HRVs. In 1973, DINA¹⁴ – a clandestine police force designed to eliminate any threat (most commonly through disappearance) to the military dictatorship most principally Communist, Socialist, and MIR¹⁵ Party members – was created. Disappearances allowed DINA and the Joint Task Force to

¹⁴ DINA, the Dirección de Inteligencia Nacional, or, in English, the National Intelligence Directorate, was established in November of 1973 and functioned as a Chilean secret police similar to the U.S. CIA (Weiner 2007).

¹⁵ MIR, the Movimiento de Izquierda Revolucionaria, or, in English, the Revolutionary Left Movement, was a far-left political organization that actively opposed the Pinochet military dictatorship and was involved in guerrilla activity.

repress political opposition to the military while avoiding any responsibility or public criticism. These disappearances were largely ordered by high-ranking officials in the military rather than isolated events by low-level personnel. This first phase of repression is demarcated from 1973 (coup) to 1977 when DINA was dissolved due to major criticisms against its activities. The Catholic Church was the most outspoken critic of the HRVs committed by DINA and the military regime, while the United States also applied pressure to save face,¹⁶ since by 1977 most neoliberal economic policies had already been implemented. The Catholic Church was able to use publications by human rights advocates to educate the public while protecting leaders of the opposition from abuses. The Catholic Church along with international criticisms from the United Nations and other human rights organizations were the major players in stopping most HRVs in Chile.

The second phase of repression lasted from 1977 to 1982 in which very few HRVs were committed. The few victims during this phase belonged to armed resistance groups, the MIR and the Manuel Rodriguez Popular Front which was a reaction to the economic crisis of the time (e.g., falling wages, high unemployment). Then, from 1983 until 1989, HRVs increased precipitously. Excessive force primarily was used against growing support for labor demonstrations due to the economic situation. According to the evidence, there is no doubt that the HRVs committed by the military regime were part of a repressive strategy to eliminate the leftist opposition. From 1973 to 1982, the targets of repression were selected as a part of this strategy, but from 1983 to 1989, victims of repression were likely not strategically targeted, but instead victims typically died during public protests. Almost nothing was done by any of the

¹⁶ The U.S. reversal of support for the Chilean military regime is largely due to the Carter administration's decision to indict the military officers responsible for the planned assassination of Orland Letelier in Washington, D.C.

police forces to address these deaths, even though they were likely not part of a planned repressive strategy (normalization likely explains these killings).

The military regime was able to take over the media immediately upon seizing power which allowed for mass dissemination of images that displayed communists and other leftists as enemies of the state. The media helped to justify the human rights abuses committed by the military. The first major justification was that war tactics were necessary to avoid a full-blown civil war at a later date. The military suspected Allende and his supporters of planning to initiate a civil war with the support of Cuba. The other justification was guided by the National Security Doctrine which viewed Marxism as an internal threat. Thus, any action taken by the military was deemed justified if it was aimed at eliminating internal threats and solidifying security. Contributing to the dire conditions, the courts did not attempt to process any perpetrators of HRVs likely because they were indoctrinated by the propaganda and understood these actions as justified.

Economic conditions contributed to the HRVs since much of the repression was targeted at unions and labor strikes, or demonstrations motivated by the deteriorating economic conditions for workers. After coming to power, the military also passed several neoliberal economic policies with the support of business. Augusto Pinochet used repression to contain much of the voiced opposition to these new policies which were near opposites of the policies put in place by the preceding Allende government. Chile, seeking to secure foreign investment, offered beneficial policy incentives for foreign companies wishing to penetrate its domestic market. In agreement with the foreign business community, the Chilean military regime promised to keep the Marxist labor unions under control and establish an environment more conducive to business and capital accumulation. Chile's HRVs took place within an ideological

war between differing economic factions. Both the social welfare policies of Allende and the neoliberal policies of Pinochet stirred violent opposition. Although these policies are briefly mentioned by Fruhling (1999) in his case study, more emphasis should be placed on understanding how these policies were formulated, their impacts on the population, who benefited from them, and if they violated human rights. Despite not addressing these concerns, Fruhling (1999) does demonstrate that these policies played an integral role in creating the conditions under which HRVs were committed.

Argentina¹⁷

From 1937 to 1983, the military in Argentina was politically involved in running the country unlike most other Latin American countries. Several coups were executed with only one democratically elected president serving his full term during this period, Juan Peron's first term. The military ousted and exiled Peron in 1955 while serving his second term. Both supporters from the left and right became violent and battled in armed opposition. The assassination of General Pedro Aramburu in 1970 (de facto president responsible for the coup ousting Peron in 1955) by the Montoneros, a leftist guerilla group, is said to be the starting point of an internal war. However, once Peron was exiled, guerilla movements began to form supporting the return of Peron from exile. Upon Peron's return in 1973, both political sides felt their pleas would be answered. From 1973-1976, major political crises occurred creating polarization between Peron

¹⁷ See Heinz (1999c) for full case study. Human rights organizations proved to be invaluable in the Argentina case study. Several human rights organizations published reports, some of the most important were done by Permanent Assembly of Human Rights, the Center for Social and Legal Studies, and the Inter-American Commission on Human Rights. The *Diario del Juicio* recorded trial testimonies from witnesses and members of the military and police. Secret documents from the military junta that were released as well as declassified U.S. documents published by Carrollton Press, and interviews with witnesses from the various sectors of society were also included.

supporters. Peron was originally widely supported throughout the political spectrum, but with the political polarization, these supporters became divided. Eventually, Peron turned his back on the leftists and war was actually declared against them. The Montoneros then took it upon themselves to create a socialist Argentina. Isabel Peron, Juan Peron's wife, took over the presidency after Juan Peron's death in 1974. Repression by the military de facto government against guerillas was mild at this time despite there being some deaths. Once the polarization of the left and right grew to be irreconcilable, the Peronist right began eliminating the opposition in large numbers while the guerillas targeted police, military, and some politicians. During this "internal war," most traditional peace-keeping attempts proved futile, suggesting the necessity of a military intervention.

In 1976, the military launched a coup to seize power and eliminate the guerilla opposition, with the support of most of the population. The counter-revolutionary nature of the struggle led to the intelligence agencies' rise to power. Military officials explain they were simply following orders from the Peron government when they committed HRVs. The military perceived an immediate and perilous communist threat, and they communicated this threat to the public. The communist propaganda dehumanized communists who were portrayed as less than human and irreconcilable (largely because many captured Montoneros had committed suicide). Overall, the wide use of disappearances seems to be a deliberate and systematic approach taken by the military to instill fear in the guerrillas and their allies while also concealing the level of HRVs, unknown until much later.

The neoliberal economic policies that were introduced during military rule would not have been possible under a democratically-elected president. The use of HRVs was necessary for subduing an otherwise resistant population. The technocrats in alliance with the military

sought to establish a new economic model. The United States seized the opportunity to open Argentina's markets and introduce it into global capitalism, which was also not thought possible under democratic rule. Using the hostile political environment as a smoke screen, the military violently repressed labor and trade unions to pave the way for neoliberalism. Heinz (1999c) argues that most likely the new neoliberal policies led to unemployment and a shrinking working class. The guerillas were "justifiably" eliminated due to their violent approach, while the labor and trade unions were held in check with similar repression tactics. Fear swept the nation during these crises allowing the military junta to exert its power over a mostly docile population after crushing the guerrilla movements. Neoliberal economic policies are portrayed as having a profound impact on the economic conditions under which HRVs were committed. As Heinz (1999c) argues, these policies increased unemployment creating a large pool of aggrieved stagnant workers. These workers attempted to express their discontent politically leading to a polarized political environment. The heated political arena quickly turned hostile resulting in HRVs. As Heinz (1999c) suggests, given the influence of neoliberal economic policies on the conditions leading to HRVs, this dissertation considers these policies a central unit of analysis. Therefore, rather than just analyzing the actions of the Argentinian state, the central focus of Heinz's (1999c) analysis is on economic and political policies. In the age of globalization, these policies take the form of trade agreements. Thus, examining Argentina's relationship (and economic agreements) with countries that are part of Wallerstein's (1974; 2004) economic core is crucial.

Two primary ideological influences propelled the military repression of internal opposition in Argentina. First, the *National Security Doctrine* that was influential in the other Latin American countries studied also identified communists and terrorists as the central threat to

political and economic stability in the country. More importantly, however, was the French counter-insurgency strategy (developed originally against Algeria) in informing the military in Argentina to control its population with propaganda and force using torture and killings when necessary. Political goals of security are also important for this dissertation since it is apparent in these case studies of Latin America that, time and again, political goals of stability and security are used to justify HRVs. Oftentimes, people rebelling against perceived injustices embedded in economic policies are criminalized to pave the way for implementation of these economic policies.

Cuba, El Salvador, and Nicaragua

Sociologist, Maya Gómez (2003), used historical comparative analysis to investigate the causes of HRVs, mostly physical integrity rights, in Cuba, El Salvador, and Guatemala. Of the three major works presented in this section, Gómez's study was the most comprehensive exploration of causes of HRVs. Unlike the first two studies, she makes international relationships, particularly those with the United States, an integral part of her study, with the primary intention of moving beyond the dominant focus in on other HRV research on internal factors and a rational choice paradigm of the state acting as a unified whole. Thus, for Gómez (2003: 80), causes of HRVs transcend the nation-state where they occur, and the state should be viewed as a "divided state," contrasting the state theorized by realists. Therefore, internal and external factors that contribute to HRVs are the central focus leading to Gómez (2003: 94) asking the research question: "What kinds of changes in national politics or international pressure seem to affect patterns in human rights abuse?" The current dissertation also examines this concern through the study of criminogenic policies.

Gómez (2003) uses historical-comparative methods for the following reasons: (1) to increase the idiographic depth into specific cases; (2) to explore historical trajectories and social processes; (3) to provide an encompassing investigation of both internal and external factors affecting state behavior; (4) and to contextualize HRVs historically, politically, and socially. Such a research method allows for considerable flexibility in studying a wide array of complex variables that intersect in the social world such as the interactions between state and international systems. Furthermore, patterns of HRVs can be documented and “critical turning points” such as historical events can be pinpointed to explore their effects on subsequent abuses (Gómez 2003: 86). Her methodological approach centered on the “construction and analysis of case narratives” (Gómez 2003: 85). This approach allows for the investigation of historical events in their chronological order to explore their casual significance. These historical narratives order history as it actually happened in “story” form, and provide an organization of complex social phenomena within their proper historical context and temporal position. Gómez’ (2003) primary focus is on the specific timing of events considered “critical turning points” that separate important segments of history crucial for investigation. These turning points are defined by the changes following them. If the overall pattern of HRVs are changed after some event, it is considered a critical turning point, similar to Pruitt’s (2011; 2014; 2015) triggering catalyst. Thus, answering the how, when, and why systematic changes in HRVs occur is arguably answered by discerning these turning points. As part of her historical narratives, changes in international policy and internal politics are important for portraying a country’s changing human rights situation.

Gómez’ (2003) selects Cuba, El Salvador, and Nicaragua as cases for her study for several reasons. First, all three countries are culturally and regionally similar and related

suggesting similar internal dynamics. Second, they all have gained international attention and even experienced some level of intervention on the basis of human rights. With such attention, they all have received considerable focus for research providing a large amount of available data. Third, each of these countries occupies a similar position in the international economy as developing nations. Fourth, the three countries differ greatly on levels of HRVs experienced. Fifth, while having similar positions internationally, there are many differences among their political, economic, and class systems. Most important for this dissertation, the countries had dissimilar relationships with the United States.

In her search for causes of HRVs, Gómez (2003) distinguished between what she called pressures and threats, investigating them both internally and externally, expanding on Poe et al. (1997) and Poe, Tate, and Keith (1999). Although pressures and threats were not conceptualized well, pressures seem to cover any constraints that have the potential to influence behavior by the state or other non-state actors, while threats are perceived or actual dangers to the established power structure benefiting state or non-state actors. Furthermore, she takes a constructivist approach to explore Poe et al.'s (1997) concepts of "willingness" (actors have perceived costs and benefits which are essential for action) and "opportunity" (actors must have structural supports or suitable circumstances favorable to executing their action) when considering the motivations of state or non-state actors. Lastly, she uses the idea of decoupling to understand state decision making as disjointed by the simultaneous pursuit of several, potentially conflicting, goals such as international legitimacy, domestic authority, economic development, ect. (Meyer, Boli, Thomas, and Ramirez 1997; Christenson 1997).

Cuba

Cuba had widespread HRVs prior to the 1959 communist revolution which probably was a major impetus for the revolution itself beyond the economic and political goals. The revolutionary government enhanced social and economic rights for citizens in the country after seizing power. HRVs actually were the most severe just after the revolutionary government took over that were prompted by external threats destabilizing the country, such as the Bay of Pigs Invasion. Rates of political imprisonment were extremely high, but unlike the politically right governments in the other Latin American countries, the Cuban leftist government held capitalist and imperialist sympathizers – considered threats to the state at that time – indefinitely. Furthermore, the United States created an even greater threat by urging many Latin American countries to join the United States in embargoing imports and exports to and from Cuba. The Soviet Union provided the needed support and relief for the Cuban economy to survive. With this support, political, social, and economic conditions improved in Cuba during the 1970s. Human rights conditions also improved, with most of Cuba's political prisoners being released by 1977. Even relations with the United States improved during this time. For the first time since the revolution, Cuba lifted its "Illegal Exit Law" allowing dissatisfied citizens to leave the country. Many sought to leave for the United States. Cuba likely lifted the law in order to avoid any possible internal conflict. Cuba also took advantage of the U.S. open door policy, sending criminals and the mentally challenged to Florida in the Mariel boatlift in 1980.

During the 1980s, Cuba maintained a good human rights record, due in part to the economic stability provided by the Soviet Union. When Ronald Reagan was elected president, his administration switched strategies towards Cuba to more hostile tactics. Despite this more aggressive U.S. approach, Cuba was still able to protect human rights. However, after the

collapse of the Soviet Union, the Cuban economy crashed. Forced to face this economic crisis, Cuba realigned itself internationally and accepted U.S. investment to resuscitate the Cuban economy. With the bleak economic conditions, HRVs resurfaced, although in different form. In addition to the anti-government rioting during these times, the government attempted to organize civilian groups to do the government's "dirty work," and political imprisonment was used albeit with much more regularity and shorter sentences. Despite these new repressive strategies, the Cuban government was able to maintain international legitimacy. In the wake of the "war on terrorism," Cuba has been under scrutiny again for incarcerating political prisoners.

In conclusion, Gómez argues that the United States, Soviet Union, United Nations, and human rights organizations such as Human Rights Watch and Amnesty International were all responsible for external pressures and/or threats contributing to, or limiting, the HRVs occurring in Cuba. Cuba represents an exemplar case of a nation where external actors have influenced its domestic situation. Internal factors played a major role as well – many of which resulted from external factors. The three most important internal factors affecting levels of abuse in Cuba identified by Gómez (2003: 120) were "the level of economic stability," "presence of established domestic institutional structures," and "level of internal pressure or civil unrest." Three important factors influencing types of abuse were strength of international human rights organizations, level of international criticism, and reliance on international partnerships or agreements. The Cuban case demonstrates the importance of including international factors in understanding the domestic human rights situation. Economic stability was also crucial, similar to the previous case studies reviewed. The United States seized the opportunity to invest in the Cuban economy when Cuba lost the Soviet Union's economic support. As the economic situation changed due to this alteration in the U.S.-Cuba relationship, the economic conditions

arguably became more conducive to HRVs. Gómez fell short in exploring this relationship in more detail in order to understand its connections with the changing conditions in Cuba and to explore their impacts on HRVs. Much of what Gómez has done suggests the importance of this relationship, but does not go all the way in tracing the connections.

El Salvador

The El Salvador civil war, lasting from 1979 to 1992, resulted in the worst HRVs in Central America in recent history, with an estimated one percent of the population being killed. To understand the civil war, one must understand the history of El Salvador and the “la Matanza” (the massacre) event particularly. In 1932, amidst global economic depression, El Salvador’s workers suffered extreme pay cuts and loss of employment leading to a massive uprising. The uprising was suspected of being inspired by Agustín Farabundo Martí, leader of the Communist Party. The military captured and executed Martí, which incited a peasant revolt. The peasant revolt was met by brute military strength by the government guided by a “scorched earth” policy which claimed the lives of nearly three percent of the El Salvadoran population. All labor unions were then banned until the late 1960s. With the events of “la Matanza” in the minds of El Salvadorans, the perceived fraudulent election of U.S.-backed presidential candidate Carlos Romero in 1977 was even more disturbing to the populous. Romero was also a general in the military who had strong ties to the economic elite. Before Romero could even be inaugurated, civil unrest broke out and was met by severe HRVs. The government declared a state of emergency that revoked all constitutional rights. Faced with international criticism, Romero introduced the Public Order Law attempting to formalize and legitimate state repression. However, the Public Order Law only increased criticism, forcing Romero to repeal it. Again,

Gómez' noting of Romero's political and economic connections is applauded, but the research should take the next step to explore Romero's role in the U.S.-El Salvador relationship and how that relationship may have impacted HRVs.

With the formation of guerrilla groups, the inability of Romero to quell the opposition, and the successful Sandinista Revolution in Nicaragua scaring the elite, the military executed a coup d'état in 1979 that overthrew and exiled Romero to Guatemala. The new military government was divided with both left- and right-wing sympathizers. Initially, they established the Revolutionary Governing Junta (RGJ) inviting civilian politicians to join. The RGJ promised a long list of social, economic, and political rights, but none of the promises were kept. Even though violence was severe before Romero's ouster, HRVs would actually intensify under the RGJ. All civilian members of the RGJ resigned by 1980 due to the excessive violence and little power they had in the government. A moderate, José Duarte (Christian Democratic Party leader), was brought in to the RGJ in an attempt to unify the people, but civil unrest continued. At this time, the reformist and rightist factions of the military government were even more pronounced. Colonel Adolfo Arnoldo Majano, a reformist, successfully averted two coup attempts by extreme right military members. Yet, Majano was soon voted out of his position in the RGJ resulting in the predominance of rightists in the RGJ.

Archbishop Oscar Romero encouraged soldiers to rise up against the military by refusing to participate in HRVs. Enraged by the Archbishop's subversive position, the military assassinated the archbishop during a ceremonial prayer. Severe HRVs and protests ensued with little policy change by the United States who continued to support the ruling regime. U.S. aid never stopped coming into El Salvador as defeating the leftists appeared to take priority over addressing HRVs. The United States certainly wanted to maintain a positive image

internationally, but the goal of eliminating the leftists was more important. The military government knew that it had immunity as long as it maintained U.S. support. In 1981, the military declared martial law intensifying government violence. Refugees were killed while attempting to flee the country and the United States denied all Salvadorian refugees – sending them back when they attempted to enter the United States. Democratic elections were held subsequently, with the conservatives winning a majority in 1982. To circumvent criticism, state repression tactics were switched to more narrowly focus on oppositional members. The United States continued to support the El Salvadoran government despite international criticism, and even went so far as to praise the government's human rights record.

In conclusion, the El Salvador case suggests that the political and economic elites continued HRVs until they were deemed unnecessary for the primary goals which seemed to focus on establishing a new economic system characterized by free market ideology and eliminating the opposition which undermined the possibility of this achievement. Both the conservatives in the military government and the United States continued to support or use HRVs until these goals were met. Then, once these goals were met, they were able to hide behind their support for democracy and human rights. Even though international criticism existed, the U.S. support was able to undermine it. These criticisms were only effective in shifting the type of HRVs from overt to covert, and from indiscriminate to more focused targeting. Gómez argues that international organizations played a role in the peace process, but fails to mention that this only came after the primary goals of the United States and military government of El Salvador were met. Furthermore, the relationship between the United States and El Salvador appears to be crucial to understanding the HRVs in El Salvador. However, Gómez does not place this relationship at the center of her analysis, nor does she attempt to trace

how this relationship may have contributed to and/or orchestrated the HRVs. Instead, Gómez simply notes that El Salvador was the recipient of U.S. aid, and the United States turned a blind eye.

Nicaragua

The Somoza family held a dictatorship over Nicaragua from 1936 to 1979 when they were overthrown by the Sandinistas. During the Somozas' reign, HRVs were numerous and atrocious. One example of their atrocities is Operation Vampire which sold donated blood of poor Nicaraguans for the family's financial gain. They were also notorious for political corruption. In one instance, they pocketed large sums of U.S. aid money for their personal fortune. Under their reign, inequality was extreme, even by Latin American standards, with only a few people owning most of the land. A majority of HRVs that occurred during the Somozas' regime were committed by the National Guard (e.g. killings, torture, and disappearances of rural peasants).

The Sandinista National Liberation Front (FSLN, or Sandinistas), named after Augusto Cesar Sandino,¹⁸ were the most prominent guerrilla group critical of the Somoza family. In an act of dissidence, the Sandinistas invaded the home of José María Castillo, a high ranking government official, during a house party. The Sandinistas took several hostages and held them for ransom, requesting one million U.S. dollars and the release of fourteen political prisoners pertinent to the Sandinista movement in exchange for the release of Castillo and his dinner

¹⁸ Augusto Cesar Sandino is a controversial national hero who was the first to oppose the Somoza regime when he led a peasant army revolt against the U.S. Marines and National Guard military occupation of Nicaragua resulting in a civil war from 1927 to 1933. The National Guard was U.S.-backed and led by Anastasio Somoza Garcia. Sandino's struggle against the U.S. National Guard and the Somoza family represented the struggle against American imperialism to many of the peasants in Nicaragua. Although the Marines were driven from Nicaragua, the National Guard assassinated Sandino under orders from President Anastasio Somoza Garcia creating Sandino as a martyr. The FSLN later took the name Sandinistas in his honor.

guests. Although the FSLN's demands were met, the Anastasio Somoza Debayle government more seriously viewed them as a threat, declaring martial law on December 28, 1974 shortly after this incident. Extreme repression followed these events since all constitutional rights were neutralized by this declaration. Dr. Pedro Chamorro Cardenal, head of a prominent independent newspaper in Nicaragua was murdered by a government-supported death squad, sparking widespread rioting and demonstrations by thousands of Nicaraguans requesting the resignation of President Somoza. The National Guard responded by escalating the conflict, resorting to bombarding civilian population centers to reclaim the city from the protesters. International scrutiny increased and the United States even asked Somoza to voluntarily leave office, but he refused. Eventually, the FSLN launched a final offensive that overthrew the Somoza regime on July 17, 1979.

Under the new Sandinista government, HRVs did not disappear although they did arguably improve. HRVs qualitatively shifted in form as political imprisonment was now the most ubiquitous type of HRVs perpetrated by the government. The Sandinista government did in fact ratify several human rights conventions despite their culpability. Much of their HRVs resulted from lack of due process when trying members of the previous Somoza regime for past crimes. Once Reagan took office in the United States, policy towards Nicaragua drastically changed. In particular, Reagan created the Contras (counterrevolutionaries) in Nicaragua. The Contras, funded and provided leadership by the United States, directly targeted the Sandinista government and its sympathizers with repressive tactics. The Sandinista government responded to this threat by engaging in HRVs themselves to defend the new government. The HRVs committed by the Sandinista government may have warded off the threat of the Contras; however, these violations ultimately delegitimized their authority and led to a major diminution

in their popularity. In addition, most of the Sandinista government's finances were allocated to the war against the Contras that ultimately led to defunding their social programs, which proved extremely unpopular, by the Nicaraguan people. With the Sandinista government's actions against the Contras losing favor, national elections were held in 1984 resulting in Daniel Ortega, a FSLN leader, being elected president. Under Ortega and pressure from the international community, Esquipulas II was ratified starting the peace process. In 1989, the Contras agreed to demobilize. Contra rebels were asked to disarm, and in return they would receive some land and food aid under the new Violeta Chamorro presidency. Once the Contra rebels settled on their new land, old sparks reignited, but the situation later stabilized around 1994. Although throughout the mid-1990s and early 2000s HRVs were relatively low and stable in Nicaragua, social and economic conditions still remained grim, with the majority of citizens living in dire poverty. Nicaragua during this time was one of the poorest countries in all the Western Hemisphere.

In conclusion, the human rights situation in Nicaragua was inextricably tied to U.S. intervention over the past century. The United States funded some of the worst perpetrators of HRVs in Nicaragua during this time. For instance, Gómez fails to mention that the overthrow of democratically-elected Nicaraguan president, Jacobo Árbenz, was orchestrated by the United States in collaboration with Anastasio Somoza as part of Operation PBFORTUNE (Doyle and Kornbluh 1997). Another interesting conclusion suggests that, despite the Sandinistas continuing efforts to remain neutral politically and abide by international human rights standards, they were still unable to avoid the politics of the Cold War. More specifically, they were targeted by the United States because their policies threatened a global capitalist marketplace and were not beneficial to capitalism. Although not examined by Gómez, the goal of establishing

neoliberal economic policies in Nicaragua, like the other countries investigated, played a role in U.S. intervention and HRVs. The Sandinistas were demonized for their HRVs that they committed out of a need for political survival, but ultimately cost them their political livelihood. The Contras, although they arguably did not succeed in overthrowing the Sandinistas, were able to delegitimize their more socialist policies as ineffective given that the Sandinistas' resources were focused on fighting the Contras rather than their new social programs. Lastly, Gómez notes that HRVs were low during the mid-1990s and early 2000s, but social and economic conditions still left the majority living in poverty which marks where this dissertation diverges from Gómez. While Gómez only focuses on physical integrity rights, she misses seeing that the dire poverty in Nicaragua could and should be classified as a HRV. When the scope of HRVs is expanded in this way, the situation in Nicaragua must be viewed differently. An alternative stance on human rights would change Gómez' conclusion that HRVs decreased in number and became stable, to HRVs took yet another form. In other words, killings and disappearances decreased, but dire poverty increased. Therefore, she may be right in saying that HRVs lessened, since poverty is arguably less severe than death, but may be remiss in stating that HRVs have decreased. The current dissertation explores these lesser HRVs that may spark more severe HRVs – as seen in many of these Latin American cases studies where people rebel against perceived social, political, and economic injustices – and may persist during times previously discussed as peaceful with no or only a few HRVs.

Overarching Themes

Considering all nine cases studies, there are some patterns that illuminate how and why HRVs are committed. First and foremost, these case studies clearly demonstrate that HRVs are

often systematic and not accidental. Adding to Heinz and Fruhling's (1999: 591) conclusions, which primarily focused on military de facto governments, they make four hypotheses. First, "the greater the level of political polarization and violence prior to the democratic breakdown, the more likely it is that a government will resort to [physical integrity rights] to restore public order and the greater the possibilities are that civilian supporters of the government will justify these violations." Second, the greater the perceived threat of any opposition by the military, the more likely HRVs will be used to eliminate such a threat. This conclusion can be expanded to include any opposition to the ruling party. Third, physical integrity rights violations occur largely due to the intentional acts by leaders of state or state agencies. Isolated physical integrity rights without support of state leaders are much less common. Fourth, the main determinants of physical integrity rights violations are political polarization, breakdown of law and democracy, exclusionary economic policies, strategic alliances to protect ruling class (and capitalist) interests, and ideological justifications to protect against criticism of repressive tactics. These determinants of physical integrity right violations are expected to also impact lesser HRVs in Mexico.

Gómez (2003) expands on the causes of HRVs. However, due to her specific focus on the international level, she listed several external factors that explain HRVs. First, geopolitical shifts or events destabilizing the political or economic system negatively affected human rights. Second, external (or international) support for HRVs, such as foreign aid, provided the opportunity for HRVs, but the state receiving funds must also be willing to commit such crimes. Third, external threats can influence internal threats thus leading to an increase in HRVs. For instance, the successful communist revolution in Cuba was thought to spur the communist movement in many Latin American countries, and these movements were perceived as a threat to

power. Fourth, international peace initiatives and criticism can control, at least to some level, against HRVs. However, an important finding was that these controls often did not eliminate HRVs, rather just caused them to shift in form from overt to covert. Two internal factors were also noted as causing HRVs: (1) internal threats such as protests and social movements increased HRVs, and even more so if they were perceived as threatening the ruling classes' power and political interests and (2) sudden and undemocratic regime changes often are accompanied by HRVs.

The current dissertation borrows much from these qualitative cases studies. Most importantly, from Heinz and Fruhling (1999), I take how perpetrators of HRVs are able to establish national security doctrines that provide justifications for pursuing internal political and economic stability. Policy implementation in the name of political and economic stability has created chaotic conditions under which HRVs have been committed. Populations in these countries often rebelled against perceived unjust economic policies leading to violent conflict between the state and its citizens. From Gómez, I adopt her focus on how international relationships influence domestic human rights conditions. Furthermore, Gómez offers an understanding that HRVs shift form and intensity due to their visibility and the public's disagreement with them. A major goal of the current dissertation is to explore the nature of this shift in the modern neoliberal era. In the current era, human rights organizations have gained more of a presence which could lead to less visible HRVs. Thus, HRVs may not appear in the form of physical integrity rights violations as they did in all of the nine case studies reviewed in this chapter. Instead, lesser forms of HRVs may appear such as increased poverty, increased unemployment, deteriorating labor conditions, the dismantling of unions, widespread hunger, and displacement. Since Gómez's study can be viewed as the most recent and in-depth case

study exploration of the causes of HRVs, it is a starting point for the current dissertation, but several criticisms must be made to advance the study of HRVs in the neoliberal era.

With the introduction of comprehensive international human rights treaties (e.g., International Covenant on Economic, Social and Cultural Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, International Convention for the Protection of All Persons from Enforced Disappearances), HRVs are now unequivocally criminal acts. Research on HRVs may benefit by borrowing theoretically from criminology, particularly the state crime literature, in explaining HRVs in the current era. The Kramer and Michalowski (2006) model, further expanded by Rothe and Mullins (2009), can more appropriately theorize HRVs as state crime and better guide an explanation of HRVs than Gómez's theoretical framework. In the Rothe and Mullins model, four catalysts for action are included: motivation, opportunity, controls, and constraints which more comprehensively covers HRVs than Gómez' use of a simplified variation of these catalysts for action using the concepts of "willingness" and "opportunity." Rothe and Mullins' (2006) distinctions are an improvement over Gómez's theoretical framework. The opportunity category, of course, overlaps and is the same as Gómez's proposal, but "willingness" is split into motivation and constraints. States that are "willing" to commit HRVs can be said to be motivated and not constrained. Yet, states may be motivated and constrained which is not well explored using Gómez's theoretical framework. Gómez does use external/internal pressures and threats to account for constraints, but her framework is scattered and not well conceptualized whereas Rothe and Mullins model is built specifically to describe and explain the interrelations between these variables. Gómez even specifically states that pressures and threats need more conceptualization. Lastly, controls from the Rothe and Mullins model theorize the effects that international treaties and other binding

laws may have on HRVs which is subsumed under external pressures in Gómez's theoretical framework.

I applaud Gómez's (2003) focus on external pressures applied by core nations, such as the United States, on peripheral nations. However, she gave little to no attention to the reasons why the United States was consistently involved in contributing to HRVs. Of course, the political environment of the Cold War was the major explanatory variable as to why the United States was involved in these nations, which is better documented in Heinz and Fruhling's (1999) case studies. Now that the Cold War has ended, it is not likely that Gómez could explain why the United States would involve itself in HRVs given her analysis and the time period she studied. When focusing on the relationship between the United States and these developing nations, it is paramount to explore its impact on the economic environment in the United States, in the peripheral country holding a relationship with the United States, and globally. The Cold War ended with capitalism as the victor over socialism/communism, and much of the HRVs during the Cold War were motivated by preserving the capitalist system which brought wealth to the elites in the United States, the countries of intervention, and its allies internationally. Once the Cold War ended and these countries were "stabilized," Gómez argues along with many other scholars (see Hafner-Burton 2014; Regilme 2014 for summaries of these scholars' work) in the human rights area that HRVs ended for the most part. This argument is surprising given that she portrays HRVs as shifting in form. Since many of the studies reviewed in this chapter are focused on physical integrity rights, this is a correct statement, but misleading if the study views HRVs more broadly. The issue with concluding a study once physical integrity rights remain at an acceptable level is that other HRVs may still exist in different forms. These studies have neglected other rights such as civil rights and worker's rights while also failing to explore the

economic quality of life through measures such as inequality. If the population is still suffering from a low quality of life after physical integrity rights are under control, admitted by Gómez in the case of Nicaragua, then there is still much work to be done by human rights advocates.

Judging from these qualitative cases studies done in several Latin American country, physical integrity rights are closely related to these other rights and measures of quality of life. Physical integrity right violations have been used as a systematic repressive tool and are not necessary if the population does not visibly oppose the social and economic conditions. However, absence of opposition does not mean absence of HRVs.

Summary of Empirical Literature

While the research on genocide helps illuminate the intricacies of HRVs at the interactional level in the state-corporate crime models (Kramer and Michalowski 2006; Rothe and Mullins 2009), especially providing a more comprehensive understanding of the interactions between individuals in policy creation and explicating what motivates and constrains agents of the state in policy creation, the crimes of globalization literature provides an empirical groundwork that supports the proposed analytical model from the previous chapter. State-corporate criminologists demonstrated that IFIs and transnational corporations enact policies in developing nations that sometimes result in violating a series of human rights of particular populations. It has been discussed how this process can be explained by bilateral or multilateral policy formation and that particular states should be of primary importance given their influence over these IFIs and multinational corporations. The United States was particularly singled out for its clout over IFIs. The IFIs become a powerful mechanism by which the United States or other powerful nations can exert influence over development programs and policy creation that

affect weaker, less developed nations. Understanding the ways a country can shape policy and in turn establish conditions conducive to HRVs, regardless of explicit intent, is a key focus of the current dissertation. Although policy formation is not a central concern for the crimes of globalization literature, the effects of policy was highly regarded as a cause or contributor to HRVs in the case studies reviewed. This dissertation will center around tracing policy from formation to implementation to outcomes in an attempt to assess the role policy may play in creating the conditions for HRVs. Thus, the proposed analytical model should help contribute to the crimes of globalization literature by providing a systematic research tool when assessing criminogenic policies.

In addition, the amount of detail provided by the qualitative case studies covering several Latin American countries offers rich empirical evidence of states complicit in the commission of HRVs. Although these case studies document states that were likely more directly committing HRVs than the modern states that are the subject of this dissertation, much can be learned from the methodological approaches and findings of these historical cases. The findings from the Latin American case studies suggest that both political stability and economic growth are major motivators for state action. Therefore, bilateral agreements will likely center around these goals. The ideologies informing these goals led to HRVs in several of the cases explored. For instance, several Latin American countries adopted some variation of a national security doctrine that justified HRVs in the name of political stability. Thus, political movements or groups that threatened political change were repressed, sometimes violently. Also, new economic policies were formulated and informed by the logic of economic growth justifying the repression of labor unions and worker strikes in the name of economic stability. Both of these goals and their legitimating ideologies are crucial to the current dissertation. As for methodology, Gómez's case

narrative methodological approach is most appropriate for use in the current dissertation. When studying a single case using the proposed analytical model from the previous chapter, events leading up to HRVs can be effectively explored using historical narratives to establish chronological order of events while investigating a key policy for its significance as a critical turning point contributing to the HRVs. Given the popularity of the case study method in exploring the causes of HRVs, the case study method is explored in detail in the following chapter.

CHAPTER 4

THE PRESENT STUDY

Chapter Overview

Most studies covering human rights violations (HRVs) use quantitative data and methods of analysis. For this reason, this chapter begins by critiquing quantitative studies of human rights violations (HRVs) to demonstrate the many complexities uncaptured by these approaches. Then, I introduce case study methodology through three unique lenses and argue that it is the best method for studying HRVs due to a number of advantages such as its high level of construct validity, flexibility, and ability to incorporate a variety of data sources. Once I have established case study method as an appropriate method for tracing HRVs in a particular country, I justify case and time period selection. Then, I identify several of the key data sources I used to address the research questions in my study and describe why they are important. Lastly, this chapter concludes with a succinct overview of the entire project to be covered in detail in the remaining chapters.

Criticisms of Quantitative Studies of HRVs

The human rights literature contains numerous quantitative studies of HRVs. However, Goldstein (1986) has cautioned against using quantitative data when studying HRVs. He does not argue that HRVs can only be understood using qualitative data, but does take the stance that quantitative data on HRVs is often useless without providing context with qualitative research.

Overall, Goldstein (1986) warns against an overreliance on statistical methods without the use of supplementary qualitative data. Whenever possible, he argues, statistics should be made more meaningful by being placed in their appropriate historical and political context. In other situations, where quantitative data are unavailable, researchers should not avoid doing such research because they feel quantitative measures are superior. Case studies can include both quantitative and qualitative data together. However, before continuing to the advantages of case studies, I will review several of Goldstein's (1986) concerns with quantitative research on HRVs.

The first problem Goldstein (1986) addresses is the definitional problems which have long plagued human rights research. In addition to HRVs not being defined the same in different countries or different databases, countries have often differed on their views of which human rights deserve more attention. For example, Western countries and human rights organizations have focused mostly on political and civil rights (e.g., voting rights) and physical integrity rights (e.g., freedom from torture), while non-Western countries have emphasized social and economic rights (e.g., right to employment). In addition, Western/capitalist nations have stressed individual rights within legally bound nation-states, while non-Western (often developing nations) have argued for global rights of economic autonomy and freedom from racial discrimination, often making direct criticisms of Western global hegemony. Pollis and Schwab (1979) even go so far as to describe "human rights" as a Western construct used to maintain its hegemony. One American delegate, Richard Schifter, at an international human rights convention exemplified these differences by stating, "we talk about human rights and they [the Soviets] talk about unemployment and racism" (Wren 1985: para. 1). Unemployment and racism are arguably human rights concerns, but this quote suggests that this is by no means a clear distinction. Although the Universal Declaration of Human Rights is often considered as the

global definition of human rights, different nations tend to choose which rights they deem to be important. Human rights are influenced by ideology, and thus unilateral actions taken by a state may be considered repressive by some while others see them as heroic. In other words, repressive state action is often justified making it even more difficult to separate between HRVs and necessary repressive measures (Stohl and Lopez 1984).

The second problem involves the difficulty of obtaining reliable data on HRVs. This problem stems from the first. Since states define or focus differently on various HRVs, any data they collect likely reflects their position taken on human rights. Popular quantitative measures must not be blindly used in human rights research. For example, the Physical Quality of Life Index (PQLI) is a score based on three equally weighted indicators – infant mortality rate, life expectancy, and literacy (see Morris 1979). Researchers often use the PQLI as a measure of social and economic rights, but there are several problems with this measure. First, there is no theoretical or methodological justification for the equal weighting, essentially treating each of the three rights as equally important. Second, the literacy rate is measured quite differently across countries, while the other two measures are more standardized, thus complicating cross-national comparisons. Third, the PQLI does not account for subnational differences such as racial disparities in these human rights. For instance, in the United States, African Americans have an infant mortality rate twice as high as Caucasian Americans (Mathews, MacDorman, and Thoma 2015). Fourth, the PQLI provides little variability among developed nations since they all tend to rank low on infant mortality and high on life expectancy and literacy despite major differences in equality and social welfare expenditures. Lastly, critics have argued that the PQLI signifies national wealth rather than government's protection of economic and social rights, which is a major validity issue (Heginbotham and Bite 1978).

Obtaining any data on HRVs may be problematic; however, obtaining reliable data may be even more challenging as countries, especially those with poor human rights records, tend to avoid data collection on human rights. Even Heinz and Fruhling (1999) found it difficult to locate military officials who wished to disclose HRVs that had been committed by their government years after the events. Also, in the United States, the FBI (Theoharis 1978; Weiner 2012) and CIA (CIA 1973; Weiner 2007) have long been involved in HRVs and their cover-ups, but these events have not been recorded.

In the 1970s, researchers used qualitative data to study human rights (Marie 1973), but a decade later quantitative researchers became involved in the study of human rights using sophisticated quantitative measures and multivariate analysis techniques. Despite some improvements over time, it became troublesome that the number of HRVs widely varied across sources. For instance, the U.S. State Department's report on El Salvador that classified the country as making progress was criticized by America's Watch as being biased (America's Watch 1985). Overcoming bias is a major concern for any researcher dealing with human rights data. Data are often self-reported by governments, such as those data coming from the United Nations Human Rights Commission established in 1965. Furthermore, sources are often motivated politically such as the U.S. State Department Country Report on Human Rights Practices. Although, this source is considered quite comprehensive and consistent, it is reporting human rights conditions from the position of the U.S. government, which, given the stance of this dissertation, is likely not an unbiased source as the United States would be highly motivated to downplay HRVs committed in another country where the United States may have been involved. NGOs are likely the best sources for measuring human rights violations, but this does not mean that they cannot have bias as well. Since there is no single definition or operational

definition for measuring human rights, either theoretically or methodologically, a prudent researcher must use caution when making cross-national comparisons.

The third, and arguably most important, problem with using quantitative data for studying HRVs is the interpretation of data. Quantitative measures of HRVs must be interpreted by experts who have intimate knowledge of the country or case where the HRVs have been committed. In other words, a purely quantitative interpretation of HRVs is likely misguided. The Political Terror Scale (see Gibney and Dalton 1996; Wood, Reed, and Gibney 2010) and the Cingranelli and Richards (2010) Human Rights Data Project known as CIRI are two of the most widely used quantitative measures in human rights research. They both represent a score given to a country based on the human rights record and are heavily based on raw count data. Human rights scores must weight several different types of HRVs to arrive at a final score. However, these weighting procedures, or lack thereof, can be scrutinized for their seemingly arbitrary conclusions. In other words, there are judgements made as to which HRVs are given more weight, and oftentimes, all HRVs are given equal weight despite their difference in seriousness. For example, when including cases of torture with cases of extrajudicial killings, one could argue that killing people is worse than torturing them. Thus, equal weighting between the two abuses would not provide a useful overall score of state repression or severity of HRVs in a country. However, is it fair to assume that ten cases of torture equal one extrajudicial killing? What about 50 cases of torture? The point here is that serious consideration to weighting must be given to any measure of overall human rights violations, and any such measure should be used with extreme caution.

Another concern with interpreting data on human rights is that HRVs are connected to a state's legitimacy. In other words, a dissident populous will likely lead to more HRVs, all else

being equal, given the importance of conflict as a cause of HRVs. Accordingly, HRVs such as police violence should be considered in relation to protest activity. For example, if we compare countries on police violence, one country may have 1,000 incidents of police violence, while the other only has 100. Based on this quantitative information we may conclude that the first country is more repressive. However, more contextual information may lead to a different conclusion. The first country may have experienced 2,000 protests while only 100 protests occurred in country two. Given this new information, country two is actually quite repressive with one incident of police violence per protest, while the first country only had one incident of police violence every two protests. Citizens of country two may actually be even more repressed beyond this ratio, but they simply know how repressive the state is, and in turn obey authority more than citizens of the first country. In other words, quantitative measures often fail to capture the amount of coercion that does not make itself visible. Furthermore, it is difficult to measure the effect HRVs have on producing fear and deterring people from acting the way they would have without the presence of repressive tactics. Leo Tolstoy is quoted as stating, “what matters is not what the censor does to what I have written, but to what I might have written” (Swift 2009: 280). Oftentimes, states may modify behavior through fear, but quantitative measures will not reveal this effect.

Case Study Methods

Quantitatively-oriented critics often argue that case study methods do not have well-defined research procedures. Furthermore, researchers employ case study methods differently depending on their epistemological stance. Yazan (2015) reviews Yin, Stake, and Merriam’s views on case study methods. Yin (2013) holds the positivistic view of research and views the

objective of case study research designs as maximizing well-established criteria used in quantitative research designs – construct validity, internal validity, external validity, and reliability. Yin’s epistemology informs his systematic design of a case study consisting of five components – research questions; hypotheses; unit(s) of analysis; connection between data and hypotheses; and criteria used for interpretation. All three researchers suggest using multiple sources of data when studying a case, but differ on the types of data sources. Yin (2013) lists six sources – documentation, archival records, interviews, direct observations, participant observation, and physical artifacts. He argues that a chain of evidence should be constructed that links the research questions all the way to the conclusions of the study. Analyzing data, to Yin (2013), is about cross-checking and testing the data gathered against the initial hypotheses of the study in an attempt to uncover some objective truth. Lastly, Yin (2013) lays out how to achieve the objective of case study research designs. Construct validity can be achieved by triangulating multiple sources of data and outlining a chain of evidence, internal validity by pattern matching, external validity by analytic generalizability, and reliability by using a systematic case study protocol.

In contrast to Yin’s view, Stake (1995) views knowledge as constructed rather than as some objective truth to be discovered. Thus, case study researchers are primarily constructing knowledge through their new interpretations of the data rather than discovering some objective truth. While Yin suggests a systematic plan to be in place at the onset of a case study, Stake (1995) describes a flexible design that only requires the major research problem(s) and question(s) to be defined at the study’s onset. Stake (1995) follows Parlett and Hamilton’s (1972) concept of “progressive focusing,” which suggests that the trajectory of the study cannot be known in advance, and the researcher must be allowed to follow the research rather than lead

it. Stake (1995) suggests using observation techniques, interviews, and document review to gather data. However, he does describe the data gathering process as more artistic than systematic requiring skills of “sensitivity and skepticism” and having an expertise in “knowing what leads to significant understanding, recognizing good sources of data, and consciously and unconsciously testing out the veracity of their eyes and robustness of their interpretations” (Stake 1995: 50). Both Stake (1995) and Merriam (1998) disagree with Yin (2013) on using quantitative sources of data and suggest solely using qualitative sources of data. Unlike Yin (2013), Stake (1995) argues that researchers should simultaneously collect and analyze data. Data analysis is viewed as an ongoing process of separating the researchers’ impressions from their observations. For Stake (1995), data validation is a process that never ends, but is ongoing throughout the research process. He argues that triangulation in multiple forms (i.e., data source triangulation, investigator triangulation, theory triangulation, and methodological triangulation) should be used to achieve data validation.

Lastly, Merriam (1998) also views knowledge as constructed. However, she emphasizes studying how knowledge construction is a product of social interaction between people sharing their interpretations. In Merriam’s (1998: 22) words,

The researcher brings a construction of reality to the research situation, which interacts with other people’s constructions or interpretations of the phenomenon being studied. The final product of this type of study is yet another interpretation by the researcher of others’ views filtered through his or her own.

Merriam (1998), although coming from a constructivist perspective like Stake (1995), lays out a systematic procedure for designing a case study. Somewhere between Yin (2013) and Stake (1995), she suggests performing several tasks before beginning data collection, including reviewing the literature, constructing a theoretical framework, identifying a research problem, creating research questions, and selecting a sample. Merriam’s suggested data gathering

techniques mirror those of Stake (1995) by focusing on interviews, observations, and document review while ignoring quantitative data sources. Similar to Stake (1995), Merriam (1998) sees data collection and analysis as simultaneous processes. Merriam (1998:178) views data analysis as “making sense out of the data ... [which means] consolidating, reducing, and interpreting what people have said and what the researcher has seen and read – it is the process of making meaning.” Since she views reality as “holistic, multidimensional, and ever-changing,” case study, research should strive to provide “the reader with a depiction in enough detail to show that the author’s conclusion ‘makes sense’” (Merriam 1998: 202, 199).

I follow Bennett (2004) in using a combination of these three approaches in the current dissertation. Bennett (2004) discusses the use of case study methods with a focus on single-case research. Of particular importance to this approach is process tracing – a technique used to investigate an observed phenomenon from hypothesized cause to its predicted outcomes (or unpredicted effects). Bennett (2004) draws on similarities between process tracing and detective work. Detectives test several possible explanations against the known evidence to search for the most plausible chain of events explaining the outcome. Process tracing is most useful when controlled experiments are impossible, such as when studying nonexperimental or quasi-experimental studies of historical cases. Instead of using a nomothetic approach, process tracing focuses on providing an ideographic explanation of a particular case including extensive depth of detail, and tracing a historical process while applying theory throughout explains a case in its entirety (Roberts 1996). Each step in a historical process must be described and its connection to a subsequent one can be explored for a possible explanation. Although historians may be satisfied with explaining individual cases, sociologists strive to generalize to some group of

cases. Thus, another goal of this project is to conclude with testable propositions for future research of similar cases.

Although many researchers criticize the value of single-case research (see King, Keohane, and Verba 1994) since the results cannot be generalized beyond the single case, yet single case studies can contribute to testing or generating theory. Eckstein (1975) distinguished between “most likely” and “least likely” cases that are extremely useful for theory testing. “Most likely” cases are those cases that are strongly predicted to fit a particular theory, thus if a “most likely” case fails to fit, it provides strong evidence suggesting theory reconstruction. On the other hand, “least likely” cases are cases that are expected to be most difficult for a theory to explain. Thus, if a theory is able to explain a “least likely” case, this offers support for the theory. Even in instances where a single case fits neither of these distinctions, a single-case project can help generate hypotheses capable of systematic testing in future research.

Despite its critics, case study research offers several advantages over other methods for use in the current study. Maybe the greatest strength of case study research is its ability to achieve high levels of construct validity – the ability to measure theoretical concepts most appropriate to a theoretical lens (Bennett 2004). Contrarily, when conducting secondary data analysis, or even when limited to quantitative measures, difficulties arise when attempting to find or design a measure that captures the theoretical concept of interest.

The ability to achieve strong construct validity, however, often is paired with the inability to obtain high levels of external validity. Thus, findings from case study research tend to be applicable to small specific subfields rather than large general populations. Empirical generalizability is often a goal that is only important once empirically-grounded theory has been established, and case studies often contribute to the construction and testing of these theories

with no attempt at achieving empirical generalizability. However, one goal of this dissertation is to strive for theoretical generalizability by offering a theoretical explanation based on the proposed analytical model for one case providing the groundwork for future researchers.

Case studies are capable of employing several levels of analysis within a single study allowing for micro-macro connections to be studied and theorized (Yin 2013). Case studies also provide an opportunity to synthesize a wide body of empirical evidence such as ethnographies, interviews, surveys, historical archive data, and statistical data. All the evidence in a particular case can be evaluated as a whole and an evidence-based judgement can be made about the causal mechanisms in the case. Multiple data collection methods lead to triangulation of more robust theoretical constructs and propositions, or simply a more accurate descriptive narrative of the case. Case studies are quite unique given that they can utilize both quantitative and qualitative data sources and analysis methods. One common misconception is to consider case studies as solely based on qualitative methods. The strongest case studies include empirical evidence that is both qualitative and quantitative. For instance, if the quality of life of Nicaraguan farmers is under study, the Physical Quality of Life Index that includes quantitative measures of infant mortality rate, life expectancy, and literacy would be included along with other qualitative data such as in-depth interviews with farmers about their lived experiences. Therefore, case studies can provide an immense amount of detail, test theoretical propositions, or even create theory. Another important advantage of case study research is its ability to address complex causal relations such as equifinality (several combinations of variables may result in the same outcome), multiple interaction effects, and path dependency (Ragin 1987).

Case study research can also be the foundation of good theory building (Eisenhardt 1989). The empirical strength and flexibility of case studies influence this power. Case studies

allow greater flexibility than other forms of data collection. Unlike other methods, case studies provide the opportunity for a hypothesis to be derived during the study and subsequently tested using the same case as well. New research questions may emerge during the research process and case study methods allow for the alteration or addition of data during the research process. However, several of the advantages of case study methodology contribute to a weakness of having an overwhelming amount of data per case. Although researchers may be advised against the use of boundaries and allowing for the research to lead the researcher in case study research, the constant use of techniques to organize the data, thereby attempting to remove any extraneous information in order to hone in on what is of causal importance, is a more effective strategy. One technique is to compare the case against others, either in the literature or within the study if multiple cases are used. This technique is particularly useful when attempting to build or test theory. Given the length of an in-depth case study, most research will involve a limited number of cases. Thus, it is essential for other researchers to build on the previous literature to increase the number of cases for strengthening theory through theoretical saturation.

The perpetual oscillation between theory and data is a key component, and advantage of, case study research (Eisenhardt 1989). Theory can constantly be compared to various cases to check for a good fit. Modifications to the theory can be made where it is appropriate. Case study research can actually be most fruitful when data does not fit theory because it forces the researcher to critically think about a specific case, and through rigorous reanalyzing of the case, the researcher can develop a significant theory modification. If a case supports theory as expected, more bias is likely present since the researcher is never forced to rethink his or her theoretical position. However, when discordant information is discovered, researchers must regroup in order to explain the unexpected. Regardless of whether theory holds or not in a

particular case, an in-depth case study can be useful in explaining why such a relationship holds or not. Given the back and forth between data and theory, theory generated or tested using case study methodology is likely to be valid empirically. Furthermore, theory generated or tested through case study research should also lead to more clear and falsifiable hypotheses, since any hypotheses will have already been empirically verified with some evidence during the case study.

A few disadvantages to the intensive use of empirical data in case study methods exist. The first has already been alluded to, which is the overwhelming amount of information. With extensive empirical data on a particular case, any theory designed to explain that case and others like it will likely result in an overly complex theory. State-corporate crime research has been criticized for modifying theory every time a new case is added (Lynch, Long, and Stretesky 2013). Good theory is generally signified by parsimony, and theory created through case studies struggles to remain parsimonious. Related to this shortcoming, theory generated from case study research also tends to be idiosyncratic. Typically, theories strive to explain wide bodies of phenomena, but theory generated through case studies can often only explain very specific phenomena given the extensive detail of particular cases.

Case study research is also restricted by other limitations. The lack of generalizability was one issue already mentioned. However, case studies are typically employed to uncover how particular conditions lead to specific outcomes by tracing the mechanisms by which these outcomes occur. Selection bias is another potential issue, which involves selecting a limited number of cases that does not represent accurate variability of conditions and outcomes. Yet, selection bias is more of a concern in statistical research when sophisticated sampling procedures are used. Since case study research inherently deals with small samples and sometimes single

cases, confirmation bias – selecting cases that are known to support the theory under investigation – is more problematic. Including all suspected cases is important during the selection process to allow the research hypotheses to be fully examined. Lastly, although case studies are proficient at discovering the scope of conditions that lead to particular outcomes, they fall short at determining the magnitude of effects for each condition (a task statistical methods perform well).

Research Procedures

This dissertation uses case study methods with a single case to assess the role that NAFTA played in creating conditions for HRVs in Mexico, primarily among the working class, with a focus on the agricultural sector. From Bennett (2004), the process tracing technique is borrowed which allows for an in-depth examination of NAFTA and its connection to the probable existence of HRVs in Mexico. This process helps to enlighten what other unsuspected conditions lead to HRVs as well. Thus, I act as a detective, as Bennett suggested, which is quite suitable considering that HRVs are criminal acts. Once I reviewed all the available evidence, I established who or what was responsible for these HRVs, whether it was NAFTA, something else, or a combination of factors.

Given that NAFTA is a prime suspect related to the HRVs, events before NAFTA, after NAFTA, and the negotiation process itself was historically reconstructed into a case narrative, similar to Gómez' (2003) work. Once the case narrative of the creation of NAFTA and its aftereffects is outlined, NAFTA was assessed as a critical turning point leading to HRVs in Mexico. The use of case narratives allows for a chronological ordering of historical events to explore casual significance. Thus, one key aspect of this dissertation is assessing whether HRVs

changed in any manner during the course of NAFTA's negotiations and its subsequent implementation.

Theory building is another main goal of this dissertation. Since case study research is the foundation of theory building due to its ability to amass and assess large amounts of both quantitative and qualitative data, this dissertation builds on the proposed analytical model I elaborated in Chapter 2 (see Figure 2.1). Following this model, this project provides some insight into criminogenic policy formation and related human rights violation outcomes. With only one case being explored, some critics might question the value of such a study, but Eckstein (1975) demonstrated that "most likely" cases can be useful for theory construction. Given the likelihood that NAFTA has contributed to some HRVs in Mexico, it can be classified as a "most likely" case. Thus, rather than being a criticism of confirmation bias, it can be treated as a "most likely" case based on the proposed analytical model.

Case Selection

NAFTA was selected as the subject for studying criminogenic policies for a number of reasons. First, it is relatively recent and has occurred within the most recently identified neoliberal social structure of accumulation (SSA) which allows for findings that may also be applicable to other policies formulated in this SSA (Kotz 2015). Second, NAFTA has already been the subject of a myriad of scientific research and popular commentary, providing a copious amount of data for use by any researcher wishing to study NAFTA. Given the strength of case study research to incorporate all these forms of data, a case study of NAFTA can greatly benefit from all of the research already conducted. Third, NAFTA is a policy that is nearly bilateral (actually trilateral) between two nations, one in the core, the other in the periphery, (the United

States and Mexico, respectively) of the global economy (Wallerstein 1974; 2004). The United States has a long history of policy creation and intervention in Latin America, and its relationship with Mexico is of particular importance since they share a border (Galeano 1973). Fourth, in the neoliberal era, free trade agreements between the United States and other countries have abounded, but NAFTA has received as much, if not more, attention than any of them. Consequently, findings on NAFTA may have some generalizability to other free trade agreements.

Time Period Selection

The time period for this case study is based on the timing of the creation of NAFTA and its outcomes. Accordingly, as previously emphasized, it is important to document events some time before and after NAFTA. Although the official NAFTA negotiations began on December 17, 1992, unofficial negotiations began a few years earlier, and similar free trade agreements set the stage for NAFTA. The focus of this study begins in 1982 during a major economic crisis in Mexico and end with the present. Although NAFTA was implemented on January 1, 1994, it has been augmented with several side and supplemental agreements, and the original policy did not remove tariffs completely until January 1, 2008. In addition, many of the effects of NAFTA are not likely to be seen in their entirety until several years have passed. Therefore, given the delayed outcomes, series of changes, and multiple phases of implementation, a longitudinal case study spanning from the 1982 economic crises\ to the present time is the best time frame for the current study.

Sources of Data

NAFTA, including its negotiation process, and its short- and long-term effects, has been the subject of a sizable literature. To document both the outcomes and negotiation process, I use several secondary documents as part of my analysis and to locate essential primary sources. The sources for this project include scholarly journal articles, books, and dissertations, official reports from both the U.S. and Mexican states as well as IFIs such as the World Bank, articles from the popular press, government and private memoranda, and NGO reports from various human rights organizations. Given the large body of literature on NAFTA, it is possible to engage in the process of triangulation to approach empirical verification. Also, this wide array of sources provides a nuanced understanding of NAFTA and its consequences.

I also use several primary sources of data, mostly to construct the U.S. account of NAFTA as many of these sources are produced by U.S. departments or commissions designed specifically for NAFTA. I use the text of NAFTA, along with its supplemental texts, to determine the key elements of the original agreement and subsequent changes in it. Two important supplemental agreements are the North American Agreement on Environmental Cooperation (NAEEC) and North American Agreement on Labor Cooperation (NAALC). NAFTA members' state agencies have also established several commissions to provide some oversight and ensure that NAFTA is implemented effectively. The Free Trade Commission, Commission for Environmental Cooperation, Commission for Labor Cooperation, Committee on Trade in Goods, and Committee on Agricultural Trade all publish reports that are useful for establishing the governments' (both U.S. and Mexico) accounts of NAFTA. The Mexico Agricultural Country Reports from the Office of Agricultural Affairs and Agricultural Trade Office in Mexico City and Monterrey helps to round out the states' accounts. Lastly, several

reports by the World Bank investigated the impacts of NAFTA on agriculture and poverty in Mexico.

Given the primary interest in how NAFTA affected the agricultural sector in Mexico, published reports by the United States Department of Agriculture (USDA) were essential for this dissertation. NAFTA's effect on the rural economy and farmers in Mexico are the subject of many of these reports including, *Effects of North American Free Trade Agreement on Agriculture and the Rural Economy* (Zahniser and Link 2002) and *NAFTA at 20: North America's Free-Trade Area and Its Impact on Agriculture* (Zahniser, Angadjivand, Kuberka, and Santos 2015). The knowledge held by the U.S. government when considering future action is established by these reports.

While the reports published by the U.S. and Mexican governments tend to focus on the benefits of NAFTA, NGO reports offer several publications that are more critical. One crucial NGO is the non-profit organization, Public Citizen, which defines itself as protecting health, safety, and democracy for the common global citizen. Public Citizen functions as a lobbyist for all people of the world, but is headquartered in the United States as a counterbalance to corporate lobbyists. Its main goal is to ensure democracy and hold government officials accountable to the global population. Global Trade Watch is a division of Public Citizen that is most valuable for this dissertation, as it particularly focuses on trade agreements with a self-proclaimed mission,

to ensure that in this era of globalization, a majority have the opportunity to enjoy economic security, clean environment, safe food, medicines and products, access to quality affordable services such as health care and the exercise of democratic decision-making about the matters that affect their lives (Public Citizen 2016: para. 1).

Human Rights Watch is another non-profit NGO that publishes reports on HRVS and pressures governments for change. Specifically, it has investigated the effects of NAFTA on Mexican agriculture and labor in two important reports, *Mexico: Labor Rights and NAFTA: A Case Study*

(Human Rights Watch 1996), and *Trading Away Rights: The Unfulfilled Promise of NAFTA's Labor Side Agreement* (Human Rights Watch 2001). Other notable NGO sources include the Center for Immigration Studies, the Global Development and Environment Institute at Tufts University, which has done a lot of work on NAFTA, the Economic Policy Institute think tank dedicated to securing social justice for middle- and low-income workers, and the *Public Eye*, a quarterly publication by the Political Research Associates think tank devoted to holding the U.S. right accountable.

I use the above sources among others to develop a valid picture of NAFTA's effects. However, the negotiation process is crucial to understanding the formation of the policy. I use several academic books that outline these negotiations. Four books most extensively document the NAFTA negotiations: (1) *The Selling of "Free Trade": NAFTA, Washington, and the Subversion of American Democracy* (MacArthur 2000); (2) *Interpreting NAFTA: The Science and Art of Political Analysis* (Mayer 1998); (3) *The Making of NAFTA: How the Deal was Done* (Cameron and Tomlin 2000); and (4) *Negotiating NAFTA: A Mexican Envoy's Account* (von Bertrab 1997). These books were instrumental in reconstructing the negotiation process. To ensure validity, I reviewed the authors' primary sources to establish a narrative of the negotiation process, while also supplementing them with other primary source material.

Overall, these various sources are interwoven to achieve triangulation in establishing a chronological narrative of the events leading up to the signing of NAFTA, its negotiation process, and its effects, both positive and negative. However, the primary focus is the impacts of NAFTA on Mexican indigenous populations, farmers, the rural economy, and other labor-related effects. The reconstructed narrative is used to assess the responsibility of NAFTA and its subsequent amendments for any HRVs experienced by Mexican workers and citizens.

Although this study focuses on NAFTA's negotiation, Canada is not a central focus of the study. Canada is only mentioned to the extent that it relates to the shaping of the North American economy. Canada was not a very active negotiator during the NAFTA negotiations, thus it is only minimally covered in this dissertation.

Chapter Summary

This project utilizes case study method, particularly trace processing, and applies the analytical framework detailed in Chapter 2 (see Figure 2.1) to the case of NAFTA with the primary goal of analyzing NAFTA as a criminogenic policy. This study answers if NAFTA is a criminogenic policy, and begins to answer the question of how criminogenic policies are formulated. The following four chapters describe the findings of this study. Chapter 5 details the events leading up to the unofficial and official NAFTA negotiations with a focus on Mexican developments. This chapter begins with the 1982 economic crisis in Mexico. Chapter 6 describes how NAFTA was formulated by reconstructing the NAFTA negotiation process. Then, the negotiation process and NAFTA are analyzed as criminogenic. Chapter 7 documents the social harms (or HRVs) incurred by Mexicans, mainly farmers and indigenous, at least partially, caused by NAFTA from its onset to present day. Each of these three chapters concludes with an analytical summary that explicitly applies the analytical model from Chapter 2 (see Figure 2.1) to the findings. Finally, Chapter 8 concludes the dissertation with a general overview of findings and contributions followed by study limitations and direction for future research.

CHAPTER 5

LEAD UP TO NAFTA

Chapter Overview

A multitude of forces shaped Mexico's path to embracing NAFTA, and neoliberal economics more generally, including emerging factions in the government's one true political party, the Institutional Revolutionary Party (PRI), the rise of a technocratic ruling class, a weakening economy, a modification of Mexican national identity, influences of powerful corporate organizations, increasing debt and loan restrictions, and a quickly integrating global economy. In order to understand the U.S.-Mexico relationship, and how that relationship impacted primarily Mexican workers, peasants, and indigenous groups, NAFTA is an important piece of policy to study. However, several of these other forces and the larger body of neoliberal economic policies, of which NAFTA is a part, must be examined in connection with one another. To accomplish this goal, this chapter focuses on identifying the various forces behind NAFTA's creation primarily from a Mexican perspective, although how both U.S. political and corporate leaders influenced NAFTA will be detailed throughout the chapter as well. In this respect, this analysis of the U.S.-Mexico relationship investigates the interactions between state, corporate, and non-state/corporate actors in both countries. Canadian actors are only superficially mentioned since most scholars agree that the key aspects of NAFTA stem from the relationship between the United States and Mexico (an extremely wealthy country and a developing

country).¹⁹ This chapter proceeds in chronological order beginning with events prior to the 1982 economic crisis and concluding with the beginning of the NAFTA negotiations, but many events and forces affecting NAFTA happened simultaneously over extended periods of time. Chapter 6 will cover the NAFTA negotiations in detail, but events in this chapter also overlap with the negotiation process. To clarify this progression, Figure 5.1 below provides a timeline that gives the dates of important events leading up to the NAFTA agreement.

1910 – 1920 – Mexican Revolution

Oct. 2, 1968 – Tlatelolco Plaza massacre (decreased public confidence in PRI)

Aug. 13, 1982 – Mexican debt crisis

Sept. 19, 1985 – Mexico City earthquake

Aug. 24, 1986 – Mexico joined General Agreement on Tariffs and Trade (GATT)

Dec. 1987 – Economic Solidarity Pact negotiations

Jan. 2, 1988 – Canada-U.S. Free Trade Agreement (CUFTA) signed

July 6, 1988 – Carlos Salinas won fraudulent election

Feb. 1989 – Programa Nacional de Solidaridad (PRONASOL; first groups began signing)

Jan. 1990 – World Economic Forum in Davos, Switzerland (NAFTA discussion began)

Aug. 21, 1990 – Salinas sent letter to Bush asking to discuss free trade deal

Sept. 1990 – Unofficial NAFTA negotiations began

Mar. 1, 1991 – Bush sent NAFTA fast-track request to Congress

Mar. 1991 – Business joined the NAFTA battle

June 12, 1991 – Official NAFTA negotiations began

¹⁹ See Mayer (1998), Cameron and Tomlin (2000), and MacArthur (2000).

Nov. 7, 1991 – Salinas proposed Amendment of Mexican Constitution Article 27

Feb. 17-21, 1992 – Dallas Jamboree (Mexico made major concessions during negotiations)

Aug. 12, 1992 – Original NAFTA text finalized

Oct. 9, 1992 – USA*NAFTA formed

Nov. 3, 1992 – Bill Clinton elected president

Mar. 17, 1993 – NAFTA supplemental agreement negotiations began

Sept. 14, 1993 – NAFTA supplemental agreements signed

Sept. 14, 1993 – Secret USA*NAFTA meeting at Allied Signal Corp.

Oct. 1993 – Salinas announced Programa de Apoyos Directos al Campo (PROCAMPO)

Oct. 25, 1993 – Jean Chrétien elected prime minister of Canada

Nov. 20, 1993 – NAFTA ratified by Congress

Jan. 1, 1994 – NAFTA went into effect

Jan. 1, 1994 – Zapatista uprising

Jan. 1, 2009 – Final NAFTA tariffs eliminated

Figure 5.1 NAFTA Timeline

Mexico's Unique Political Character

Mexican Democracy

Many commentators have labeled Mexico's political system as authoritarian (Erfani 1992; Roett 1993; Grinspun and Cameron 1993; 1996; Heredia 1994) including NAFTA proponents such as journalist William Orme Jr. Even with U.S. administrations defining Mexico as a democracy, Orme (1996) suggests that it cannot be classified as such based on typical

criteria. Orme criticizes Mexican democracy for its state repression of political dissidents, biased media, electoral fraud, and political tactics of cooptation.

Despite the 70 years of nearly unchallenged political rule by the PRI, a couple characteristics of Mexican politics allowed those in power to keep that power even after leaving office. *Camarillas* are integral to the Mexican political system and operate as small political blocs of power and influence. Camp (1990) argues that *camarillas* influence the Mexican political system more than any other variable. According to Ángel Centeno (1994:146), *camarillas* are based on quid pro quos oftentimes between unequals such as when a “patron offers a job or increased influence, the client offers loyalty and trust. At some moments the patron may help a client’s career, at others the junior partner might provide resources or knowledge critical to the chief.”

Along with *camarillas*, *el dedazo*, known as the handpicking of future presidents, was also a well-established component of Mexican politics (La Botz 1995). Since the PRI reigned as a virtually unchallenged political party for 70 years, the selection of the PRI presidential candidate was a powerful ability afforded to the current president (Dominguez 1995). Thus, presidents could ensure their political power would expand beyond their six-year term (*sexenio*) by effectively hand selecting the next president, and filling several political positions with members of their own *camarilla* (Cameron and Tomlin 2000). The Mexican political system throughout the 1980s in the lead up to NAFTA, and many years prior to then, was not democratic (La Botz 1995). The PRI was a large corporatist party deeply embedded within the state that bestowed monolithic power to the presidency and its subordinate governmental branches of power allowing for the 70 years of political dominance. The Mexican government emphasized cementing PRI rule rather than establishing free and fair elections.

Throughout the 1980s, both the de la Madrid and Salinas administrations focused on economic transition, but few steps were taken towards democracy (Roett 1993). Interestingly, most Mexican citizens supported Salinas's decision to address the economy before the political system. According to the World Values Survey in 1990, 60 percent of Mexicans ranked economic growth the most important issue to address in the 1990s, while only 25 percent ranked political participation higher, although this was the second most important issue after the economy.²⁰ Seemingly, democracy could be ignored when the economy was suffering. Thus, the poverty and social problems in Mexico provided a diversion for pursuing economic reform without political changes. Other countries such as Chile (and maybe even the United States) send the message that economic consensus is a precursor for stable multiparty democracy. In other words, "multiparty democracy is tolerated to the extent that it is perceived as nonthreatening to economic reform" (Baer 1993:63). The various case studies of Latin American countries from Chapter 3 support this argument as well (Heinz and Fuhrling 1999; Gomez 2003). The United States along with the domestic Latin American governments pushed for economic change with an "any means necessary" approach with no attempt to democratize those nations. Only once economic reforms were solidified, the United States began to critique some of their political systems as a way to save face in the international arena.

Heath (1996) also found Mexicans to be more willing to accept a loss of sovereignty if economic well-being could be improved. Heath argues that the political elite used the cover of political sovereignty – the ability of Mexico to rule itself – to secure economic wealth, in turn, threatening economic sovereignty – the ability of Mexicans to influence the economy. Salinas's ability to reverse Mexico's skeptical view of U.S. intervention led to more integration and

²⁰ The raw data for the World Values Survey can be found here
<http://www.worldvaluessurvey.org/WVSDocumentationWV2.jsp>.

thereby less economic sovereignty. According to Heath, laws regarding foreign direct investment were purposely flexible to allow for control with little earnest concern for sovereignty.

Mexico's authoritarianism was a valuable tool for social control complementary to free trade (Zinser 1993). In particular, Salinas abused his presidential power to remove more state governors in his first two years than any other president since Miguel Alemán whose term ended in 1952 (Camp 1993). The United States did not wish to see Mexico democratize since Mexico's authoritarian government was beneficial to transnational corporations (TNCs). Historically, democracy has not been ideal for business in Latin America (Collier 1979). Furthermore, Mexican business executives tended to place their firm before their country, suggesting that economic reform is more important for the business community as well (Dull 1981). Authoritarianism offers a series of advantages to passing policy without popular challenge, including corporatism, political centralization, and impunity (Zinser 1993). Without democracy, neoliberal policies will strengthen the elite while deepening inequalities. All of these issues in Mexican democracy exist without even mentioning Salinas' rise to power through electoral fraud, after which he claimed Mexico was moving towards democracy and a true two-party political system largely in part because of the highly competitive election (Erfani 1992).

Unions and Labor

Another characteristic of Mexican politics related to its democracy is its treatment of workers and unions. Salinas actively removed union leaders to weaken their ability to bargain for better wages (Kim 1995), and agrarian reforms, to be discussed, reshaped the government's new position towards rural workers (Barry 1995). The Mexican authoritarian regime also has a

track record of repressive action towards labor unions and the manipulation of union leaders which threatens Mexican democracy (Middlebrook 1989). Although unions were not always treated with repressive tactics, there is a long history of the PRI using corporatist methods to coopt any push for workers' rights. One example is the Kodak union that was actually created by the Eastman Kodak Company along with the PRI (MacArthur 2000). In the lead up to NAFTA, some companies were relocating to Mexico, but were concerned with the potential strength of unions. Thus, in this case, Kay Whitmore, the CEO of Kodak, explained in an interview with MacArthur (2000:140):

We worked with the government and created a union before we even had employees. So it was almost a ruse. Because you applied to the government – really the PRI – and they created a union for you, and when the employees came in they were just automatically part of the union. In union terms, we never had any problems.

Such a strategy between business and the PRI demonstrates a common partnership with the common goal of a cheap labor force in the neoliberal age.

The Confederation of Mexican Workers (CTM) was the largest aggregation of labor unions in Mexico, but became very corrupt during the 1980s onward (La Botz 1992). Instead of defending the workers' rights and interests, the CTM often took sides with business by promoting policy that increased worker productivity. Since most of the leadership was allied with business, little criticism of free trade policies could be expected. The CTM had long been a tool of the PRI and this continued under the Salinas administration. On February 24, 1992, 92-year-old Fidel Velazquez, one of the original founders of the CTM, was reelected as secretary general for another 6-year term. He headed the CTM from 1941 when he was first elected until his death in 1997. Velazquez had strong ties with the PRI government, and effectively silenced Mexican workers, keeping wages and benefits very low in return for political privileges and

government largesse for over 50 years (Erfani 1992). The compromised composition of the CTM played a role in the shape NAFTA took as well.

Worker social movements such as Solidarity are also vulnerable to presidential cooptation. Salinas promoted Programa Nacional de la Solidaridad (PRONASOL) as a poverty elimination program, while also naming it after the Solidary movement with the sole intention of creating a strong political base for the PRI (Orme 1996). Even critics of Salinas saw this effort as the most effective recruitment strategy ever in the PRI's history. The poor in dire need of aid were won over, undercutting the Democratic Revolutionary Party (PRD) and leftist opposition (Scott 1992). Whereas Salinas entered office with low approval ratings and amidst electoral fraud, the engineered Solidarity program restored faith in the PRI to some extent. Interestingly, Salinas's Harvard dissertation investigated the correlation between public programs and support for the PRI (Orme 1996). Ironically, in his analysis, he found that these programs often did not help support the PRI.

The United States praised both workers' rights and democracy in Mexico, facilitating a smooth economic transition in Mexico at the behest of TNCs. One example is found in the *Wall Street Journal* which praised the Solidarity program as "politically neutral" and an insurance plan for the poor that would ensure they benefit from neoliberal policy (cited by Orme 1996). The United States also praised Mexican labor laws due to their liberal legal code, but in practice, enforcement is often left to unaccountable government officials who have more at stake in securing their own political and economic interests (Heredia 1994). Since economic policy trumps political equality, the United States pretended Mexico was a democracy without criticism as long as U.S. economic interests were served.

Prior to the 1982 Economic Crisis

Public confidence in the PRI was first severely shaken after the events at Tlatelolco Plaza in 1968, when the Mexican military and police forces killed several hundred students and onlookers, and arrested several thousand (Suchlicki 1996). The massacre invited criticism from many previous supporters of the PRI and placed the Mexican political system under unwelcomed international scrutiny. In response, President Luis Eschevería strengthened security forces while attempting to coopt the left's call for democratization. These types of political maneuvers, used by Eschevería to coopt democracy in order to maintain power, are deeply embedded in the PRI's history. However, the increased state repression under Eschevería's presidency raised levels of public criticism and created friction in the PRI, resulting in a rift that would later leave an opening for a new technocratic class with strong U.S. ties (Suchlicki 1996).

The PRI maintained power by running its campaign based on a cultural identity shaped by the Mexican Revolution, 1910-1920. At risk of oversimplification, this cultural identity arose when the United States and business interests backed counterrevolutionary forces. Thus, the Mexican identity became synonymous with cynicism toward the United States and TNCs. Mexico's cultural ethos was based on a long history of U.S. interventionism that led to the characterization of the United States "as imperialistic, paternalistic, and racist" (Morris and Passé-Smith 2001:126). The Mexican ruling elite, most commonly manifested in the PRI, coopted the anti-American sentiment to solidify their stranglehold over government policy, while subtly undermining the political left in favor of their own economic development programs (Bartra 1989). The economic crisis in 1982 provided an opportunity for questioning this traditional ideology.

Mexican anti-Americanism influenced Mexican economic philosophy. Historically, Mexico was opposed to opening its markets to the international community, and was specifically skeptical of providing the United States access to its domestic markets (Mayer 1998). In contrast to Mexico's philosophical preference towards a closed-economy, a strong U.S. business coalition sought economic integration and free trade. As early as the 1970s, U.S. corporate power – consolidated in the form of the Business Roundtable – came to the conclusion that the compromise and protections offered to organized labor under Keynesian economics in the post-World War II era needed to be reversed, and radical free trade policy was the best option for achieving that goal (Robinson 2015). President José López Portillo succeeded Eschevería in 1976, to the relief of U.S. business interests initially, but he soon used the newfound Mexican oil wealth to finance some anti-American/Communist regimes (Suchlicki 1996). However, these measures failed as the oil crisis in 1982 ruined the Mexican economy. Up until the 1982 debt crisis, Mexico's economy was based on the import substitution industrialization model. In line with its anti-American cynicism, this model advocated replacing foreign imports with domestic production, and relied on state intervention to avoid foreign influence in the domestic economy.

The 1982 Economic Crisis and 1985 Mexico City Earthquake

On August 13, 1982, a devastating economic collapse in Mexico – caused by plummeting oil prices and rising external debt – forced the Mexican government's hand into seeking aid from the International Monetary Fund (IMF; Cameron and Tomlin 2000). Briefly, Mexico's economy was staying afloat in the years leading up the debt crisis due to its oil revenues. In 1979, oil prices skyrocketed allowing Mexico to take out large loans backed by its oil reserves assuming future revenues would be capable of loan repayment. However, the U.S. Federal Reserve

increased its interest rates in an attempt to address oil inflation, the purported cause of the ongoing global recession. Once oil prices began to fall, Mexico was faced with high-interest loans, low revenues, and an overvalued peso exchange rate resulting in default on its massive external debt.

Most scholars attribute the 1982 economic crisis as the starting point for a major economic transition towards free trade, open-market capitalism in Mexico.²¹ Among these scholars, Golob (2003) provides evidence that Mexico – a country long opposed to trade liberalization with the United States – experienced an economic policy paradigm shift, totally embracing neoliberal economic policies. The economic crisis of 1982 was an “exogenous shock,” not simply a domestic issue, and its lingering effects created the opportunity for this dramatic shift to take place by fostering insecurity and uncertainty over Mexico’s economic future and national identity (Golob 2003:373). President Portillo, in fact, nationalized the banks in response to the 1982 economic crisis (Mayer 1998), and continued his vocal opposition to U.S. foreign policy (Suchlicki 1996). However, Mexico’s policy options were limited by its relation with the IMF as an in-debted nation (Golob 2003), and the nationalization of banks scared away foreign investors leading the succeeding president, Miguel de la Madrid, to pass a series of reforms to open up the Mexican economy (Mayer 1998), which is the subject of the following section. The de la Madrid and Salinas administrations provided the relief for business interests that some originally thought would come from the Portillo presidency. Yet, de la Madrid’s experimentation with neoliberal policies, and enforced austerity programs from the IMF, did not win over citizens that resulted in an extremely narrow victory by Salinas in 1988.

²¹ Nearly every cited author in this chapter who discusses the 1982 economic crisis makes this attribution.

Shortly after the economic devastation in 1982, natural disaster struck. The Mexico City earthquake of 1985 was probably the most significant event in catalyzing the mobilization of Mexican civil society (Monsiváis 1987). When the earthquake hit, the PRI government told Mexicans to stay in their homes. In one of the largest waves of civil disobedience in Mexican history, thousands of Mexicans poured into the streets of Mexico City determined to rescue victims of the catastrophe (La Botz 1995). Besides the strong will of Mexicans in ignoring their government's request, the earthquake also uncovered the structural weakness of buildings due to corrupt contractor deals and the hidden torture chambers under the rubble that had been the police headquarters. Democracy became the rallying cry that united Mexican citizens around questioning the current social structure, and particularly the PRI government.

Restructuring of the Mexican Economy

Although many commentators have depicted Mexican economic restructuring after the 1982 collapse arising from endogenous political and economic conditions in Mexico, several aspects of the transition were in response to external factors (Hogenboom 1998). Even though Salinas approached the United States with the idea of free trade, this and the next chapter will demonstrate that various factors led Mexico to such a choice, and ex-U.S. President Ronald Reagan mentioned the idea of free trade much earlier than Salinas, informing Mexico, as well as most of Latin America, that such a deal was on the table whenever the others wished to discuss it (Orme 1996).

The economic crisis that hit Mexico in 1982 was part of a larger global economic crisis involving world oil prices. The U.S. Federal Reserve raised interest rates in an attempt to address the inflation crisis. The hike in interest rates severely crippled Mexico's economy and posed

severe risks for the established political order, providing a major impetus for comprehensive economic reform. Accompanying Mexico's foreign debt, investors began moving their money from Mexico to more secure investments. Failing to restructure the debt or secure favorable international loans, Mexico was forced to seek financial support from the IMF, receiving nearly \$4 billion in loans, which was to be distributed over a three year period, and the United States provided over \$1 billion in an advanced payment for oil reserves (Boughton 2001). In return for the IMF loan, the Mexican state was required to cut public spending, raise taxes, and tighten its monetary policy (Cameron and Tomlin 2000). Miguel de la Madrid was inaugurated president during this tumultuous economic time and the same month (December 1982) as receiving the IMF loan. President de la Madrid quickly implemented a recovery plan in line with the IMF's demands by freezing wage increases, slashing government social expenditures, and reducing major state consumption subsidies.

The IMF loan failed to stabilize the Mexican economy, and the United States then proposed the Baker Plan, a relief package that required Mexico to intensify its market liberalization process (Cameron and Tomlin 2000). James Baker, U.S. Secretary of the Treasury, proposed the plan at the 1985 IMF/World Bank meeting in Seoul, South Korea. The policy blocked bankruptcy and instead encouraged countries to grow their way out of debt which required more trade liberalization, creating opportunities for foreign direct investment, and privatizing state-run enterprises (Cline 1989). To fulfill its obligation, Mexico sought membership in the General Agreement on Tariffs and Trade (GATT) in 1986.

Prior to 1986, Mexico had turned down GATT membership primarily due to its belief in the import substitution industrialization model supported by both the PRI and citizens despite incessant efforts by the United States to urge Mexican membership in GATT (Story 1982).

Thus, Mexican nationalism and anti-Americanism dominated Mexican domestic policy prior to the 1982 economic crisis. However, the United States shifted strategies after Mexico declined to join GATT by imposing higher countervailing duties against Mexican exports entering the United States (Lara-Fernandez 1987). It was not until the economic crisis hit Mexico in 1982, and IMF loans were unable to solve the problem, that Mexico capitulated in joining GATT. Under such dire circumstances, the United States was able to use the crisis as leverage to implement the Baker Plan, GATT membership, and in turn promote trade liberalization in Mexico. The United States finally gained Mexico's acquiescence to join GATT by allowing Mexico to retain several exemptions including sectoral subsidies, an exclusion of agricultural products, and import permits (Ortiz Mena 2005). The United States allowed Mexico these exemptions under GATT in hopes of gaining full trade liberalization in the long-term (Davis and Wilf 2011). The political elite sold GATT membership to the Mexican people as a way towards economic recovery (Cameron and Tomlin 2000). Although trade liberalization had reached Mexico, free trade with the United States was not considered until a 1987 document, *Framework Understanding on Bilateral Trade and Investment* (American Society of International Law 1988). The Mexican government had avoided any trade deal with the United States until it was perceived as the last resort. Unfortunately, for Mexico, approaching the United States as a last resort in dire economic times gave Mexico very little bargaining power. As we will see, Mexico faced a similar scenario in the NAFTA negotiations.

Several special interest groups rejected the GATT text. In particular, the Cámara Nacional de la Industria de la Transformación (CANACINTRA) – a coalition representing small and medium-sized businesses – fervently opposed GATT membership, but their objections were weakened by strong business support in both the United States and Mexico, even coalescing

within the U.S. Chamber of Commerce (Cameron and Tomlin 2000). President de la Madrid avoided public debate and discussion on GATT membership knowing that opposition would arise, a pattern that would continue throughout the NAFTA negotiations. The denunciation of GATT was not limited to Mexican groups. Twenty-five leading U.S. environmental, consumer, and animal protection groups wrote a letter to the GATT director on January 8, 1992 rejecting the final Uruguay Round GATT text (Nader et al. 1993). The Canadians had their concerns as well. One of the major concerns for all parties involved was that protections for workers and the environment were made more difficult under GATT, a topic taken up in more detail as it relates to NAFTA negotiations in the next chapter.

Mexican Business and the State: A Powerful Friendship

Both the de la Madrid and Salinas administrations sought to form an alliance with big business, operating throughout North America, to win support for economic restructuring from groups represented by CANACINTRA and the general public. Expropriation fears resonated among the international business class despite the efforts towards market liberalization since the nationalization of Mexican banks in 1982 was still fresh in their minds (Hernández Rodríguez 1986). Thacker (1999) argues that a major policy needs a political sponsor and a coalition mobilized with political support to gain acceptance and be further implemented. As Mexico experienced economic crisis, TNCs became more involved in Mexican economic reform policy. Then, the IMF and World Bank joined the sponsorship of free trade policies along with the Bank of Mexico. Despite the support, the move toward free trade did not remove Mexico from crisis.

One of the pressing concerns in Mexico was the high inflation rates averaging around 88 percent a year during de la Madrid's presidency, and eventually reaching 177 percent in January

of 1988 (Cook, Middlebrook, and Horcasistas 1994). In response, the Mexican state engaged in the Economic Solidarity Pact (PSE) negotiations which reinforced a trend toward including big business and the private sector elite, while excluding small- and medium-sized firms, in free trade talks (Hernández Rodríguez 1990). The Business Coordinating Council – an organization that disproportionately represented large corporations – was involved in the negotiations magnifying the interest of big business (Luna and Tirado 1992). The consensus of business leaders was that neoliberal reforms were both in their own interests and the Mexican economy as a whole, albeit they had concerns over increased competition (Kaufman, Bazdresch, and Heredia 1994). The PSE solidified the institutionalized collusion between economic state planning and large firms that dominated the Mexican economy, and went a long way in building a strong mutual trust between the Mexican state and private sector.

The primary goal of the PSE negotiations that began in late 1987 was to drastically reduce inflation despite Mexico's economy growing by less than 0.1 percent a year during the de la Madrid administration (Lustig 1992). Yet, Ros (1994) argues that Mexico had several advantages that allowed it to combat inflation more swiftly than other Latin American countries. First, the authoritarian political structure allowed presidents and economic policy makers to implement drastic changes with little backlash from an uninformed public. Second, a major interest from the Reagan administration sought to test its new debt restructuring approach embodied by the Baker Plan. Third, Mexico had extremely low indexation despite the high degrees of inflation, thus wage increases did not keep pace with inflation, eroding purchasing power. Fourth, the historical relationship between the Mexican state and labor allowed for astonishing flexibility in setting wages. Given these advantages combined with the depth and length of the economic crisis gave government officials wide latitude in reexamining the role of

the public sector and the country's overall strategy for economic development. Beginning in 1985-1987, economic policy makers radically liberalized Mexico's trade and industrial policy regime, rapidly privatized state-owned enterprises, and aggressively deregulated foreign investment flows and domestic economic activities.

Since attracting foreign capital was vitally important to the Mexican elite, Mexican decision makers had strong incentives to adopt market reforms. Indeed, the U.S. government's Baker (in 1985) and Brady (in 1989) plans conditioned additional foreign lending on debtor countries' willingness to adopt such measures (Lustig 1998). The result was a sharp shift toward export-oriented economic development, greater scope for market forces, and a more prominent role for the private sector in promoting economic growth. These policies were accompanied by other measures (including the elimination of government budget deficits, more effective tax collection, and greater institutional autonomy for the Banco de Mexico) designed to maintain business confidence and place the Mexican economy on the path toward sustained long-term growth.

While GATT membership, the PSE negotiations, and IMF loan restrictions were in place, simultaneously, both the de la Madrid and Salinas administrations restructured the Mexican economy (Moody 1995). One major aspect of the restructuring was the privatization of the Mexican public sector. By 1991, Mexico privatized or liquidated nearly 75 percent of its state-owned firms, with several others likely to follow (Hufbauer and Schott 1993; Moody 1995). A small wealthy elite rose to power alongside Salinas represented by the 37-member Mexican Businessmen's Council. The 37 members controlled the wealthiest 71 private companies in Mexico, accounting for 22 percent of annual GDP by 1992 (Carlsen 1991). These 37 members

also benefited from the five largest privatizations that occurred from 1982 to 1991, and accounted for 80 percent of all value transferred via privatization of state-owned assets.

The economic restructuring was primarily geared towards shifting the Mexican economy from an import-substitution model to a neoliberal export model. In order to achieve this shift, several measures were taken:

...the official minimum wage ... was frozen well behind inflation. Industrial wages were also restrained, often by forceful strikebreaking. The buying power of the minimum wage dropped 67 percent from 1982 to 1991, hitting a historical low point, while the real wages of industrial workers in the same period fell by 48 percent (Moody 1995:102; see *La Jornada*, December 26, 1991).

The amendment of Article 27 of the Mexican constitution was the most radical rewriting of law that influenced the economic structure in Mexico by completely reforming agriculture, as will be covered in detail in a later section. In addition, the Mexican state reduced social expenditures on programs such as the social security. With the restructured economy, U.S. capitalists found Mexico a lucrative option for investment due to its:

...literate, industrious workforce adaptable to high-tech labor with its wages disciplined by a PRI-dominated Confederation of Mexican Workers, on the one hand, and a growing army of unemployed and underemployed, on the other (Moody 1995:103).

Throughout the 1980s, Mexico found it difficult to economically recover due to restrictions by the IMF, lack of external investment, and falling oil prices (Dominquez 1995). However, GATT membership and export promotion was advantageous for large TNCs, especially the automobile industry, and large agricultural businesses focused on fruit and vegetable production for the U.S. market. In contrast, Mexican citizens primarily experienced social and economic dislocation and increased penury throughout the 1980s and early 1990s due to the economic restructuring. In light of the growing state-corporate allegiance, citizens seriously questioned the PRI's legitimacy throughout the 1980s. Economic restructuring and

eventually NAFTA promoted the growth and strength of a transnational capitalist class (TCC), primarily consisting of elite state officials and corporate leaders (Petras and Morley 1990). Despite the burgeoning power of the TCC, the state-corporate allegiance needed to sell neoliberal economics to the public.

Economic Restructuring Under Salinas

Since NAFTA was negotiated and signed during Carlos Salinas's presidency, he deserves more attention than the other presidents before him, and other key players in the NAFTA negotiations. For seven decades, the PRI maintained political stability and peaceful transitions across presidential administrations (Dominguez 1995). While effectively an authoritarian government, the PRI maintained the political legitimacy necessary to block any desire for a multi-party democracy. However, neoliberal policy reforms under de la Madrid created discontent and suspicion towards the PRI.

Riding the momentum created by the 1985 Mexico City earthquake, Cuauhtémoc Cárdenas along with Muñoz Ledo established the Democratic Current a reformist wing of the PRI (La Botz 1995). The PRI initially lashed out at the Democratic Current, then made some superficial reforms to maintain an appearance of democracy. Due to the PRI's unresponsiveness to requests for Cárdenas as a presidential candidate, the FDN was formed garnering the support of many leftist groups. Cárdenas campaigned primarily on bringing democracy to Mexico with almost no appeal to citizens as workers.

Amidst widespread electoral fraud, the PRI won the 1988 election and Cárdenas was defeated. During the vote counting process, political authorities claimed a computer breakdown had occurred in order to halt the high vote count for the opposition (Dominguez 1995).

Although electoral fraud was typical, the PRI needed to go beyond its typical fraudulent practices. Even with electoral fraud, Salinas barely garnered 50 percent of the vote in what was the lowest number of votes ever received by a PRI candidate in any election since 1929 (Kim 1995). The previous low for a PRI candidate was de la Madrid who received 72 percent in the preceding election. The strange computer glitch incident led many to believe that Cardenas was the real victor. In 2005, Salinas confirmed these suspicions by stating Cardenas did, in fact, win the election, thus indirectly admitting electoral fraud (see Mora 2012).

With its defeat, the FDN became the PRD, but many of the political parties that joined the FDN quickly left when it became clear that they were outsiders to Mexican politics and returned to the PRI (La Botz 1995). The PRD gained legal status as a political party by taking control of the already-established Mexican Socialist Party (PMS). However, the absorption of the PMS put an end to the socialist movement in Mexico, virtually shifting Mexican politics to the right. Despite its fairly moderate political form, the PRD faced severe forms of repression by the PRI government. The fraudulent election of Salinas was essential for delivering a crippling blow to the most radical democratic groups, allowing Salinas to utilize an essentially authoritarian government to restructure the Mexican economy.

The economic crises of the 1980s undermined public confidence in the statist policy paradigm, and created a vacuum for policy change exploitable by a new “cohesive generation of young, foreign-educated economists” that “arose through the Mexican economic policy bureaucracy together in the early 1980s” (Golob 2003:382; see also Ángel Centeno 1997). By 1988, these “policy entrepreneurs” reached the president’s cabinet, the nexus of policy creation (Golob 2003:384). Simultaneously, Salinas “centralized presidential power to an extremely noteworthy extent” (Golob 2003:384) by elevating the economic cabinet as primary advisors,

thus allowing the team of ministers to greatly influence policy creation and implementation (Reyes Heróles 1991). Such a development effectively marginalized the Foreign Ministry and diminished its ability to counterbalance the neoliberal ideology espoused by the president's cabinet. At this point, normalization of neoliberal economic policies was well underway, with Salinas's team of bureaucrats ready to produce technical studies advocating neoliberalism, while offering an escape route for Salinas to publicly reject it if necessary (Golob 2003).²² Big business lined up to support Salinas once the decision to pursue free trade was made.

When President Salinas arrived in office in 1988, amidst both economic and political uncertainty, he quickly accelerated trade liberalization by reducing tariffs and import restrictions with the ideological justification of neoliberal economic philosophy. He prioritized economic recovery believing that political support would follow. Just one year after he took office, almost all (96 percent) Mexican imports were quota-free and the average weighted tariff was 6.2 percent (Cameron and Tomlin 2000). Bilateral relations between state and corporate power in Mexico and the United States were already strengthening. Mexico increased its intellectual property protections for U.S. corporations and removed a 40 percent tax on exported capital, while the United States opened more of the U.S. domestic market to Mexican steel and textile exports. More importantly, Presidents Bush and Salinas engaged in economic discussions, and when Mexico displayed interest in a free trade agreement, "the United States was careful not to push too hard" (Cameron and Tomlin 2000:60).

Beyond his friendship with the Bush family, Salinas had several connections to the TCC and easily fit into Ángel Centeno and Maxfield's (1992) description of the new technocrats. Although not a son of a president, Carlos Salinas was the son of a major Mexican politician,

²² In private interviews conducted by Stephanie Golob, SECOFI officials confirmed that the studies were aimed at advocating a bilateral free trade option.

Raúl Salinas Lozano – an economist and technocrat himself. Carlos Salinas served as the secretary of the Budget Secretariat before becoming president, and his father was the minister of industry and commerce during the Adolfo López Mateos administration. Most importantly, Carlos Salinas received a master's degree in public administration and a doctoral degree in political economy from Harvard University's Kennedy School of Government. Although Salinas has been portrayed as having a true belief in neoliberal economic ideology, it may have been more his desire to gain the U.S. seal of approval than his neoliberal sympathies that motivated his economic policies (Oppenheimer 1998). Regardless of his true intentions, his background, as well as much of his administration's similar educational and social backgrounds, likely influenced both a belief in neoliberal economics and a desired partnership with the United States. Furthermore, the new neoliberal political elites in Mexico have had a tendency to be educated in elite U.S. schools with a neoliberal economic emphasis, which is a dramatic shift from the educational and social backgrounds of most Mexican politicians born prior to 1950 who were overwhelmingly educated in elite French and English institutions (Camp 1995).

Beginning of NAFTA Negotiations and Economic Restructuring

Although Salinas did not seek a deal with the United States initially, in 1990, at the World Economic Forum in Davos, Switzerland, he felt he could attract foreign aid with the enticement of “cheap labor and privileged access to the U.S. market” (Dillon and Preston 2004:196). Reportedly, while at this conference, President Salinas, still in his pajamas, woke up his Trade Secretary, Jaime Serra Puche, at dawn asking what he thought of a trade deal with the United States (von Bertrab 1997). Salinas quickly sought a deal with the United States after this realization and fervently marketed NAFTA in Mexico and beyond its borders. Serra met the

following day with U.S. Trade Representative Carla Hills about a possible trade deal. She responded by suggesting that they bring in President Bush to hear his thoughts which marked the beginning of the NAFTA negotiations.

The trip to Davos was not planned to involve free trade with the United States. In fact, Salinas, as Mexican presidents before him, seemed adverse to such an idea. As stated, Salinas intended on diversifying Mexico's foreign investments. Davos was his last visit in an attempt to promote and secure foreign investment. However, in Davos, Salinas learned that European nations were consolidating into their own economic bloc, and thus were mostly not interested in providing aid to the struggling Mexican economy (Cameron and Tomlin 2000; MacArthur 2000). Instead, the major European powers were interested in transforming Eastern European economies. With limited investment funds, Salinas and his team were unable to convince the Europeans to invest in the Mexican economy. Mexico was faced with a constrained choice of risking economic isolation or collaborating with the United States in order to compete within the global economy. Only as a last-ditch effort, once Salinas's attempts at diversification failed, did he seek out a trade deal with the United States (Dominquez 1995). Thus, foreign direct investment was the primary impetus for Mexico's support for NAFTA.

Since Salinas sought out a free trade deal with the United States, Mexico is often considered the initiator of NAFTA. However, faced with the economic difficulties, Mexico resorted to loans from major Western powers, primarily through the IMF (Cockburn 1986; Krooth 1995). Many of the "unilateral" actions taken by the Mexican government were made to appease the moneylenders. Privatization of public enterprises, trade liberalization for market imports, reduction of government expenditures, and underwriting of foreign direct investment

were all required or encouraged by the IMF. Furthermore, once NAFTA was on the table, Mexico faced pressure to continue its economic restructuring.

Although Mexico implemented several actions and policies in the years surrounding the NAFTA negotiations and leading up to its implementation, they must be understood as consequences of NAFTA since they were adopted to prepare the Mexican economy for the free trade agreement. For example, in face of all the government expenditure cuts, Mexico increased its anti-drug spending ninefold from 1987 into the 1990s (Andreas 1998a). At the end of de la Madrid's presidency, he announced drug trafficking as a threat to national security which is a rare claim in Mexican society. Salinas continued pursuing drug traffickers primarily to appease the United States and amp up the national security apparatus to mollify investor concerns. The militarization of the police force and involvement of the Mexican military grew as a solution to drug trafficking. Narco-corruption among state officials in Mexico remains an issue today, and drug trafficking and enforcement issues will be discussed more thoroughly in Chapter 7.

By the end of Salinas' term, a conservative estimate of around 86 percent of state enterprises were privatized, most during his presidency (Moody 1995). Ironically, Oppenheimer (1998) sardonically points out that Salinas opened the Mexican economy to such an extreme that Mexicans were eating their own cultural foods ill-prepared by Taco Bell. Land reforms characterized another major aspect of the Salinas restructuring that will be covered in a later section. Due to the intensification of the privatizing efforts and other neoliberal modifications, unions that had long been controlled with corporatist methods became problematic to the Mexican state and potential U.S. investors. However, with Salinas' bold economic and political promises, the PRI rebounded in 1991 with PRI candidates winning 61 percent of the votes in the elections for federal senators and state governors. With this political victory, Salinas was able to

make law unilaterally without appeasing oppositional parties (Dillon and Preston 2004). Even President Bill Clinton (Auerswald, Duttweiler, and Garofano 2003) and the U.S. press (Dillon and Preston 2004) endorsed Salinas, thus furthering his political and economic legitimacy.

With Salinas's image as an economic savior and lack of oversight, he was free to deal with the unions. Salinas disregarded article 123²³ of the constitution that protected workers' rights, particularly their right to organize and strike, by cracking down on union workers in order to subdue labor resistance to neoliberal policies. Since Salinas and his cabinet members saw Mexico's competitive advantage and their leverage at the bargaining table as cheap labor and lax corporate regulations, unions only stood in the way of Mexico making its case as being a strong free trade partner to the United States. In response, Salinas went after major union bosses and declared a war against unions (Kim 1995). The Salinas government arrested and sentenced Joaquin "La Quina" Hernández on charges of corruption and possession of firearms, and *The Los Angeles Times* described this action as a power grab by Salinas (Miller 1989). Dillon and Preston (2004) described the charges as legitimate, but realized the economic and political goal Salinas pursued. Hernández was the PEMEX (Petróleos Mexicanos – the Mexican state-owned petroleum company) union leader who was outspoken against the privatization of PEMEX and Mexican oil. Thus, Salinas felt he must be dealt with because he stood in the way of the privatization of the Mexican petroleum industry. The commander of the Federal Judicial Police threatened Hernández's family in order to get his acquiescence to a thirty-five year prison sentence (Dillon and Preston 2004). Labor groups went on strike in opposition, but were repressed by the federal government. Eventually, PEMEX was partially privatized by 1993 (Teichman 1995).

²³ The Mexican Constitution can be found here http://www.oas.org/juridico/mla/en/mex/en_mex-int-text-const.pdf Article 123 begins on page 47 of the PDF file.

Salinas also successfully subdued another prominent union leader, Agapito González Cavazo, the day before his dockworkers' union staged a protest against the *maquiladora* plants owned by U.S. investors (Meyer, Sherman, and Deeds 2003). The experience of the *maquiladora* sector raised many concerns over the NAFTA negotiations among labor unions, considering workers in these American-owned firms were suffering brutal working conditions and environmental degradation plagued the host communities (Grunwald 1991). Once again, the U.S. and other foreign media hailed Salinas as a national hero and competent leader maintaining peace during a tumultuous time in Mexico (Grunwald 1991). The wave of privatization enticed foreign investments along with empowering the PRI government's control over the Mexican people. Once union and labor opposition was quashed, the Salinas government was free to privatize nearly any industry deemed necessary. Corporate constituents of the PRI government benefited greatly from these tactics, particularly billionaire Carlos Slim Herú who made a fortune. The amendment of article 27 of the constitution was just another step in this strategy of privatization that moved land from the poor to the wealthy.

Agricultural Reform

Faced with pressure by the United States, IMF, and World Bank, the Mexican government followed a path of austerity commonly paired with trade liberalization by further reducing the social programs it had in place (Stanford 1994; Barry 1995). In the years leading up to NAFTA, President Salinas reformed agrarian society by allowing an inflow of agricultural imports, removing or reducing most agricultural subsidies, withdrawing or shrinking tariffs on most products, and guaranteed prices were no longer given for any crops other than maize and beans in 1990 (Foley 1995). For instance, Mexico dissolved ANAGSA, a public insurance

agency that provided programs for crops to help with losses, BANRURAL – a rural development bank – declared it would only loan to profitable peasant farmers (Foley 1995), and the state ended a history of subsidizing affordable necessities for farmers such as water, electricity, fertilizer, and pesticides (Hewitt de Alcántara 1976). When the Mexican government withdrew their political and economic support for peasant organizations, U.S. companies ceased to offer financial credits to these organizations as well (Stanford 1994).

In 1992, a constitutional amendment to article 27 ended 70 years of land reform and established the groundwork for privatization of *ejido* lands (McGuire 2015). The *ejido* system was established by the Mexican Constitution of 1917 after the Mexican Revolution. An *ejido* is a large piece of communal land available to landless farmers for cultivation. Historically, wealthy land owners would lease lands to these farmers. With the establishment of the *ejido* system, peasants could petition their government to expropriate the land from wealthy landowners which, if successful, would make the land publicly owned. Thus, *ejidatarios*, members of an *ejido*, would retain land rights as long as they used the land for farming, however, they did not own the land. Land redistribution under this article was a large part of Mexican history (Sanderson 1984). After the Mexican government deemed the *ejido* a failed system in the face of the 1982 debt crisis, advocates of neoliberalism pushed for full privatization of rural lands and abolishment of the *ejido*.

The amendment to article 27 revoked peasants' right to petition for land reducing the fears of foreign investors (Foley 1995). Corporations, although previously banned from land tenure, were now free to purchase agricultural land, and only 33 percent of the *ejido* plus one member were needed to make changes in property relations. Proponents of privatization saw this move as beneficial for *ejidatarios* because they now owned some piece of land, and could use or

sell it for profit. Many producers experienced an increase in competition simultaneously as costs were rising.

Salinas proposed and implemented these reforms swiftly and furtively with little outside consultation (Foley 1995). Despite the Permanent Agrarian Council – an organization created to represent an aggregate of various peasant and *campesino* (i.e., farm labor and tenant farmers) groups – and other constituent organizations’ disapproval of the amendment and subsequent drafts proposing alternatives to it, the Mexican government ignored their appeals. These peasant organizations had no direct involvement in broad policy decisions such as NAFTA and the reforms brought by the constitutional amendment. The Mexican government also successfully filtered the interests of agriculture into compartmentalized interest groups based on crop and service, effectively dispersing organized grievances and narrowing each of their foci. With dissidence fragmented, the government and corporate capital were more powerful in quelling any protest. The Salinas reforms ended the legal threat to property that corporations feared. Faced with the major reforms, rural-dwelling Mexicans were expected to relocate, and many people wondered where these individuals would migrate. The Mexican government in a 1992 agricultural program even acknowledged that about 75 percent of the nation’s corn farmers and a majority of grain producers were expected to “have to search for alternatives in other crops, reorganize their landholdings, associate with private capitalists, or become wage laborers” (Cited in Barkin 1994:74). Government policies tended to favor urban areas drawing cheap laborers to the cities (McGuire 2015).

Despite such expectations, proponents of the reforms did not commonly concern themselves with this potentially major complication, and certainly little was done to address the likely fallout. Although Solidarity (more on this policy in the following section) offered some

credits to very marginal producers, the landless, constituting two-thirds of Mexico's rural population, received nothing. With the struggles faced by *campesinos*, Mexican administrations opted more for minimal relief measures than any real plan for rural farming sector development (Barry 1995). The government was much more willing to discuss the issues of transition with agroexporters and productionists (those who emphasize and have high productivity) than any peasant or indigenous organization. U.S companies worked primarily with wealthy commercial producers leading to a decline in the agricultural industry and a more concentrated market from 1987-90 (Stanford 1994). The concentration of local agriculture led to few commercial investors profiting from these gains, while the region's economic growth decreased. Peasants lost participation in the export system as producers and were expected to become "hired agricultural laborers on their own land" (Stanford 1994:108).

Although the Salinas administration used the lack of productivity as the justification for most of the policies leading to the displacement of *campesinos*, the government did little to help foster their productivity (Barry 1995). Despite motivation by *campesinos*, the government lacked support in its failure to provide needed loans, technical assistance, and general marketing operations. The changes to article 27 did create circumstances more conducive to increasing productivity but at the cost of deepening class divisions in rural Mexico. Several of the land transfers occurring during agrarian reforms were never titled, and often overlapped, causing several complications with land ownership disputes. The government also removed its protection of *ejidatarios* unable to repay their loans which increased the likelihood of more land seizures by banks and large land-owners. Effectively, the reform of article 27 emphasized the individual over community making land more of a commodity than a resource with social

productive capacity breaking with a long time Mexican tradition of supporting the peasantry (Gates 1993).

The United States also played an integral role in influencing land reform policy in Mexico prior to NAFTA. Hendrix (1995) states that, according to the *Wall Street Journal*, the amendment to article 27 was enacted to directly allow the Mexican Department of Agriculture and Water to “enlist the Chicago Board of Trade, Merrill Lynch, Spatts, and several other brokerage houses and Mexican financial institutions as consultants to create a new agricultural commodities market” modeled after the Chicago Mercantile Exchange. A primary goal was to convert *ejidos* to private property, in turn creating international partnerships for foreign investment. Thus, U.S. foreign investors were directly behind, or at least heavily supported, major agrarian reforms in Mexico prior to NAFTA.

Reversing Mexico’s National Identity and Selling Neoliberal Restructuring

As noted earlier, anti-Americanism was central to the Mexican national identity since the Mexican Revolution of 1910, and arguably much further back in the past. Due to this sentiment, most Mexicans were wary of any international involvement with the United States (Morris and Passé-Smith 2001; Golob 2003). Thus, any economic restructuring that involved economic integration with the United States was tough to sell to the Mexican people. Salinas’s strategy to sell neoliberalism to Mexico was paired with the redefinition of the Mexican national identity. However, still suffering from a slow recovery from the 1982 crisis, Mexicans were more open to radical economic proposals.

A “strength through integration” narrative was the cornerstone of shifting the national identity (Golob 2003:389). Integration rhetoric grew popular throughout North American not

just in Mexico. This narrative effectively redefined the national interest as outward-looking, and economic and political sovereignty were no longer understood as major national goals. In the past, reduced tariffs or unregulated foreign direct investment were seen as invasions of domestic sovereignty, but now were portrayed as increasing internal strength via building international relationships. Another major component of this narrative was an emphasis on the idea that radical change was necessary to meet the rapidly changing global economy. Economic security was described as achievable only through interdependence in an ever-changing world affected by globalization. Canadian Secretary of State for External Affairs, Joe Clark, in the Mulroney government succinctly summarizes this narrative in a statement on October 4, 1985 in regards to CUFTA:

The decision to open negotiations with the United States will not weaken our sovereignty. It is an assertion of sovereignty in an increasingly interdependence [sic] world. It demonstrates our confidence that we can be as productive, innovative, ingenious, and efficient as our American partners. Sovereignty is a dynamic, not a static thing. It is constantly changing. It is not an artifact to be kept under glass and protected from the intrusion of change.²⁴

Salinas and his administration artfully bridged historical imagery and ideology of revolutionary Mexico with the new national project of Mexico to bolster national identity around the new neoliberal economic policies (Golob 2003). The media also helped to bolster Salinas's economic initiatives and connected it to a rising international position of Mexican identity which was a source of pride for many Mexicans. In other words, Knight (1994) might describe this process as bridging political, cultural, and economic nationalism through a project of nation-building where Mexicans were united around economic goals, and this, in turn, became an integral part of their cultural identity.

²⁴ Statement by Joe Clark to the Canadian Institute for International Affairs, Toronto, October 4, 1985. *Statements/Discourse* 85/58 as cited by Golob (2003:389).

Another component of the neoliberal pitch to Mexican citizens involved the technocrats' technical studies. Evidence suggests that it was not until after Salinas considered bilateral free-trade as a legitimate economic strategy that Jaime Serra Puche, Salina's commerce minister, and other members from Mexico's trade ministry (SECOFI) began to produce these studies that provided scientific evidence in favor of free trade (SECOFI 1990). Furthermore, in confidential interviews conducted by Golob (2003) in Mexico City in August of 1994, SECOFI officials confirmed that the Salinas administration commissioned these studies after February 1990 with specific instructions to justify bilateral free trade.

With widespread concern about the woes of the economic restructuring, Salinas implemented Programa Nacional de la Solidaridad (PRONASOL) immediately after coming to office in 1988. The goal of the program was to placate the poor (Lustig 1995) and coopt the solidarity movement in Mexico (La Botz 1995). The official goal, however, was to alleviate some of the issues of poverty caused by the 1982 debt crisis. By naming the program after the solidarity movement, Salinas effectively usurped its identity. The solidarity movement gained steam after the 1985 earthquake and raised questions of the state's ineffectiveness. With the growing scrutiny of the PRI and Salinas slim (even fraudulent) electoral victory, PRONASOL was a state concession that sought to rebuild loyalty to the PRI. Many of the components of PRONASOL, such as cheap credit programs and food subsidies, did not reach the poor (Lustig 1995). Instead of helping the poor, PRONASOL funds flowed into politically strategic neighborhoods, specifically neighborhoods where the PRI lost in the 1988 election. Essentially, PRONASOL was a program to rebuild the PRI. The case of the Committee for Popular Defense (CDP) offers one example of how the PRONASOL coopted critical groups of the PRI. The CDP strongly backed the PRD candidate, Cárdenas, in the 1988 election and was a major critic of the

PRI while representing a diverse group of citizens (La Botz 1995). However, quickly after he won the election, Salinas reached an agreement with the CDP to work in PRONASOL. The CDP publicly distanced itself from the PRD and stopped openly criticizing the PRI. In return, the CDP received millions of pesos to support a myriad of social services. The PRONASOL investments may have helped some, but they certainly did not address the inadequate income at the root of the poverty problem (Lustig 1995). Although poverty persisted, PRONASOL effectively helped Salinas rebuild public faith in the PRI.

Peasants in Mexico were particularly unenthusiastic and even incensed by the economic changes, specifically the amendment to article 27 along with the other agrarian reforms (Barry 1995). As Mexican corn prices were brought in line with international prices, Mexican corn farmers were expected to lose income, and the Mexican government knew it had to do something to quiet the rural discontent with the new land reforms. The answer for Salinas's administration was Program of Direct Support Payments to the Countryside (PROCAMPO) which officially intended to compensate farmers for their losses during the NAFTA adjustment period by making direct payments according to Salinas's announcement in October 1993.

The creation of PROCAMPO to offset some of the expected harms from NAFTA's implementation demonstrates that the Mexican state was aware that the middle and lower classes of Mexico would experience some difficulty due to NAFTA's policy changes (Lustig 1995). The Mexican state did not attempt to sell agrarian reform to peasants. Instead, the state seemed to engage more in damage control since PROCAMPO was largely criticized by peasant organizations for not consulting them before announcing the program in October 1993 (CECCAM 1993). Even after the program was implemented, many peasants complained about the meagerness of the payments (Barry 1995). Thus, PROCAMPO ostensibly was implemented

to provide just enough aid to avoid any major social movement. Hogenboom (1998) describes both PROCAMPO and PRONASOL as tools of social control used to assuage the lower classes from protest or revolt. Similar to these programs, most of the Mexican social policies passed during the early NAFTA years were more about quieting discontent than making structural changes (Wise 1998).

Overall, the Salinas administration masterfully reversed Mexico's anti-American national identity and kept Mexicans ignorant when necessary. Due to the steps taken by Mexico leading up to NAFTA, Helleiner (1993) accurately predicted that Mexico would likely receive few, if any, major concessions by the United States. Unfortunately, Mexicans knew little about free trade which was a purposeful goal of the Salinas administration.²⁵ The Mexican government was not alone in its efforts to sell the ideology of neoliberalism to Mexican citizens, peasants, and the middle-class alike. Mexican business leaders, in particular, collaborated with the Mexican state to promote neoliberal philosophy. A massive campaign to win support for NAFTA, in particular, played a large role in convincing the Mexican people neoliberalism was a promising philosophy. The state-business coalition that heavily influenced the shape of NAFTA will be explored in more detail once the NAFTA negotiations are discussed in the following chapter.

²⁵ Hellman (1993) conducted several interviews of Mexican citizens to uncover their content knowledge on free trade. He found four different types of individuals. The first type of individual was confused about free trade and its possible outcomes. The second type of individual could discuss deep philosophical questions of free trade, but had little specific data to support their claims. A third individual type was a zealous neoliberal supporter who knew little about free trade but remained unrealistically optimistic. Finally, the last individual was the cynic who felt that anything tied to the PRI or the Political Action Party (PAN) was unlikely to benefit lower or middle-class Mexicans. The PAN was and still is the primary second party to the PRI which typically is to the right of the PRI on most issues. Very few Mexicans had an extensive knowledge about the specifics of NAFTA.

Analytical Summary

At this point of the analysis, it is important to establish the context under which NAFTA was negotiated. Referring back to the analytical model in Figure 2.1, the essential contextual pieces are the current social structure of accumulation (SSA), transnational capitalist class (TCC) involved in the negotiations, and where the United States and Mexico fit in the world-system. A portion of the TCC, operating in North America, was driven by a neoliberal economic philosophy, dominant during the neoliberal SSA (Kotz 2015). The 1982 economic crisis shook the social, political, and economic fabric of Mexico as a result of a failing Keynesian SSA. In response, the Mexican state sought solutions to its economic woes. During this time of crisis, a TCC emerged from the wreckage in the form of technocrats in Mexico, most of whom possessed economic degrees from elite U.S. universities.

In response to the crisis of accumulation, a shift towards neoliberal globalization occurred led by the newly emerged TCC in the form of technocrats in Mexico. With the transnationalization of production and capital, a TCC formed to replace domestic capitalist classes (Robinson 2004). Although Mexico tried to stay steadfast to an import substitution model, industrial growth was too tightly correlated with advances in technology, energy, and raw material extraction. The internationalization of markets led developing countries to rely heavily on loans from IFIs, unable to repay those loans, new loans were needed leading to a cycle of debt (Robinson 2008). Mexico's foreign debt rose from \$6.8 billion to \$58 billion from 1972 to 1982, nearly forcing the state's hand in restructuring its economic policies to the liking of the TCC and its global hegemony (Harvey 2005). Mexico's loans came with strings attached – structural adjustment policies specified by the World Bank and IMF – requesting budget austerity (e.g., slashing social expenditures), privatization of many state-run firms, tariff reductions or removals,

and increases in labor market flexibility (e.g., lower minimum wage, restriction of unions; Harvey 2005). According to world-systems analysis, Mexico remained a semi-peripheral nation depending on the investment of wealthier nations. Arguably, the structural adjustment programs attached to Mexico's loans established the foundation for Mexico's future economic restructuring and represent neoliberal ideology. The IFIs, business elite, and state leaders all allied in the new TCC that ultimately shaped Mexico's neoliberal economic restructuring of the SSA, including a direct influence on NAFTA's formation. The creation of NAFTA is a political artifact of a deliberate collaboration and consensual effort among the TCC, and a major piece in the creation of a new neoliberal SSA.

The SSA plays an integral role in shaping the negotiation process between states. The TCC actively propagated a neoliberal ideology that promoted such an SSA, during the neoliberal age, under which NAFTA was formulated. Kotz (2015:42) lists several of the key ideas of neoliberal capitalism: (1) removal of trade restrictions placed on capital internationally; (2) deregulation of industry and financial sector; (3) the abandonment of aggregate demand management policies; (3) lowering regulations on workers' rights and environmental standards; (4) less enforcement of anti-trust violations; (5) privatization of previously public industries; (6) reduction in social welfare programs; (7) major tax cuts for corporations and the wealthy elite; (8) shifting the capital-labor relation in favor of capital by increasing labor flexibility and weakening unions; (9) encouraging unfettered competition; (10) financial institutions becoming independent from the non-financial sector; (11) restrict inside promotions for CEOs of corporations; and (12) these neoliberal principles become dominant within corporations themselves and other major institutions in society. Several of these characteristics of neoliberalism can be used to define many of the policies implemented in Mexico during the

economic restructuring advocated by both state and corporate leaders. The ideological influence of neoliberalism is largely attributed to the prominence of the TCC in Mexico.

The rise of the technocratic ruling elite in Mexico occurred most precipitously during the economic crises of the 1980s and paralleled the formation of the TCC subset involved in negotiating NAFTA (Ángel Centeno and Maxfield 1992; Ángel Centeno 1994).²⁶ The new technocrats gained power through political opportunism brought by economic crises and developing deep ties to the private sector, unlike the politicians who came before them. The cohesion among these technocrats developed through homogenous social backgrounds, analogous ideological predilections, lack of experience with the traditional PRI institutions, similar professional specializations such as economics, and often housed in only a select few of the government's departments. Specifically, Ángel Centeno and Maxfield (1992) defined the new technocrats as *technoburócratas* characterized by their social origins being most likely from urban areas, a middle- to upper-class background, and the sons of presidents. Furthermore, they tended to receive their education in foreign universities, most often the United States, and typically specialized in economics or a related field. Most likely, due to their similar education, they commonly viewed free market capitalism, global economic integration, and foreign investment as solutions to Mexico's economic woes. The new technocratic elite also lacked the experience in corporatist politics and more often resorted to repressive government tactics as evinced by Salinas' presidential tenure. With the saturation of technocrats, patronage politics of

²⁶ The technocrats differed from their counterparts the politicians. Vernon (1964) first discussed this division in Mexican politics between the *técnicos* (who had advanced through the political ranks by first establishing some technical expertise) and the *políticos* (who advanced politically by their life-long servitude to the PRI). At times, these factions are at odds with one another, but frequently they complement one another. With more technocrats gaining power in Mexico, many *políticos* saw them as a threat considering the dwindling political influence of *políticos* compared to the *técnicos*. However, many political bureaucrats have effectively maintained order and stability by exerting political control over the population in accordance with the ruling technocrats. The PRI developed close ties to both the Secretariat of the Interior and the Secretariat of Programming and Budget where many presidents began before becoming president.

corporatist cooptation were supplemented with the reliance on technical expertise to assuage the fears of the population. Most of the neoliberal policies were sold to the public through this mechanism: a president educated in economics telling the public the moves necessary to salvage the Mexican economy.

Accompanying, and partly due to, the rise of the technocrats, Mexico went through a dramatic economic restructuring. Pastor and Wise (1994) explain this restructuring through a series of factors. The exponential growth of intra-industry trade occurring between Mexico and the United States helped create a free trade constituency among the technocrats, corporate elite, and U.S. politicians. Pastor and Wise also argue that the policymakers engaged in a rational calculus based on weighing three influential processes. First, the 1982 debt crisis forced a reassessment of the current political and economic model based on state patronage and domestic production. Simultaneously, the technocrats heavily influenced a reconstitution of the PRI. Political leaders found corporatist strategies more difficult to employ with fewer resources and weakened legitimacy due to the economic crisis. Technocrats rose to power filling the political void and quickly found allies among the corporate elite. The second process involves the perpetuation of asymmetric information on neoliberal economic policies. The ruling elite maintained a strict circumscription of NAFTA information, disseminating only studies that painted NAFTA in a positive light. The ongoing debates over these studies by state and business leaders were concealed from the public. The PRI also attempted to silence critics by offering more political or economic concessions such as PRONASOL or PROCAMPO. The public information campaign for NAFTA will be explored in more detail in the following chapter.

The third process was the homogenization of ideological thought that led to a single solution platform (Pastor and Wise 1994). As mentioned earlier, a new technocratic ruling class

educated in U.S. universities brought a neoliberal economic ideology back with them sympathetic to the Washington Consensus. Concurrently, the private sector grew jaded with the state and their corporatist policies, and found neoliberal economics more appealing. These views by both groups intensified when trade liberalization policies demonstrated a capability in lowering inflation and stabilizing the economy. The results of economic studies demonstrating these successes also fed into the second process of asymmetrical information further swaying less eager groups towards a similar economic ideology. In other words, a TCC formed with a homogenous group supportive of the economic restructuring in Mexico. Arguably, Carlos Salinas was the most important Mexican member of the TCC who tremendously impacted the shape and direction of the Mexican economy with NAFTA being one of the major tools of the economic restructuring.

The homogenization of ideological thought manifested in a profound groupthink, influencing much of the TCC's actions throughout the NAFTA years. To say that the TCC deliberately advocated policies beneficial to them while being harmful to the majority would be shortsighted. Rather, many members of the TCC suffered from an overwhelming groupthink that led them to ardently believe in neoliberal economic policies as being the saving grace for much of the economic woes. Clarkson (1993) specifically investigates the influence of neoclassical economic ideology on U.S. power relations, and argues that neoclassical economic theory was a powerful tool for U.S. empire building. Once intellectual theory crosses a threshold to becoming ideology, the resulting ideology provides a tool of major influence. In particular, neoclassical economic ideology became a tool to legitimate U.S. hegemony through securing market access in Latin America. To some degree, this legitimized Mexico's position in the semi-periphery of the world-system. Clarkson criticized the social sciences, but economics in

particular, for becoming abstracted from social reality to the point that the average citizen is lost and formulas justify the actions of macro-institutions. When theoretical economists become policymakers who fail to challenge their theoretical assumptions and examine the human outcomes of their theories, ideology stands to justify potentially harmful policies. In the neoliberal era, business leaders took the helm on policy creation rallying around an ideology that demonized government intervention, allowing them to take more control. In addition, Drache (1993) warned against ideologies that assume trade-center strategies are executed in a vacuum devoid of micro consequences. For instance, macroeconomic restructuring must be passed with the assumption that this restructuring will not cause a major disturbance for workers adjusting to the new economic model.

The TCC groupthink in Mexico was attributable to Mexico's dependence on *camarillas* in the organization of its political structure. Salinas placed Herminio Blanco Mendoza, an economist with a Ph.D. from Chicago, in charge of negotiations, and Blanco selected several members of the negotiating team from his own *camarilla* (Cameron and Tomlin 2000). Since Blanco was one of Salinas's protégés, Salinas had direct control over the negotiation process, and Blanco provided a check on Serra who was becoming a popular presidential contender.²⁷ Salinas furthered his control over NAFTA negotiations by forming an alliance among business, government, and labor organizations. This alliance made the Economic Solidarity Pact possible and led to the implementation of structural adjustment policies attached to the austerity program. The government offered these leaders political office and public or corporate business deals in return for their support (Heredia 1994).

²⁷ Camp (1990) documents Salinas's *camarilla* in great detail. Such an analysis gives an in-depth look into the members of the transnational capitalist class operating with the Mexican political system heavily influential in crafting the economic policies of the 1980s and 1990s.

The Mexican TCC incorporated business interests through lucrative trade deals. During Salinas's wave of privatization, he sold several government companies at several times the going rate to make the economic strategy look favorable (Oppenheimer 1998). What was unknown by most of the public at the time was that he had to offer furtive deals to investors for their overpayment. For instance, Telmex, purchased by Carlos Slim, was allowed to increase their prices by nearly 250 percent while only increasing their workers' wages by 18 percent (Meyer 1992). However, the exorbitant prices were met by widespread protests resulting in a compromise of only a 170 percent increase in rates. These lucrative deals springboarded ordinary businessmen like Carlos Slim into the ranks of the ultra-wealthy where he sits today as *Forbes* 4th richest person in the world, worth an estimated \$50 billion.²⁸

In addition to privatization, another primary goal of the economic restructuring was securing foreign investment, and Salinas pursued this goal with the help of the TCC. Salinas sought to regain foreign direct investment by establishing an "external constituency" of international bankers, fund managers, and corporations" (Golob 2003:377). Initially, when Salinas took office, he sought an amicable relationship with the United States, but not a major trade deal. Instead, more resources went into diversifying Mexico's foreign investment. Salinas traveled to Europe and Japan, meeting with 29 heads of state attempting to reduce Mexico's dependence on the United States (Salinas de Gortari 1989). Eventually, his plans at diversification failed, and he then switched strategies after visiting Davos, Switzerland for the 1990 World Economic Forum. Realizing Mexico's dependence on the United States for foreign investment in the current world-system, especially after Salinas was ignored by the rest of the Western world, a trade deal with the United States was viewed as the last resort.

²⁸ See *Forbes* billionaire list at <http://www.forbes.com/billionaires/#/version:realtime>.

Mexico's borrowing pattern reflects the ruling elites' desire to consolidate power rather than to use the funds to promote the welfare of the nation (Heath 1996). IMF loans, in particular, boost personal wealth at the cost of sovereignty and do not impose accountability. Mexican politicians accepted IMF loans as long as the political system was left intact. The PRI-led economic changes in Mexico are more concerned with maintaining the political structure than bringing economic prosperity to the entire nation. The limited Mexican focus on economic change without accompanying political change is problematic because economic growth means very little progress toward a more equitable distribution of wealth (Roett 1993).

Complicating this dangerous TCC groupthink further, Wilkinson (1993) demonstrated that the experts in free trade rarely discussed the ideological, moral, and ethical implications of NAFTA or free trade. He challenged these axiomatic outcomes that are traditionally ignored by economists and other experts. After documenting the extensive collusion between the government and business, he questioned several economic assumptions that were deeply embedded within the TCC groupthink. First, corporate growth through mergers and acquisitions were assumed to improve efficiency, but some studies suggested otherwise. Second, the idea that free trade created jobs for third and second world countries was often assumed and verified, but Wilkinson asks about the type of jobs being created. In many instances, TNCs were creating only

...assembly operations involving little or no transmission of technology...In this scenario, the bulk of benefits in the form of technology, advanced employment, and profits are retained by the home countries of the firms (Wilkinson 1993:38).

Third, the ease of capital flow was often uncritically accepted as a beneficial characteristic for economies, but increased capital mobility enhanced corporations' ability to threaten relocation to demand lower working and environmental standards. Furthermore, when capital mobility is

high, economic recessions or depressions in one market were quickly transferred to another, and the most dependent markets tended to suffer drastically. The dependency of nations' economies on foreign investment made the global marketplace extremely volatile. Fourth, the economic incentive for many economies to destroy foreign competition left the losers of international competition in dire conditions.

As the interstate connections deepened, NAFTA efforts intensified. NAFTA was the icing on the cake that would seal neoliberal economic policy in Mexico, and was sought after by both political and business elites as a way of solidifying a neoliberal SSA conducive for the TCC to accumulate capital. The desperate economic situation faced by Mexico provided their elites the opportunity to negotiate a policy mutually beneficial to members of the TCC. Mexico's position as a semi-peripheral nation justified NAFTA as a necessity. The next chapter traces the NAFTA negotiation process documenting how NAFTA was formed, and then argues that NAFTA and its formation process were criminal and criminogenic.

CHAPTER 6

NAFTA NEGOTIATIONS AND THE CAMPAIGN TO SELL NAFTA

Chapter Overview

As the historical narrative in Chapter 5 shows, there were events and forces shaping NAFTA prior to the negotiations that led up to its ratification by Mexico, the United States, and Canada. This chapter traces the negotiation process, from the unofficial negotiations to the ratification of the final NAFTA text, including its two supplemental agreements for labor and the environment. The massive campaigns to sell NAFTA to U.S. and Mexican citizens will be extensively documented to illustrate the amount of influence the transnational capitalist class (TCC) had on shaping NAFTA. The key sources I used in developing the historical narrative of the formation of NAFTA are discussed in the chapter appendix. Once the NAFTA negotiation process is detailed, I argue that both the NAFTA negotiation process and the final agreement were criminogenic, and beyond that criminal in and of themselves using international law as a basis. The chapter concludes by applying the model presented in Chapter 2 (see figure 2.1) to demonstrate the various characteristics of NAFTA that made it criminogenic.

NAFTA Negotiations

Key Players

Before returning to the 1990 World Economic Forum in Davos, Switzerland, it is important to first introduce the key players in the formation of NAFTA, particularly those most

extensively interviewed by Cameron and Tomlin (2000). The two key players behind NAFTA were U.S. President George H. W. Bush and Mexican President Carlos Salinas, with Canadian Prime Minister Brian Mulroney playing a more minor role throughout much of the negotiations. Members of these leaders' cabinets were delegated much of the responsibility of actually negotiating the deal. The most important negotiator for Mexico was Commerce Secretary Jaime Serra Puche. Serra had a similar background to that of Salinas – trained as an economist with a Ph.D. from Yale University who directly entered government from academia – and two years after entering government in 1988 Salinas named him secretary of trade and industrial development. Although Serra was the leader of Salinas's cabinet, Herminio Blanco Mendoza was chief negotiator who was both a protégé of Salinas and member of his *camarilla*.

For the United States, Bush handed the negotiating reins to U.S. Trade Representative Carla Hills, an accomplished lawyer and Yale Law School graduate. Bush ostensibly sought her service, not because of her trade experience which was limited at best, but rather for her reputation as an intrepid negotiator described as “fearless, combative, and uncompromising” (Dryden 1995:352) and “persistent, fiercely competitive, sometimes thin-skinned: (Uchitelle 1990).²⁹ Hills was actually reluctant to serve as a negotiator on NAFTA because she was intensely involved in the ongoing Uruguay Round negotiations of GATT (Uchitelle 1990). Once committed, she named Julius Katz, deputy U.S. trade representative, as chief NAFTA negotiator. Hills requested that Katz take on the job while also maintaining his negotiating duties in GATT. Katz also was noted to be an aggressive negotiator described as “a fox” who “knows where all the skeletons are buried” (Cameron and Tomlin 2000:9).³⁰

²⁹ Carla Hills is also described as a “shrewd layer and negotiator” in the *New York Times* at <http://www.nytimes.com/1992/12/25/opinion/looks-like-america.html>.

³⁰ Quoted in Cameron and Tomlin (2000) as coming from *Globe and Mail*, June 10, 1991, B1.

Don Campbell, Canadian Deputy Minister of Trade, headed up the Canadian negotiation team. Due to his involvement in the Uruguay Round negotiations, among many other responsibilities, he delegated the duty of chief negotiator for NAFTA to John Weekes who also was involved in the ongoing GATT negotiations. Weekes had 25 years experience in foreign service, and Cameron and Tomlin (2000) ascribe Campbell's decision to hire a chief negotiator from the foreign service bureaucracy as evidence that Canada took the NAFTA negotiations less seriously than both the United States and Mexico. Trade minister Michael Wilson, the most powerful member of Mulroney's cabinet, oversaw Weekes and the negotiation process. As a major proponent of the Canadian-U.S. Free Trade Agreement (CUFTA), Wilson was a serious force in advancing NAFTA from the Canadian side.

Unofficial Negotiations and Fast-Track Process

A nine-day trip to Europe in 1990 was likely the turning point that spurred Mexico more aggressively to pursue free trade with the United States (Salinas de Gortari 1990; Mayer 1998; Cameron and Tomlin 2000; MacArthur 2000). As noted earlier, Salinas and his cabinet sought foreign investment to alleviate their debt problems at Davos, Switzerland. However, at that time, many countries of Eastern Europe were reforming their economies and most of Western Europe's investments were preoccupied with these projects (Rohter 1990; Riding 1990). The trip made it clear to Mexico that their country was not attractive enough for European investment. A trade deal with the United States could provide the opportunity to make their economy more attractive to international investors. Furthermore, negotiations with the United States would strengthen relations between the Mexican government and business.³¹ Shortly after

³¹ See del Castillo (1995) and Weisskopf (1993) for details on the support for NAFTA coming from business.

arriving at this conclusion, Salinas and Serra pitched an idea for bilateral free trade to Carla Hills (Mayer 1998; Cameron and Tomlin 2000). When others in Washington caught wind of the proposal, it took off.

Despite the enthusiasm for a North American free trade deal by Mexico and the United States, Canada was a reluctant participant in NAFTA since it had recently finished an internally divisive free trade agreement with the United States, CUFTA, and free trade and investments with Mexico were expected to be of little value (Cameron 1991; Goar 1992). Ultimately, Canada joined to protect its interest in the North American market rather than any desire to trade with Mexico (Eden and Molot 1992). Canada was not interested in NAFTA until it heard of Salinas's bilateral trade negotiations with the United States. Canadian economic analyses conducted by the Department of External Affairs indicated that Mexican competition was not a threat, but a bilateral U.S.-Mexico agreement could threaten Canada's access to the U.S. market (Cameron and Tomlin 2000). Mexico initially perceived Canada as a potential deal breaker and opposed its involvement in the free trade negotiations (Drohan 1991; Long 2015). Yet, when Bush vouched for Mulroney, Mexico capitulated with the stipulation that if Canada halted any agreement it (Canada) should withdraw from negotiations.³²

The United States was preoccupied with the Uruguay Round of multilateral trade negotiations, and many of the key negotiators from the United States wanted to place NAFTA negotiations on the backburner.³³ However, political support from the Southwest, particularly Texas, wanted to seize the opportunity of NAFTA to consolidate the Mexican economic reforms and secure a Mexican market for American exports (Sharp 1992; Bradsher 1993b). Shortly after

³² Mulroney's support for war in the Persian Gulf gained Bush's approval (See Drohan 1991).

³³ Most negotiators did not want to give up the progress made on GATT (Marchick and Misra 1991). Some members of Congress opposed to NAFTA, favored GATT (Zremski 1994). Once NAFTA negotiations were underway, GATT took the backseat (Behr 1993a).

Davos, President Salinas sent a letter to President Bush on August 21, 1990, asking to open up discussions on a free trade deal (von Bertrab 1997). Bush informed Congress of his intent to negotiate and requested fast-track approval, leaving Congress 60 legislative days to vote on negotiations. The vote was urgent given that the president's fast-track authority would need an extension by March 1991, because, without such an extension, the fast-track authority would expire in June 1991.

Fast-tracking authority can only be issued by Congress, thus Bush needed its approval.³⁴ Typically, the president requests fast-track authority on trade deals to speed up the negotiating process and avoid long litigious negotiations over various sections of such a deal. By approving fast-track, Congress delegates its authority to negotiate trade deals to the executive branch, and, most principally the president. Once given fast-track authority, the president works with advisory committees both private and public to "ensure that U.S. trade policy and trade negotiating objectives adequately reflect U.S. public and private sector interests."³⁵ Congress retains the right to vote on the final trade deal without any power to amend any of its provisions. Fast-track authority is only granted for a limited period of time, thus, once it expires, the president must solicit Congress again for its approval. In theory, fast-track is used to bypass the need for Congress's approval on every section of the trade deal. However, critics have raised several concerns over fast-tracking (Brown 1993). *Public Citizen* describes fast-tracking as "undemocratic" empowering the "executive branch officials" being "advised by large

³⁴ See Holmer and Bello (1992) for a detailed discussion on fast-track authority and its use during NAFTA negotiations.

³⁵ Quote from Office of the U.S. Trade Representative's website found at <https://ustr.gov/about-us/advisory-committees>.

corporations to skirt Congress and the public” to furtively and non-transparently pass trade deals.³⁶

In September 1990, unofficial negotiations began.³⁷ Secretary of Commerce Robert Mosbacher and Jaime Serra acted as traveling salesmen visiting U.S. businesses across the nation giving their sales pitch for free trade with Mexico to the business community (Cameron and Tomlin 2000). Early on, Mexico asserted that its national petroleum industry was off limits, but Mexico offered U.S. oil drilling companies access to extraction a month later.³⁸ The United States made it clear free movement of labor would not be part of a trade agreement with Mexico.³⁹ When the Uruguay Round failed to reach a deal, NAFTA became a top U.S. priority (Behr 1993a). On March 1, 1991, President Bush requested Congress to extend the fast-tracking of NAFTA.⁴⁰ The extension would generally extend the fast-track option for other trade deals such as GATT negotiations. The Democratic majorities in both the Senate and House immediately issued resolutions requesting that “the disparity between the two countries in the adequacy and enforcement of environmental standards, health, and safety standards and worker rights” be addressed.⁴¹ The Democrats were simply responding to their voters who were concerned about the negative effects of free trade. While Republicans favored an extension,

³⁶ Quote from Public Citizen’s website that specifically discusses their criticisms of fast-tracking at <http://www.citizen.org/fast-track>.

³⁷ See Bush’s statement at <http://www.presidency.ucsb.edu/ws/index.php?pid=18862>, and an earlier statement about the early considerations of a U.S.-Mexico free trade agreement <http://www.presidency.ucsb.edu/ws/index.php?pid=18582>.

³⁸ *Inside US Trade*, November 2, 1990: 8 as cited in Cameron and Tomlin (2000). See also *Oxford Analytical Daily Brief*, November 12, 1991: 2 and February 19, 1992: 1, *Chemical Week* July 29, 1992, 151(4): 8, and Morton (1992).

³⁹ Bill Clinton even claimed NAFTA would reduce illegal immigration (Espenshade and Acevedo 1993). Immigrants were also not viewed as an “economic drag” until NAFTA was nearly implemented (Reinhold 1993).

⁴⁰ See Bush’s letter to Congress at <http://www.presidency.ucsb.edu/ws/index.php?pid=19354>.

⁴¹ Cameron and Tomlin (2000:73) quote House Ways and Means Committee Chair Rostenkowski and Senate Finance Chair Bentsen.

Democrats remained split, due in part to the labor-environmental coalition that had been lobbying against NAFTA since the fall of 1990.⁴²

It was not until March of 1991 that business leaders were warned that they must do something or the extension was in danger.⁴³ First, the Coalition for Trade Expansion (CTE) was created as a coalition group that represented business interests including the Business Roundtable, U.S. Chamber of Commerce, and the National Association of Manufacturers among over 500 business and lobbying groups (Olson 2014). Then, they responded with fierce lobbying, and Salinas met with American business leaders to sell free trade while alleviating environmental and labor concerns (Cameron and Tomlin 2000). Mexico also cornered members of Congress with a staff of top Washington lobbyists from both major political parties (von Bertrab 1997). On May 1, in a letter, President Bush announced a plan to address the Democrats' concerns including assisting displaced workers, retaining superiority of U.S. health and safety standards, excluding any discussion of immigration, an environmental border plan, enforcing environmental violations more regularly, allowing environmental representatives on trade advisory boards, some protectionist policies against imports likely to see large increases in the United States, and strict rules of origin.⁴⁴ Majority Leader Richard Gephardt, one of the major players in the opposition, showed weakness in his stance towards tougher regulations likely due to the fear of being labeled a protectionist which could be damaging to his political career (Cameron and Tomlin 2000). His faltering was a large blow to the opponents of the fast-

⁴² A border cleanup plan for Mexico was necessary to get the fast track opposition on board (See *The Economist*, February 29, 1992: 25).

⁴³ Rostenkowski warned business leaders that "if you want to win this thing, move your ass." Quoted from the *Wall Street Journal* in Cameron and Tomlin (2000).

⁴⁴ See Bush's letter at <http://www.presidency.ucsb.edu/ws/index.php?pid=19533>, and his remarks at a White House briefing that same day at <http://www.presidency.ucsb.edu/ws/index.php?pid=19535>. See also McCarthy (1991) for a short list of Bush's promises.

track extension. Ultimately, attempts at blocking the fast-track extension failed, setting the stage for NAFTA negotiations.

The Bush administration, along with the business community and Mexican elites, orchestrated a plan to achieve fast-tracking by reshaping the NAFTA and Mexican image among the U.S. public, politicians, and business leaders (Mayer 1998). Along with erecting the CTE, the Business Roundtable, with the encouragement of Jim Robinson, CEO of American Express, orchestrated the founding of a new National Foreign Trade Council which was comprised of many of the same groups represented in the CTE. This ad-hoc group executed a lobbying campaign that promulgated various favorable letters from business leaders, pro-NAFTA editorials, and endorsements from both political and business elites to create the impression that the business world was universally in favor of NAFTA.⁴⁵

The Mexican government spearheaded its own lobbying effort in Washington (Gerstenzang 1993a). Von Bertrab (1997) was in charge of most of these efforts and spoke candidly about the team's frustration with, even disdain for, labor unions. This frustration was mostly due to the difficulty of selling the idea of NAFTA to labor unions and their leaders, as he states: "Fear and partisan political interest made them [labor unions] impervious to such reasoning" (von Bertrab 1997:9). He continues to say, "We had very little sympathy for the trade unions' concerns, as we understood them, and I personally had to control my outrage at their sanctimonious claims and gross exaggerations." Although von Bertrab (1997:10) did not completely dismiss the concerns over labor and the environment, he certainly felt that they could be dealt with later, and even within the agreement, as he observed,

[b]ut the real issue at the time was simply the concept of a trade agreement. In my opinion, the consistent position would have been to insist during the negotiations on

⁴⁵ See also Minchin (2017).

conditions that would help clean up the environment without opposing the concept of the agreement itself before it had any content.

Later on, however, von Bertrab (1997:11) seemed to desire putting off addressing these concerns even further, removing them from the agreement entirely. He even stated that he thought the critics should abandon their idealism and that “the *Los Angeles Times* had it right in its editorial of April 29, 1991” that stated “putting them [environmental issues] on the table during trade talks is a sure way to slow the talks down and maybe even sabotage them.”⁴⁶ He also expressed agitation over considering human rights within NAFTA. For instance, he described one proposal by NAFTA opposition groups as interested in expanding “the agenda of negotiations to include human rights, debt, child labor, and *many other impossible dreams*” [emphasis added] (von Bertrab 1997:23). In another example, he characterized Majority Leader Gephardt as having “labor and human rights supremacist attitudes” invoking a negative connotation (von Bertrab 1997:23). With such categorizations, von Bertrab made the disdain and lack of empathy Mexican negotiators had for the labor movement’s concerns quite apparent.

Using his friendship with Congressman Bill Richardson, von Bertrab (1997) focused his team’s initial efforts more towards convincing members of Congress.⁴⁷ To win them over, he bolstered his team by building partnerships with the private sector (e.g., Business Roundtable), establishing contacts with think tanks (e.g., The Heritage Foundation, Hudson Institution, and the American Enterprise Institute), acquiring government relations advisors, and enlisting the help of several law firms. The armada of experts was necessary to help von Bertrab’s team successfully lobby as foreign agents in the U.S. political system. He described his experience lobbying for

⁴⁶ Von Bertrab (1997: 11) quotes an article in the *Los Angeles Times* April 29, 1991 found at http://articles.latimes.com/1991-04-29/local/me-536_1_trade-pact.

⁴⁷ See also Baldwin et al. (1993) and Long (2015) for more context on Mexico’s NAFTA lobbying campaign and their connections to U.S. politicians and business leaders.

fast-track as an invigorating, “democratic” experience (von Bertrab 1997:16). Relating lobbying to democracy, and lobbying for fast-track at that, is a bit odd considering some of the criticisms of fast-track as being undemocratic. He even described one congressman as looking like an “aristocrat” while he was working on garnering more support (von Bertrab 1997:18). Despite his praise of democracy at work, von Bertrab also recalled discovering the hidden mechanisms that obfuscated the process and circumscribed democracy, such as the Rules Committee room. All legislation in the House had to pass through the committee that meets in this very small room guarded by Representative Joe Moakley, who von Bertrab described as a strapping bouncer preventing outsiders from gaining access.

To better understand some of the elite connections and how deep they ran, consider New Mexico representative and friend of von Bertrab, Bill Richardson. Richardson acted as a gatekeeper for the von Bertrab lobbying team to establish various contacts in Washington (Von Bertrab 1997). Richardson was a supporter of NAFTA, and free trade generally, who had elite ties to both U.S. and Mexican business interests (MacArthur 2000). His father opened a Mexico City branch of the National City Bank (now Citibank) in 1929. When the Mexican banks were privatized in 1982, Citibank was left alone by the PRI.⁴⁸ Later, in 1998, Citibank was the first U.S. bank to acquire a large Mexican bank, Banco Confia, paying only \$195 million for the acquisition despite the Mexican government recapitalizing it for \$1billion one year prior (Friedland 1998). Not surprisingly, Richardson was a major proponent of Mexican privatization. Interestingly, Raúl Salinas used Citibank to surreptitiously offload large sums of money into foreign bank accounts.⁴⁹

⁴⁸ Citibank was the only foreign bank at the time it was left untouched by the PRI (Marois 2008).

⁴⁹ See the U.S. Government Accountability Office’s report at <http://www.gao.gov/products/OSI-99-1>.

Aware of the opposition mounting against fast-tracking, von Bertrab (1997), with the help of his team, devised a multifaceted campaign strategy to win support for NAFTA fast-track that went beyond members of Congress. One component of their strategy was a massive media campaign that stretched across 31 media markets to win undecided members of Congress. Interestingly, von Bertrab (1997:26) both praised and criticized the U.S. media for presenting both sides of the story, praising their “balanced treatment” while criticizing their “proclivity to highlight strong news – which in our case was basically bad news.” Von Bertrab’s team also tried to garner the Hispanic vote to create a Hispanic American constituency that could convince others of the merits of NAFTA. By influencing the media towards presenting more pro-NAFTA coverage, both citizens and their representatives were expected to come around. Ultimately, the fast-track passed suggesting their campaign was a success, but not without concerns, particularly raised by Gephardt (McCarthy 1991). His interest with including labor and environmental accords worried the Mexican negotiating team among others (von Bertrab 1997).

The fast-track process exemplifies the importance of U.S. domestic politics in shaping NAFTA. Since NAFTA was taking longer than expected, a fast-track extension was necessary to keep it moving.⁵⁰ The opposition to the fast-track of NAFTA included labor organizations and environmental groups (Lee 1991; Smith 1993). Since these groups typically comprise a key part of the Democratic constituency, many Democratic representatives felt pressured to oppose NAFTA. However, key proponents of the fast-track process felt they could pass NAFTA without the support of labor, but would need to neutralize the environmentalists’ threat (Mayer 1998). Josh Bolton, head of an interagency group to promote fast-tracking and general counsel at the Office of United States Trade Representative, and Nick Calio, a member of Bolton’s fast

⁵⁰ See Bush’s letter to Congress at <http://www.presidency.ucsb.edu/ws/?pid=19533>.

track team and Deputy Assistant to the President for Congressional Relations, pursued a way to appease environmentalists' concerns at least minimally (MacArthur 2000). With help from members of the Environmental Protection Agency (EPA), they felt they needed to do this by teasing out labor protectionism in the form of environmentalism, leaving only pure environmental issues.⁵¹ To achieve this goal, NAFTA proponents successfully encouraged major environmental organizations to submit their demands to the Bush administration.⁵² Bush's action plan was the answer to those most staunchly opposed to fast-track, such as Gephardt (McCarthy 1991). The major opposition to fast-track was mainly labor and environmental organizations and their sympathizers located in the United States. From the view of Mayer (1998), the struggle over the fast-track process for NAFTA was primarily between three competing groups: those in support, those opposed, and those who had little to gain or lose. The third group consisted of the large national environmental organizations that could gain from having some influence over the shape of NAFTA.⁵³ For them, it seemed most advantageous to gain some political power by going along with NAFTA while only receiving minimal environmental concessions (Audley 1997).⁵⁴

Official Negotiations

Nearly a year after the announcement of the NAFTA negotiations, fast-tracking passed on May 24, 1991.⁵⁵ With fast-track a reality, the various parties prepared for negotiations by

⁵¹ Calio told Mayer (1998) that this was the agreed upon strategy.

⁵² See also Pastor (1993) for an overview of how NAFTA became a major lobbying match between environmental interests.

⁵³ See also Audley (1997), Hogenboom (1998), and Kingsolver (2001).

⁵⁴ President Bush's message to Congress on environmental goals at <http://www.presidency.ucsb.edu/ws/index.php?pid=20760>. Bush lists the billions of dollars available for environmental organizations involved in environmental cleanup in the United States and Mexico. The EPA was particularly given more political power. See also Brook and Sanchez (1992) for U.S. firms' environmental motives.

⁵⁵ See Bradsher (1991a).

assembling negotiating teams. Salinas opted for a highly centralized negotiation structure. Mexico's trade ministry (SECOFI), under Jaime Serra's leadership, would run negotiations (Torres 2010). Mexican chief negotiator, Herminio Blanco, was soon discovered as ill-prepared for substantive discussions on NAFTA issues (Cameron and Tomlin 2000). Von Bertrab (1997) recalled selecting his negotiation team based on personal characteristics rather than professional experience, electing to choose members from his *camarilla* – most of whom were U.S. educated. There were also several who had connections to international financial institutions, with one member from the IMF, Ildefonso Guajardo, who pursued graduate studies at Arizona State University and the University of Pennsylvania. Two other members were from the World Bank – Harvard-educated Eduardo Wallentin and Luis de la Calle who holds a Ph.D. in economics from the University of Virginia. The U.S. team was more decentralized, including members from several government departments handling their respective sections of the trade negotiations (Cameron and Tomlin 2000). Canada, having used a centralized structure in the CUFTA negotiations, switched to a strategy in between that of Mexico and the United States.⁵⁶

For both Carla Hills and Jaime Serra, the goal was to reach a broad agreement quickly, but Michael Wilson was more defensive and wished to maintain most of the earlier CUFTA provisions (Rohter 1990; Magnusson et al. 1991).⁵⁷ Michael Wilson stated that Canada's intentions were to prevent renegotiating bilateral trade agreements with the United States.⁵⁸ NAFTA negotiations were held secretly and a high-security clearance was needed to even review the notes of the meetings (Mayer 1998; MacArthur 2000). The secrecy was intended to keep the

⁵⁶ The main change the Canadians made since CUFTA was to eliminate the position of an independent chief negotiator who had a direct line to the prime minister's office. Instead, more than simply one individual had significant influence over the negotiations. See appendix B in Cameron and Tomlin (2000) for the structure and members of each negotiating team.

⁵⁷ See also *Bloomberg*, May 27, 1991 at <https://www.bloomberg.com/news/articles/1991-05-26/the-mexico-pact-worth-the-price>.

⁵⁸ Quoted from *Financial Post*, April 26, 1991, 1 by Cameron and Tomlin (2000).

negotiations out of the public eye. Despite the lack of transparency to the public, the business community was able to work closely with negotiators and received frequent updates. In an interview with Mayer (1998:116), an official of the Mexican Embassy expressed Mexico's concern over major concessions made to the United States:

This [nationalist backlash] was always on our minds. That we would be charged with giving up the country. That's why we had to do it with support of the business community ... It was essential to build political support to defuse fears that we were giving up too much.

Official NAFTA negotiations began on June 12, 1991, during hard economic times for both the United States and Canada, while the Mexican economy was experiencing economic growth.⁵⁹ Bush's approval ratings dropped throughout the negotiations adding another obstacle to the passing of NAFTA.⁶⁰ With guidance from Salinas, Serra outlined Mexico's initial negotiation stance by listing five areas not up for negotiation: (1) reducing Mexican control over the petroleum sector; (2) no guaranteeing of supplies to countries; (3) reducing state monopoly in distribution; (4) no including of risk contracts; and (5) creating foreign retail outlets (Cameron and Tomlin 2000). Negotiations began slowly, but the imminent U.S. presidential election heightened the urgency of passage despite U.S. preoccupation with the Uruguay Round.⁶¹ The three countries struggled to get close to a final agreement on agriculture, intellectual property rights, financial services, accession, and investment.⁶² Since the United States and Canada already had a free trade agreement, it was Mexico who wanted membership, and the United States was in a position to obtain concessions from Mexico (Vaghefi 1993). The Mexicans

⁵⁹ See *New York Times*, June 13, 1991.

⁶⁰ See Gallup's presidential approval ratings at <http://www.gallup.com/poll/116677/presidential-approval-ratings-gallup-historical-statistics-trends.aspx>.

⁶¹ See also Bradsher (1991b).

⁶² See Cameron and Tomlin (2000) for a brief discussion of each stalemate in turn and White House memorandum of meeting with Carlos Salinas on December 14, 1991 at <https://bush41library.tamu.edu/files/memcons-telcons/1991-12-14--Salinas.pdf>. See also Orden (1996) for more in-depth analysis on the agricultural negotiations, and Fox (1991) for a Canadian perspective on the early issues.

began by seeking protections typically desired by developing countries, but the United States would not budge for anything less than comprehensive liberalization, specifically it opposed Mexico's wish to leave energy and financial services out of the agreement (Fox 1991; Cameron and Tomlin 2000). Since the Mexicans believed in the philosophy of neoliberal economics, they quickly capitulated and abandoned their opening position on non-negotiable areas (Marois 2008).

The Dallas Jamboree, held from February 17 to 21, 1992, was a major round of negotiations that led to significant concessions, primarily by the Mexican team (Robert 2000). Erroneously, the Mexicans perceived the jamboree as the end game, but in retrospect, it was quite early in negotiations. Mexican negotiator Blanco wrote a memorandum that instructed his negotiators to "show your cards, get to the bottom, there is no tomorrow" (Cameron and Tomlin 2000:107). One of the most significant concessions was in agriculture that removed tariffs on corn, ultimately affecting the lives of millions of Mexican peasants and consumers, while this also came in the same year that Article 27 of the Mexican Constitution was amended (Long 2015). The United States argued that if Mexico did not endorse comprehensive free trade of all agricultural products, access to the major U.S. consumer market would not be made available for winter fruits and vegetables (Cameron and Tomlin 2000). The decision to put corn on the table was unilaterally made by Salinas, as was the case for all major concessions, highlighting the centralized, authoritarian nature of Mexico's negotiation team. Only the small details of the negotiations were left to the assigned negotiators. Canada was nonplussed by the concessions and refused to liberalize across the board, desiring protections for their dairy and poultry sectors.⁶³ U.S. and Mexican negotiators used crafty language to allow Mexico to give

⁶³ See White House memorandum of breakfast meeting with Carlos Salinas at <https://bush41library.tamu.edu/files/memcons-telcons/1992-02-27--Salinas.pdf>.

concessions on investment that arguably did not violate the constitution.⁶⁴ They avoided violation of Mexico's constitution by semantically rearranging the agreement rather than making any substantial changes.⁶⁵ The Mexican negotiators also abandoned permanent caps on foreign investment in the banking sector, much to the dismay of the banking industry (Whyte 1992; Cameron and Tomlin 2000).

The Mexican secretary of finance desired to quickly wrap the agreement up, yet these concessions, rather than bringing the parties closer to an agreement, led to the U.S. team demanding more (Cameron and Tomlin 2000).⁶⁶ Mexico's impatience resulted in many large concessions made too early in the game. NAFTA was the goal with little emphasis on the terms of the agreement. Some of Mexico's impatience was due to the volatility of the peso, and its strength appeared to be tied to the success of NAFTA, as it fluctuated with the negotiation process.⁶⁷ Mexico's authoritarian political structure littered with its *camarillas* weakened Mexico's negotiating power rather than strengthening it.⁶⁸ Mexican team members were heavily committed to trade liberalization, likely due to their similar educational backgrounds, and, according to one anonymous Mexican negotiating advisor, they had little understanding of the advantages of protectionism for the Mexican economy (Cameron and Tomlin 2000). The fact that Mexico needed NAFTA more than the United States, with arguably no other viable options,

⁶⁴ Article 27 of the Mexican Constitution provides the right of the state to expropriate foreign firms when there is a public interest.

⁶⁵ A U.S. negotiator told Cameron and Tomlin (2000: 112), "The trade-off in Dallas was crafting a law that does not violate the Mexican constitution. We had to craft the expropriation language not using the words 'prompt, adequate and effective.' There are three paragraphs, and if you read them, you find that what they say is exactly those three words, but in substitute language."

⁶⁶ See also White House memorandum of meeting with Carlos Salinas, July 14, 1992 at [https://bush41library.tamu.edu/files/memcons-telcons/1992-07-14--Salinas%20\[1\].pdf](https://bush41library.tamu.edu/files/memcons-telcons/1992-07-14--Salinas%20[1].pdf).

⁶⁷ Id.

⁶⁸ Unfortunately, this structure gave too much power to single individuals to make concessions, rather than having a system of checks and balances.

created the most important power imbalance between these two negotiating countries (Blears 1993).

After Dallas, Mexico reorganized its negotiation team given the performance at the Dallas Jamboree. In interviews with Cameron and Tomlin (2000), several Mexican negotiators expressed concern over the information flows among the various negotiators. Very few people actually knew what was going on in every sector of the negotiations, and the hierarchical structure of the Mexican team led to too many concessions early in the negotiations. Von Bertrab (1997) describes the differences between the U.S. and Mexican negotiation structure. For Mexico, its organization was very centralized where information was concentrated at the top and the various task groups knew very little about what was going on in the other groups. Furthermore, upper management kept most of the information about the negotiations concealed from the public. For the United States, management was much more decentralized with various experts responsible for different sectors of the trade deal. The United States was also much more open with its information, at least among the negotiators in the trade deal. Mexico's centralized style allowed them to make much quicker decisions since there were fewer people to consult. Although von Bertrab (1997) seemingly describes this as a strength, many of the Mexican negotiators interviewed found it to be more of a weakness (Cameron and Tomlin 2000). Mexico's reorganization focused on bringing in more people to negotiate and relieving many of the negotiators from handling large portions of the negotiations, rather than addressing the problems with information flow.

In the time between the Dallas Jamboree and the meeting at Watergate in August 1992, considered the tail end of the negotiations, several advances were made in the agreement.

Mexico changed its stance on the Automotive Decrees.⁶⁹ Traditionally, Mexico's Automotive Decrees placed an emphasis on protecting its domestic manufacturing capacity, but Mexico shifted to a more open market approach during the NAFTA negotiations (Brid 1996). Mexico argued, in textiles, that it was better for the United States to lose jobs to Mexico – a country that imported various U.S. goods – than to Asia (Cameron and Tomlin 2000). The United States acquiesced and agreed to drop quotas as long as products were 100 percent made in North America. The Dunkel Text was imported from the Uruguay Round and constituted 95 percent of the agreement reached on intellectual property rights, reflecting many similarities to the Agreement on Trade-Related Aspects of Intellectual Property Rights negotiated at the end of the Uruguay Round.⁷⁰ Transportation was the one section where Mexico received a major U.S. concession – a generous phase-in schedule. The United States stopped pushing for bank branching in Mexico's financial sector, primarily because it seemed impossible considering the safeguards in place against it.⁷¹ Mexico also agreed to extend Chapter Nineteen on dispute settlement and anti-product dumping⁷² to cover Mexico. While Mexico and the United States battled it out, Canada negotiators were able to remain relatively stubborn given their ability to revert back to the CUFTA if NAFTA were to fail, whereas Mexico lacked a viable alternative (Blears 1993).⁷³

⁶⁹ See Watling (1992) for changes in the Mexican Automotive Decree.

⁷⁰ See Nayyar (1992) for an in-depth assessment of the Dunkel Text.

⁷¹ Glass-Steagall reform would have needed to be included in NAFTA to accomplish bank branching, and would have needed to be reviewed by two House committees chaired by John Dingle and Henry Gonzalez. Since both were opposed to NAFTA, it seemed like a futile effort (Cameron and Tomlin 2000).

⁷² Dumping refers to the process by which a company charges a lower price than market value for a product that it imports into another country, typically it charges less in the exported country than domestically to undercut competition.

⁷³ The Canadian's were most successful it getting protections for the dairy and poultry sectors and culture (Robert 2000). See also the White House memorandum of breakfast meeting with Carlos Salinas at <https://bush41library.tamu.edu/files/memcons-telcons/1992-02-27--Salinas.pdf>.

On August 2, 1992, the three parties met at the Watergate complex for a seventh and expected final round of negotiations (Bradsher 1992). By this time, the Americans were getting anxious given the approaching U.S. presidential election, and this impatience would undermine some of its bargaining power (Cameron and Tomlin 2000). However, the Mexicans did not want to risk the possibility of no deal. For example, according to U.S. negotiators, the Mexicans gave in drastically on liberalization of financial services, while the United States barely changed its position. Canada, instead of Mexico, used the impending presidential election against the United States, but Canada's intransigence almost led to the end of NAFTA. The severity of this stalemate was reflected in the fact that it was not made public in North America, fearing a major loss in support for NAFTA.⁷⁴ Eventually, the countries reached a compromise, and the negotiations continued. In the end, Mexico opened up PEMEX for privatization but retained the right to screen foreign investment, and Canada would win its stance on culture.⁷⁵ On August 12, 1992, a final agreement was reached.⁷⁶ Five days later, the legal text was completed. Once the deal was finalized, a strong division was visible in the United States between business groups in favor and unions opposing it (Mayer 1998).

With the U.S. presidential election approaching, support and opposition for NAFTA were fairly evenly split (Molyneux 1994). The political polls were threatening the likelihood of NAFTA's success, with Bush well behind Clinton in the polls.⁷⁷ Salinas's endorsement of Bush incensed many Democrats (Mayer 1998). Some Democrats, including presidential candidate Bill Clinton, retaliated by criticizing NAFTA with a specific focus on labor and environmental issues

⁷⁴ An anonymous senior negotiator later confirmed this secrecy to Cameron and Tomlin (2000).

⁷⁵ Canada adamantly opposed bringing culture into the negotiations and stood firm to continuing the culture exemption that was in the CUFTA. Canada benefited from the uncertainty in the United States during the Clinton political campaign. See Robert (2000) for more details on the culture debate.

⁷⁶ See Bush's official announcement at <http://www.presidency.ucsb.edu/ws/index.php?pid=21317>.

⁷⁷ See 1992 presidential polls at <http://www.gallup.com/poll/110548/gallup-presidential-election-trial-heat-trends.aspx>.

which became a driving force in his campaign apparent in his speeches.⁷⁸ However, Clinton did not abandon NAFTA, rather he proposed a different kind of NAFTA (Lavin 1993). Clinton was able to give an endorsement of NAFTA while suggesting amendments that would please his working-class constituency, which helped strengthen his appeal in the polls. However, Clinton had to resell NAFTA as a high wage policy rather than a low wage one (Mayer 1998).

After Clinton won the presidential election, relations between the three NAFTA parties grew sour.⁷⁹ The day after the election, Salinas called Clinton to urge him to ratify NAFTA without any renegotiations (Cameron and Tomlin 2000).⁸⁰ Salinas also wanted to assuage investors' fears of NAFTA coming to fruition.⁸¹ Later, Salinas informed Clinton that delays in the ratification of NAFTA would likely weaken the Mexican economy, creating political instability – something no U.S. president wanted.⁸² Salinas was clearly aware of the Chiapas guerilla activities at this time and sought to maintain political stability by securing NAFTA.⁸³ When it became clear that side agreements were inevitable, Mexico articulated its desire for the weakest possible side-agreements (Cameron and Tomlin 2000). As side negotiations began, Richard Gephardt publicly uncovered a fund called the AmeriMex Maquiladora Fund L.P. that received funding from a Mexican development bank, Nafinsa, and was dedicated to luring U.S. companies to relocate to Mexico (Bradsher 1993a). Of course, this confirmed the fears of labor

⁷⁸ *Inside U.S. Trade*, October 10, 1992 and *New York Times*, October 20, 1992, A21 as cited by Cameron and Tomlin (2000: 180).

⁷⁹ Yet, both Bush and Salinas remained hopeful on Clinton's likelihood to carry out the agreement (See White House memorandum of telephone conversation with Carlos Salinas and Brian Mulroney on December 17, 1992 at <https://bush41library.tamu.edu/files/memcons-telcons/1992-12-07--Salinas.pdf>).

⁸⁰ Clinton agreed to move with Salinas on NAFTA without renegotiations in a January meeting (Jouzaitis 1993).

⁸¹ This is clear by Salinas' conversation with key NAFTA negotiators (See White House memorandum of meeting with Carlos Salinas on July 14, 1992 at [https://bush41library.tamu.edu/files/memcons-telcons/1992-07-14--Salinas%20\[1\].pdf](https://bush41library.tamu.edu/files/memcons-telcons/1992-07-14--Salinas%20[1].pdf)).

⁸² See also Miller (1993) for the major concerns on the table for the Clinton-Salinas meeting in January 1993.

⁸³ Salinas even targeted Chiapas with aid (e.g., PRONASOL) likely to appease some of the dissidence (Vargas 1994).

groups in the United States opposed to NAFTA. Mexico quickly responded by removing Nafinsa from the fund (Golden 1993a).

NAFTA Side Agreements on Labor and the Environment

All three NAFTA countries realized that Bill Clinton's election consequently led to inevitable NAFTA supplemental agreements, or risked not passing Congress (von Bertrab 1997; Mayer 1998). As stated, Clinton campaigned on a platform that was appealing to both labor and environmental groups, even claiming that NAFTA needed side agreements (Lavin 1993). Although it proved to be an effective political strategy, it also made the passing of NAFTA more difficult than it likely would have been if there was no election, or if Clinton campaigned differently.⁸⁴ Von Bertrab (1997) observed that the Mexican negotiating team feared a Clinton presidency initially. However, to facilitate a swift ratification of NAFTA, von Bertrab's negotiation team made several connections with both political parties and was quite prepared to work with the Democrats, even though most of the opposition was within that party. Although Clinton supported NAFTA, he had to maintain an image that was critical to keep his working class constituency who voted for him. Thus, a secret meeting was arranged for Salinas and Clinton to discuss NAFTA prior to the inauguration where Clinton reassured the worried Mexicans that NAFTA would be passed (Jouzaitis 1993).

The official NAFTA supplemental agreements negotiation process began on March 17, 1993 (Gerstenzang 1993b). Two supplemental agreements were under negotiation covering labor and the environment: (1) the North American Agreement on Labor Cooperation (NAALC) and (2) the North American Agreement on Environmental Cooperation (NAAEC). Initially, the

⁸⁴ NAFTA negotiations had to balance the interests of constituencies of both the Democratic and Republican Parties (Bradsher 1993b).

United States wanted authority to overrule domestic sovereignty in Mexico, but Mexico refused to relinquish the power, knowing that it could damage its image in the eyes of foreign investors who saw Mexico as appealing for its weaker enforcement of labor and environmental standards (Cameron and Tomlin 2000). Delaying ratification was dangerous for Mexico that felt its economy depended on the agreement,⁸⁵ and holding up ratification meant more time for critics to gather information against NAFTA. However, NAFTA supporters needed to placate both the labor and environmental special interests to ensure that the supplemental agreements did not go too far and thwart business interests.⁸⁶

Labor Agreement (NAALC)

The Clinton administration doggedly sought the NAALC agreement in 1993 to appease U.S.-based political pressure for extending labor rights (Dombois, Hornberger, and Winter 2003). Both side agreements were initially one-sided due to their origins in internal U.S. politics. The Mexican and Canadian governments reluctantly accepted NAALC to save the original NAFTA agreement. Mexico stubbornly tried to maintain sovereignty over labor relations (Mayer 1998). Essentially, the NAALC upheld “labor principles” within extant domestic labor laws with no intention of replacing them with supranational legal standards, and there was no attempt at harmonizing labor standards. Other than appeasing critics, a main objective of the NAALC was to allow U.S. monitoring and modifying of Mexican labor practices (Dombois et al. 2003). Thus, conflict resolution was at the heart of this agreement. Complaint procedures detailed measures to be taken against a government accused of failing to uphold the

⁸⁵ See White House memorandum of conversation with Carlos Salinas at <https://bush41library.tamu.edu/files/memcons-telcons/1992-07-14--Salinas%20%5b1%5d.pdf>.

⁸⁶ See *The New York Times*, March 17, 1993 at <http://www.nytimes.com/1993/03/17/opinion/save-nafta-but-don-t-roll-over.html>.

“labor principles.” Disappointing critics, sanctions for some of the most severe infringements of fundamental labor rights such as collective rights (e.g., freedom of association and organization), the right to collective bargaining, and the right to strike were oftentimes the weakest sanctions. The harshest punishments for these violations would include bilateral ministerial consultations. An Evaluation Committee of Experts (ECE) could be used for other violations such as forced labor, discrimination, unequal pay between men and women, lack of protections for migrant workers, and failure to compensate injured or sick workers. Yet, the ECE was built around the concept of cooperation, and any resolution must satisfy all three countries. The NAALC only maintained a strong commitment to the prohibition of child labor, protection of health and safety, and minimum wage. Thus, violations of these principles were the only violations punishable by fines and suspension of NAFTA trade advantages.⁸⁷

Mexico was unwilling to harmonize its labor standards and thus agreed to labor standards as suggestions rather than obligations (Cameron and Tomlin 2000). Due to Mexico’s corporatist history, Mexican unions were not in favor of workers’ rights as they thought it would compromise their corporatist bargaining. A staunch anti-NAFTA stance taken by most U.S. unions cost them the ability to negotiate better side deals, while Mexican unions were considerably weaker given their position deeply embedded in the PRI and with the interests of business elites (Mayer 1998). In the end, Mexico accepted trade sanctions, against their original stance, as long as they did not cover industrial relations. Mexico realized that the United States was facing more pressure to wrap the deal up and used this to its advantage. Mexicans were happy with the weakness of the labor accord, but the environmental agreement was stronger than they originally anticipated.

⁸⁷ The final text of the NAALC can be found at http://tcc.export.gov/Trade_Agreements/All_Trade_Agreements/exp_005872.asp.

Environmental Agreement (NAAEC)

Although environmentalist groups from the United States and Canada influenced NAFTA to some degree, little momentum was gained by the grass-roots environmental movement in Mexico (Hogenboom 1998). Interestingly, U.S. environmental NGOs (ENGO) barely ever collaborated with Mexican ENGOs and established few contacts (Barkin and Mumme 1992), but Mexican ENGOs were able to receive help from Canadian ENGOs somewhat indirectly. Two major factions arose among the ENGOs (Hogenboom 1998; Hufbauer and Schott 2005). One group consisted of the moderate ENGOs including the National Wildlife Federation and World Wildlife Fund (WWF) that were most influential on altering the NAFTA deal.⁸⁸ However, this group accepted large sums of money from pro-NAFTA companies. For instance, Eastman Kodak, an integral corporation to the pro-NAFTA business lobby (more on this in the following section), donated \$2.5 million to WWF.⁸⁹ U.S. ENGOs also maintained positive relations with Salinas and his cabinet and had provisional agreements to extend projects in Mexico (Hogenboom 1998).⁹⁰

On the other side, a group of critical ENGOs was primarily ostracized from the NAFTA debates due to its questioning of basic free trade elements. Key among these critical ENGOs was Ralph Nader's Public Citizen, Friends of the Earth, and the Sierra Club who joined forces to bring a case to the U.S. District Court which ruled that the Bush administration violated the Administrators Procedures Act (Cameron and Tomlin 2000).⁹¹ This ruling raised the political stakes of any Clinton decision on NAFTA, but still did not incorporate these groups in any

⁸⁸ See also Borja (1993) and Lee (1991).

⁸⁹ *The Nation* June 28, 1993: 894-895 as cited by Hogenboom (1998).

⁹⁰ See also Borja (1993).

⁹¹ Von Bertrab (1997), when discussing this lawsuit from the perspective of the Mexican negotiating team, appears to admit that the National Environmental Policy Act was violated, but he still adamantly rejected the lawsuit.

meaningful way into the environmental side deal negotiation process. After a messy court battle, the U.S. Supreme Court freed the government to pursue NAFTA escaping a potential end to the negotiations.

Pro-NAFTA interests argued that NAFTA would bring prosperity and in turn improve the environment (World Bank 1992; Hogenboom 1998). The United States even praised Mexico's environmental policy as on par with that in the United States (EPA 1991). Although true on paper, this commendation neglects Mexico's enforcement history (Hogenboom 1998). Mexico's Ministry of Urban Development and Ecology conducted an environmental impact study to assess the likely effects of NAFTA, but it was never revised or released. In a confidential interview with Hogenboom (1998), a Mexican insider in the environment debate stated that the evidence was too damaging to a pro-NAFTA argument based on the results of the data collected.

Contrarily, NAFTA proponents consistently cited one study by Grossman and Krueger (1991) to assuage environmental critics of NAFTA. Yet, many of these proponents cherry-picked the same section of the report without mentioning its negative findings, and later studies came to different conclusions (Molina 1993). The U.S.-Mexico border proved to be a difficult issue for the pro-NAFTA side to address. They seemingly made a paradoxical argument, first admitting that the environmental border situation was in part due to the rapid growth of the maquiladora sector, and then suggesting the solution was more growth (Hogenboom 1998).

The office of the U.S. Trade Representative (1992) released the Environmental Review that concluded NAFTA would not lead to more environmental degradation compared to a no-NAFTA scenario. However, most environmental organizations dismissed this report as being grossly inaccurate (Barry and Sims 1994; Hogenboom 1998). In response, environmentalists listed minimal necessary safeguards that gained support by members of the U.S. Congress such

as not treating environmental regulation as violations of trade barriers, ensuring future economic development and growth was sustainable, and a review process should continue to monitor NAFTA's impact (Shrybman 1993), but these were not reflected in NAFTA's provisions (Houseman and Orbuch 1993; Hogenboom 1998).

When the environmental impact debate was rekindled during the side agreements, environmental groups sought several concessions, but all were again not addressed in the final side agreement.⁹² Hogenboom (1998) concludes that the transnational NAFTA environment debate positively impacted Mexico's environmental policy by bringing industrial compliance in line with environmental legislation, but changed little in the way of Mexico's enforcement, thus serious issues persisted.⁹³ Even with major increases in inspection staff, several companies were left uninspected. The inspection staff was underpaid creating prime conditions for corruption. On top of all this, most inspectors either had not received training or were ill-equipped to do their jobs. Ultimately, the NAFTA process itself and the United States greatly influenced the focus of the debates. The grass-roots environmental groups' political clout was coopted by mainstream environmental groups that successfully influenced the environmental discussion to address some of their concerns, which provided political cover for the Bush and Clinton administrations (Mayer 1998).⁹⁴

⁹² The NAAEC final text can be found at <https://ustr.gov/sites/default/files/naaec.pdf>.

⁹³ See (Goebel 1992) for news coverage on Mexico's improvements in environmental regulation during NAFTA negotiations.

⁹⁴ Republican corporate donors viewed both side agreements as weak, but offering political cover from the opposition (Bradsher 1993b).

NAFTA Goals

With the final NAFTA text comprising around 2,000 pages including the side agreements, appendices, and footnotes, the actual aim of NAFTA can be obfuscated and lost in a sea of legal jargon. Thus, the major goals NAFTA was designed to achieve can be difficult to ascertain. Beyond the obvious objective of reducing trade barriers and extending economic markets, several other goals are most often attributed to NAFTA by its commentators, and have been alluded to throughout this and the previous chapter. First, similar to extending markets, NAFTA was designed to deeply integrate the North American economies. According to Galbraith (1993), NAFTA deepened integration with the U.S. economy incentivizing the United States to help with any future economic crisis experienced by Mexico (as was the case in 1995). Such integration was also viewed as positive for Mexico since NAFTA allowed Mexico to diversify its exports instead of relying on a few major products such as automobiles. The goal of integration aligns well with the TCC's desire to create a global economic marketplace.

Beyond integrating North American economies, the majority of NAFTA critics and proponents listed two primary goals of NAFTA. One of the cornerstones of NAFTA was to solidify the unilateral neoliberal economic restructuring already underway in Mexico (Shane 1992; Bognano and Ready 1993; Dent 1994; Grinspun and Cameron 1996). NAFTA made the economic policies in Mexico much harder for future administrations to change since they would have to go through an extensive process to remove themselves from NAFTA which was a formalized treaty, not a less formal convention. However, using NAFTA to solidify neoliberal economic changes in Mexico was a tactic often seen as a means of achieving what many experts agreed was the most important premise of NAFTA. Most scholars of NAFTA, on both sides of the debate, tend to agree that its central purpose was to secure foreign investment (Shane 1992;

Galbraith 1993; Kim 1995; Young 1995; MacArthur 2000; Golob 2003; Fairbrother 2007).

From the Mexican perspective, NAFTA was an instrument to attract much needed investors for its debt-ridden economy. Relatedly, from a U.S. perspective, NAFTA needed to also provide secure investment opportunities by making the Mexican economy more attractive and reassuring an open market for the future. Many investors grew more confident investing in Mexico because NAFTA offered some assurances that Mexico was committed to neoliberal economic policies, and government expropriation of private property was a thing of the past. According to Galbraith (1993), for Mexico, NAFTA had very little to do with free trade and was more about macroeconomic stabilization.

To reiterate the major forces behind NAFTA from Salinas's perspective, Shane (1992) argues that Salinas decided to reverse the traditional Mexican economic policies for several reasons. First, the debt crisis in 1982 was caused by cheap credit throughout the 1960s and 1970s and the shocking fourfold increase in petroleum prices in 1973-1974. Mexico perceived oil prices would continue to increase, and thus proceeded to borrow based these expectations, but the future oil profits never materialized. Second, theoretically, economic policy reform predicted improvements in efficiency and increases in economic growth rates. This ideology was heavily influenced by the Mexican technocrats' educational background in economics, thus neoliberal economic philosophy dominated at the time within a TCC groupthink. Third, NAFTA did not drastically change economic policy since many of the reforms were already in place. However, it did attempt to increase investment flow into Mexico, specifically satisfying the United States that was responsible for 65 percent of Mexican foreign direct investment. Mexico's joining of GATT set a maximum bond tariff limit of 50 percent, and began the elimination of all licenses on imports (only 2 percent of imported items required licenses by 1990), and removed

restrictions on foreign exchange. Raising direct investment became the favored form of financing any deficits over government borrowing. Overall, the economic reforms gearing up for NAFTA shifted the Mexican economy from state-controlled to competitive and privately operated (including banks that were trending towards complete privatization), and drastically decreased support for public enterprises. Fourth, the signing of NAFTA was a political strategy to further solidify the neoliberal policy reforms sweeping Mexico making them more difficult for future administrations to remove. Salinas understood that he could remain in office only 6 years, but NAFTA could be used as a political maneuver to cement his economic ideology within the Mexican state and private sector. In the following sections, the process by which members of the TCC, primarily political elites and business leaders, created NAFTA with the purpose of solidifying neoliberal economics and creating profitable opportunities for investment will be detailed.

Selling NAFTA

Mexico's Sales Job

Once the NAFTA supplemental agreements were signed on September 14, 1993, the only step left was ratification which would require a majority vote from the U.S. Congress that would simply be voting yes or no on the final text due to the fast-track process.⁹⁵ After the U.S. presidential election complicated negotiations, the Mexicans felt they had to hurry to ratify NAFTA before the Mexican elections (von Bertrab 1997). Then, complicating NAFTA's success further, at the last minute, Gephardt, as suspected, opposed NAFTA even with the side

⁹⁵ See President Clinton's remarks at the signing ceremony at <http://www.presidency.ucsb.edu/ws/index.php?pid=47070>.

agreements.⁹⁶ Congressional, as well as public opposition, arose in response to the final NAFTA text making the prospective job of selling NAFTA challenging. Since there were more members of Congress against NAFTA than for it, according to von Bertrab's team count, it was an uphill battle to convince members to change their votes. Some members, like Representative Jim Cooper, were quite easy to convince, only requiring keeping their votes a secret to protect them from their constituencies. In cases such as these, members of Congress wanted to be able to continue to speak against NAFTA to appeal to their constituencies if the ratification was unsuccessful. To understand von Bertrab (1997:104) and the Mexican negotiators' approach for selling NAFTA surreptitiously, one must understand their lack of faith in the citizenry, seemingly favoring a form of republic or aristocracy over democracy:

The welfare of the people is not always clear to the man in the street who cares about his daily concerns without having to have an informed opinion about every happening in the country. That is why professional politicians exist as managers for the public interest. People are the stockholders, but stockholders cannot be asked about every detail in the administration of a firm. Those decisions should be left to the managers, who will be judged by their constituents – the stockholders – on the results of management's decisions. It thus seemed to me a perversion of democracy to have a government run by opinion polls.

The subsequent Mexican lobbying campaign was run by Von Bertrab's team to sell NAFTA ratification to the U.S. Congress. It was an extraordinary lobbying campaign conducted by a foreign government in the United States (Gerstenzang 1993a). A clear coalition formed between the Mexican government and prominent businesses that together unprecedentedly spent over \$30 million lobbying in Washington to promote the enactment of NAFTA which, at the time, was considered "the most expensive, elaborate campaign ever conducted in the United States by a foreign government" (Baldwin et al. 1993:1).⁹⁷ Salinas was personally involved in

⁹⁶ See also Bradsher (1993b).

⁹⁷ See also Bradsher (1993c).

heavily influencing U.S. government officials and business leaders (Cameron and Tomlin 2000). Opposition also arose and a war of information began. U.S. and Mexican citizens banded together in response to organize a public forum comprised of both U.S. and Mexican elected representatives. In response, Mexican government officials and the U.S. ambassador to Mexico, John D. Negroponte, moved quickly to block the forum, understanding that such a forum would bring widespread attention to NAFTA and the reality that support for NAFTA was less than unanimous (Pei-Tsu 1991). Salinas contributed to the media campaigns by praising supporters of NAFTA and vilifying the opponents. Herminio Blanco exerted great effort to thwart Mexican Action Network on Free Trade (RMALC) trips to Washington for participation in NAFTA congressional briefings (Heredia 1994).⁹⁸ The RMALC was a citizen network organization that was in favor of economic integration in North America, but wanted to see citizen networks also integrated simultaneously to ensure democratic decision-making. They opposed NAFTA (in its finalized form) viewing it as a neoliberal strategy to suppress wage and labor rights in order to gain an international corporate advantage.

Mobilizing Business Support

A small number of large, international firms took over the Mexican economy in the 1980s and stood to benefit greatly from market liberalization (Dominquez 1995). Using the precedent of the PSE, the Mexican government sought the help of the elite business community—expected to gain the most from free trade—to sell NAFTA to the public and other small- and medium-sized businesses. Salinas’s decision to negotiate free trade with the United States was likely influenced by big business, but the Mexican business community did not really

⁹⁸ See RMALC minutes, Mexico City, March 15, 1993 as cited by Heredia (1994).

mobilize for free trade until after the decision for free trade had been made (del Castillo 1995; Fairbrother 2007). Large Mexican businesses did not strongly support North American free trade nor actively oppose it, but it was, for the most part, unified in support of the idea. Although Mexico's government was ostensibly autocratic, gaining the support of the business world was essential for smoothly negotiating free trade. Large corporatist organizations coopted the smaller independent unions and peasant groups critical of NAFTA, effectively silencing their opposition. As noted earlier, Salinas and his administration also effectively quieted rural opposition, by an antipoverty and community development program that provided benefits as a *quid pro quo* for loyalty to the ruling party.

Fairbrother (2007) identifies three mechanisms by which the Mexican state mobilized support from the private sector, despite the concerns over neoliberal policies. First, the state effectively gave voice to only supporters of NAFTA while muting critics via senate hearings, advisory councils, and the Business Coordinating Council for Foreign Trade (COECE).⁹⁹ Such influence over the NAFTA debate created an illusion where even small businesses, at least publicly, appeared largely in favor of NAFTA. With Salinas controlling the PRI, and the PRI controlling the senate, all official senate hearings not only voiced support, but provided a veneer of openness and dialog that provided NAFTA with democratic legitimacy. The official Advisory Council allowed the state to present NAFTA as the majority's will. The council consisted of 24 members primarily comprised of nine private sector representatives with more than half from a large exclusive business association known as the CEO's Businessman's Council. Jaime Serra headed the council with Herminio Blanco serving on it as well. Another six members came from leaders in academia (presidents or top administrators). Although three representatives from labor

⁹⁹ See also Heredia (1994), Poitras and Robinson (1994), and Thacker (1999).

and agriculture served on the council, they all came from corporatist associations tied to the PRI, one of which represented the Confederation of Mexican Workers (CTM).¹⁰⁰

Second, the Mexican government gave concessions and incentives to the business community for participation in working for the best possible terms as long as they did not oppose NAFTA in general (Fairbrother 2007).¹⁰¹ Most parties involved often viewed NAFTA as an unstoppable force, and thus it was better to jump on board rather than try to stop it (Armijo and Faucher 2002). Third, the Mexican state also incessantly reinforced the logic that NAFTA was good for all by emphasizing the positives and never mentioning the negatives, which was the primary strategy used by lobbying campaigns in selling NAFTA.¹⁰² The lobbyists emphasized NAFTA's potential for increased exports ignoring the likely rise in imports that could be quite harmful to some industries. Furthermore, they emphasized that Mexico's "national economic competitiveness" would strengthen via NAFTA (Fairbrother 2007:286). Overall, Fairbrother demonstrates how the Mexican state created an ostensibly unanimous level of support for NAFTA among the business community despite the vocal critics of NAFTA and the state's own awareness of possible flaws in the agreement.

"Unanimous" Business Support

The role of the COECE was essential for creating the illusionary consensus on free trade (Alba and Vega 2002). Ironically, the CCE, an organization constructed to represent large corporations, created COECE to represent the entire business community including medium and small businesses (Thacker 1999). COECE assigned Juan Gallardo Thurlow, business leader of

¹⁰⁰ Information on these members comes from a SECOFI document as cited by Fairbrother (2007).

¹⁰¹ See also Tornell and Esquivel (1995).

¹⁰² See also Heredia (1994).

Grupo Guepec that was affiliated with PepsiCo, to head delegate. COECE's main representatives were actively involved in the NAFTA negotiations. However, its structure further cemented the interests of major businesses such as Nestle, Volkswagen, Ford, and Chrysler. COECE had six sectoral divisions—finance, insurance, commerce and services, industry, agriculture, and banking—to represent a diversity of interests, but three of the six were finance oriented. In addition, the head of each sector was appointed by COECE business organization leaders.¹⁰³

The sectoral arrangements shifted to a more thematic organization in 1991, leading the COECE to mirror these divisions by creating 17 unique negotiation groups (Thacker 1999; Alba and Vega 2002). This restructuring consolidated power further in favor of big business with two-thirds of the negotiators being new, and almost exclusively from large companies. To participate in the negotiations, COECE required that the businessperson read English and comprehend sophisticated economic issues, but most importantly was that they had the time to participate. Larger firms had departments dedicated to international economic trade issues, while smaller business leaders were involved in day-to-day activities. Also, COECE representatives were volunteers and needed to foot the entire bill during negotiations. Large businesses joined COECE to lobby for their interests to be represented in NAFTA, traveling with state negotiators during negotiations. Small businesses could not afford the travel expenses (Fairbrother 2007). COECE provided skilled and knowledgeable negotiators, as they had a stake in the outcome of the NAFTA negotiations, and were at the side of government negotiators throughout the process (Thacker 1999). As expected, the predicted losers of NAFTA, such as small businesses, small-scale agricultural producers, and common workers, were not represented in the negotiation

¹⁰³ See also Alba and Vega (2002).

process.¹⁰⁴ In interviews with Thacker, business leaders and individuals from business organizations explained that if they did not accept the basic premise of NAFTA, they were not allowed to participate in the negotiations.

CANACINTRA was virtually the only organization that represented small and medium business interests. Initially, CANACINTRA vehemently opposed NAFTA, but later reversed its opinions of NAFTA fearing too much to lose by taking on the state (Poitras and Robinson 1994; Shadlen 2000). Critics of CANACINTRA viewed it as being a tool used by the government to manipulate perceived acceptance of NAFTA by the business community (Thacker 1999). Small business owners were probably only represented if they were in favor of accessing U.S. markets. Fairbrother (2007) lists three reasons why CANACINTRA likely refrained from mounting serious public criticism against NAFTA. First, CANACINTRA leaders were content with maintaining their political influence in the PRI and did not desire to become confrontational with its members. Second, many CANACINTRA members relied on some form of state aid, such as economic protections and subsidies, and did not want to risk this support being discontinued. Third, much of the CANACINTRA membership was determined by a compulsory membership rule for small industry. Thus, any confrontation could result in a rewriting of the law weakening CANACINTRA further. However, much of the advantages CANACINTRA did not want to lose also reflect their corporatist composition and dependent relationship with the PRI-controlled state. In turn, CANACINTRA's dependence shaped its support for NAFTA rather than any strong belief in free trade.

¹⁰⁴ See Santa Cruz (1997) for how small-scale producers in agriculture went unrepresented in the NAFTA negotiations.

Von Bertrab's Negotiation Team's Campaign and Deep Connections

Von Bertrab's (1997) team was responsible for several strategies to sell NAFTA beyond the massive media campaign that helped NAFTA fast-track to successfully pass. Early on, Von Bertrab knew that Mexico needed Americans to sell NAFTA to U.S. citizens, and they hired a minimum of 33 former U.S. state officials with wide-ranging ties to the federal government including Congress, the White House, the State Department, and the Treasury to achieve this goal (Baldwin et al. 1993). Mexican business, specifically COECE, was also heavily involved, flying at least "three members of Congress, a governor, and 48 congressional staffers on a dozen 'fact-finding' trips to Mexico" for "educational" purposes (Baldwin et al. 1993:17, 26). The U.S. Senate approved these trips without releasing participants' names until a financial disclosure was made available just before ratification.¹⁰⁵ SECOFI provided most of the funding for the NAFTA campaign, and had several resourceful firms on its payroll including Shearman and Sterling, TKC International, Walker/Free Associates, Gold and Liebengood, Burson-Marsteller, Manchester Trade, the Brock Group, Public Strategies, Cleary, Gottlieb, Steen & Hamilton, and Fleishman-Hillard, to name a few.

Von Bertrab's (1997) team also felt that an initiative to garner U.S. business and citizen support was the missing component to sell NAFTA, but again, the Mexicans thought that any such initiative supported by a Mexican-affiliated group would be suspect. Thus, it sought the help of corporate supporters of NAFTA to influence U.S. citizens. The USA*NAFTA coalition (subject of the next section) spearheaded this endeavor with other corporations such as Dow Chemical Company, Bechtel, and General Electric. Over the course of the NAFTA negotiations, Von Bertrab met with nearly all chief lobbyists on Capitol Hill on a weekly basis, establishing

¹⁰⁵ See Appendix E in Baldwin et al. (1993) for a full list of staffers participating in the COECE trips.

deep connections with members of the TCC (Baldwin et al. 1993). Ildefonso Guajardo, a member of Von Bertrab's team, associated regularly with Gail Harrison of the Wexler Group, who was a prominent executive in the USA*NAFTA coalition representing nearly all U.S. corporate interests, and Sandra Masur, Director of International Trade Policy at Eastman Kodak. Eastman Kodak, operating throughout North America, was a member of USA*NAFTA, and contributed to the corporate movement promoting NAFTA. Other members of Von Bertrab's team had important tasks as well: Felix Aguilar regularly updated a database tracking individual members of the U.S. Congress and where they stood on NAFTA; Luis de la Calle ran the "Hispanic outreach" program and worked with Burson-Marsteller to organize meetings between Mexican government officials and U.S. businessmen to discuss the economic changes in Mexico; Raul Urteaga served as a liaison with U.S. environmental groups; and Rodolpho Balmaceda helped facilitate the interactions between Mexican government officials and U.S. business interests (Baldwin et al. 1993:19).

Von Bertrab (1997) observed that his team was acting more fairly and democratically than the opposition, while subsequently saying that they tried to avoid raising public interest in NAFTA because they thought the public had no interest in the NAFTA debate, although he admitted they were wrong about there being no citizen interest. Despite these claims, Von Bertrab and his team went to great lengths to control the image of Mexico and NAFTA. Under his direction, Burson-Marsteller was involved in "a speakers' bureau, media monitoring, grassroots outreach and public education, position papers, fact sheets, speeches and press releases" all with the purpose of creating a positive outlook on NAFTA and Mexico among U.S. citizens (Baldwin et al. 1993:21). For their efforts, Burson-Marsteller received \$5.4 million from SECOFI. The Brock Group provided strategic counseling to Burson-Marsteller, and Bill Brock

was personally involved in conversations with Mexican officials about a free trade agreement since 1982. He actively pressured major NAFTA players to aggressively pursue a free trade deal. Von Bertrab's team also hired prominent lobbyists that extensively solicited all 115 new members of Congress who were elected in 1992 to vote yes on NAFTA. Among these lobbyists were Joe O'Neill, president of Public Strategies and former administrative assistant to Senator and Treasury Executive Lloyd Bentsen,¹⁰⁶ Charls Walker and Phil Potter from Walker/Free Associates, both of whom formerly held principal positions in the Treasury Department, Howard Liebengood, former Senate Sergeant-at-Arms, and Marin Gold, former U.S. government official.¹⁰⁷ Charls Walker, like many of those involved in the sale of NAFTA, was a well-known lobbyist with major corporate clients such as Anheuser-Busch, AT&T, CBS Records, Columbia Pictures, Mitsubishi, and CSX Corporation. With all the political power players on Mexico's payroll, critics argued that it looked like Mexico was "trying to buy the treaty."¹⁰⁸

As mentioned, von Bertrab (1997), through Salinas, had deep connections with Bush, but they also hedged their bets by establishing relationships with Clinton prior to the 1992 election. In addition, several of the lobbyists hired by the Mexicans were deeply embedded in the Clinton administration (Baldwin et al. 1993). Joe O'Neill, for instance, worked for Lloyd Bensten who served as Clinton's Treasury Secretary. Gabriel Guerra-Mondragon was deeply entrenched in both countries beginning as U.S. Ambassador to Mexico in the 1980s, and then working for the Mexicans in his firm, Guerra and Associates, while also serving as an advisor to Clinton on

¹⁰⁶ "Public Strategies contacted government officials on 140 separate occasions in one year, including then-Senator Bentsen's office 16 times, the Senate Finance Committee 23 times, and the House Ways and Means committee eight times. O'Neill and his firm discussed NAFTA with Rep. Howard Berman (D-CA), Rep. Bob Matsui (D-CA), Rep. Richard Gephardt (D-MO), Rep. Ron Wyden (D-OR), Sen. Bentsen (D-TX), then-Senator Brock Adams (D-WA), Sen. Charles Robb (D-VA), and others" (Baldwin et al. 1993: 22).

¹⁰⁷ "Gold and Liebengood contacted members of Congress and their staff nearly 500 times in a single year" (Baldwin et al. 1993: 23).

¹⁰⁸ *Trade New Bulletin*. May 20, 1993 as cited by Cameron and Tomlin (2000: 202).

national security issues. Charlene Barshefsky became Deputy U.S. Trade Representative despite a history of representing transnational corporations (TNCs) throughout North America and Japan, with some specific clients including COECE and the Canadian Wheat Board.

In addition to the Mexicans' awareness that they needed Americans to help sell NAFTA, they also realized that rallying the Hispanic vote in the United States would be helpful. The strategy to build a constituency of Hispanic Americans mentioned earlier continued beyond the fast-track stage, but generally failed to win the Hispanic vote in favor of NAFTA. Von Bertrab's (1997) team focused on members of Congress with large Hispanic constituencies, gave talks at their meetings, and tried to connect with Hispanic community leaders. Despite various attempts to capture the Hispanic vote, a majority of Hispanics did not view NAFTA favorably. Even a "substantial minority" of Hispanic representatives voted against NAFTA (von Bertrab 1997:123). Von Bertrab mostly blames ignorance for why, not just Hispanics, but the opposition in general did not support NAFTA. He is probably right about some U.S. stereotypes of Mexicans as "bandidos," but he clearly did not believe that NAFTA would have unequal effects. For instance, he states, "[C]ertainly we were not fighting for an economic model that would grant more opportunities to rich Mexicans at the expense of the underprivileged" (von Bertrab 1997:124).

Another strategy von Bertrab (1997) and his team used to galvanize support for NAFTA was the recruitment of past presidents to endorse NAFTA. Former Presidents Gerald Ford, Jimmy Carter, and George H.W. Bush came together to demonstrate bipartisan support for the trade deal as Bill Clinton signed the side deals on Sept. 14, 1993 (Mayer 1998; Cameron and Tomlin 2000).¹⁰⁹ Each of them spoke in favor of NAFTA, while trying to placate the fears of the

¹⁰⁹ See also President Clinton's remarks at the signing ceremony at <http://www.presidency.ucsb.edu/ws/index.php?pid=47070>.

opposition. The Mexicans hoped such an event would demonstrate the overwhelming political consensus surrounding NAFTA. Former presidents Carter and Bush went further to actively campaign for NAFTA calling in favors from members of Congress (Mayer 1998).

USA*NAFTA Coalition and the U.S. Campaign

As mentioned, more than anything else, NAFTA was a policy sought by the Mexicans to primarily secure foreign investment.¹¹⁰ U.S. corporations would be interested in Mexican investment only if the Mexican government could guarantee likely returns and minimize risks. Therefore, U.S. corporations were not completely satisfied with the Salinas/de la Madrid neoliberal reforms because there was no guarantee that the next administration would not raise tariffs, use expropriation strategies, create inflation, or engage in national populism. NAFTA solidified the unilateral reforms taken by the Salinas/de la Madrid administrations making it much more difficult for future administrations to overturn them, and fostering the confidence of U.S. corporations in the process. The U.S. business community, and President Bush, an oil man himself, had not forgotten President Lázaro Cárdenas expropriation of U.S. oil interests in 1938. Jorge Castaneda accurately described NAFTA as an investment opportunity for U.S. corporations that would lock in low wage rates, and establish cash flows for a “nervous oligarchy” (MacArthur 2000:133).

Much like the Mexican government, corporations were sending large sums of money to both the Republicans and Democrats during the 1992 U.S. presidential election.¹¹¹

Unquestionably, NAFTA was important to them and they wanted to hedge their bets. Also, the Democrats under Clinton were very capable of pitching to business interests while

¹¹⁰ See Shane 1992; Galbraith 1993; Kim 1995; Young 1995; MacArthur 2000; Golob 2003; Fairbrother 2007.

¹¹¹ See MacArthur (2000: 150) for a short list of corporate donations.

simultaneously upholding a pro-labor image. The Clinton administration went to great lengths to establish relationships with Republicans and the Business Roundtable (MacArthur 2000). For example, the White House gave its polling data on who would make the best spokesperson for selling NAFTA directly to USA*NAFTA. Such an act is noteworthy since the *Fortune 500* is a staunch Republican entity and widely represented in the Business Roundtable, and thus USA*NAFTA. In effect, the Democratic National Committee dedicated its funds to promoting NAFTA which was largely opposed by labor organizations that are major contributors to the Democratic Party.¹¹²

Although Mexican interests behind NAFTA were substantial, the largest player from the corporate world during NAFTA was the massive business coalition, USA*NAFTA. Mexico, and von Bertrab (1997) specifically, played an integral role in establishing the groundwork for the U.S. business coalition. Bill Daley, head of Bill Clinton's Illinois campaign, also worked to achieve the support of the private sector (Behr 1993b). The USA*NAFTA coalition was formally created in New York on October 9, 1992. Among the attendees of the meeting in which this coalition was formed were President Salinas and staff members, the Business Roundtable, and several business leaders from both the United States and Mexico, specifically key representatives of USA*NAFTA, Kay R. Whitmore (chairman of Eastman Kodak and chair of the Business Roundtable) and James D. Robinson of American Express and former chairman of the Business Roundtable's task force on trade (Cameron and Tomlin 2000). When crunch time approached at the height of the NAFTA negotiations, the USA*NAFTA coalition represented a staggering 2,300 corporations and lobbies. U.S. TNCs operating in Mexico comprised a significant portion of the USA*NAFTA coalition (Hogenboom 1998).

¹¹² Some of the pro-labor Democrats who voted yes to NAFTA were later starved of funds from these groups (Franklin 1994).

Their lobbying campaign to sell NAFTA was a sophisticated multi-clustered approach where groups of corporations were assigned specific states and jurisdictions (Levy and Bruhn 2006). These groups or corporations would then be responsible for convincing their local citizens and representatives of the benefits of NAFTA. In Illinois, Daley's state, for example, Caterpillar, John Deere, the Illinois Farm Bureau, and the Illinois Retail Merchants Association along with others formed an Illinois "NAFTA Coalition."¹¹³ Several large corporations covered multiple states—AT&T had seven, IBM had five, and General Electric dealt with the New England states. Von Bertrab (1997) explained that 35 captains orchestrated these campaigns, of which 34 came from *Fortune 500* companies.

Secret Meeting at Allied Signal

On September 14, 1993, the very same day the NAFTA supplemental agreements were signed, a secret meeting attended by both business and Washington lobbyists, along with three officials from the Clinton administration, was held at the Allied Signal Corporation in Washington, D.C. to discuss the bleak prospects of NAFTA ratification (MacArthur 2000; Roman and Arregui 2015). In other words, the pro-NAFTA interests devised a plan to alter the course of NAFTA through a major lobbying campaign headed by USA*NAFTA at this meeting.¹¹⁴ Clinton's staff in attendance included Mickey Kantor, Clinton's presidential campaign chair and later U.S. trade representative, Rahm Emanuel, Clinton White House aide and later Barack Obama's chief of staff, and William Daley, son of longtime mayor of Chicago, Ricard Daley. Various members of USA*NAFTA or attendees at their meetings paralleled

¹¹³ *Trade News Bulletin*, June 21, 1993 as cited in Cameron and Tomlin (2000: 202). See also (Fites 1992).

¹¹⁴ Lawrence A. Bossidy, CEO of Allied Signal Inc. told the press that business and "the proponents have not done a very good job of selling [NAFTA]" (Bradsher 1993c).

members of the TCC with widespread connections across North America in business and politics, specifically a strong interweaving of U.S. and Mexican interests: President Salinas himself; Jim Jones, chairman of the New York Stock Exchange at that time who later served as U.S. Ambassador to Mexico from 1993 to 1997; Rodman Rockefeller, head of the Mexico-U.S. Business Committee (MEXUS) which is the oldest binational private sector business organization with a focus on economic, commercial, and political relations in North America; Juan Gallardo Thurlow, mentioned earlier, head delegate of COECE, business leader of Grupo Guepec, PepsiCo affiliate, and later Mexican co-chair of MEXUS from 1990 to 1993; and Jerry Jaznowski, President of the National Association of Manufacturers in the United States to name a few (Roman and Arregui 2015).

Before serious lobbying efforts could begin, the goal coming out of the meeting was to assemble an elite lobbying team that would, in Nick Calio's (Bush's congressional liaison) words:

[Bring] together a group of us who had been in the political process for a long time and had various jobs who knew people very, very well on a personal level, and who could talk on that level, and by happenstance, people who had probably raised an awful lot of money for a lot of members and who were part of their political life-support system, so to speak (MacArthur 2000:172).

Calio encouraged members of the Business Roundtable to get their best guys to the meeting at Allied Signal Corporation.

USA*NAFTA Gets Serious

The pro-business lobbying campaign did not have many supporters or strength early on, which was part of House Majority Whip and later Speaker of the House, Newt Gingrich's, concern. He told business to get serious or risk losing NAFTA (Austen 1993; MacArthur 2000).

Three reasons existed as to why NAFTA was in danger and needed the efforts of USA*NAFTA to succeed. First, NAFTA was so obviously advantageous for business that no one really went to them to ask for support, it was expected. The other two reasons involved the side agreements. Much of the business community was waiting to see what came of the side agreements before they moved one way or the other (Bradsher 1993c). If nothing serious was threatened, there would be no reason for intervention. Lastly, and most importantly, no one really expected the labor and environmental interest groups to gain as much momentum as they did to actually challenge the Washington system (MacArthur 2000).

The business community waited on true commitment from the Clinton administration before fully backing a campaign to save NAFTA (Mayer 1998).¹¹⁵ Through secret correspondence, the conclusion was that domestic forces were constraining the administration's ability to move forward. The strategy was to sway undecided voters in the House and slow and weaken the oppositional forces outside of Washington. Eventually, the Business Roundtable committed \$5 million for an advertising campaign.¹¹⁶ The media campaign painted NAFTA as good for American jobs, a solution to environmental, immigration, and drug problems, and as a choice between "competing or retreating," "going forward or backward," "hope and fear," and "embracing change" or shying away (Mayer 1998:284). Election-like television campaign commercials aired, and business reached out to the public through talk shows and newspaper editorials (Austen 1993). Mainstream environmental groups publicly voiced their support, and lobbied undecided members of Congress explaining to them the environmental advantages (Mayer 1998). Above all, the primary goal of the campaign was to create an image that there

¹¹⁵ Business support for NAFTA intensified in the latter half of 1993 (Bradsher 1993c).

¹¹⁶ See also Ullmann (1993).

was universal consensus behind NAFTA by amplifying the positives and eliding the negatives.¹¹⁷ Beyond the facts, the story of NAFTA was most important to voters, and the administration's campaign was able to alter that story from one of tragedy to national pride.

U.S. NAFTA Advertising Campaign and More "Unanimous" Support

Faced with a vehement opposition, USA*NAFTA knew it needed a campaign for NAFTA, and it needed a spokesperson for its advertising campaign. Using the polling data received from the White House, three possible spokespersons arose as top candidates: Bill Cosby, Lee Iacocca, and Arnold Palmer (MacArthur 2000).¹¹⁸ According to Ken Cole, Allied Signal's chief lobbyist who was largely responsible for the USA*NAFTA secret meeting, Lee Iacocca was the perfect fit for all the right reasons:

He had just done the funding for the Statue of Liberty, a lot of money had been pumped into his image at Chrysler, he knew international business, he had done business in Mexico, he was selling cars (MacArthur 2000:202).

Leo Kelmenson, advertiser extraordinaire and chairman of Bozell, Jacobs, Kenyon, & Eckhardt, also explained to MacArthur (2000:202) that Iacocca represented the perfect balance between business and labor interests, recalling one time when a couple of workers praised him:

I'll never forget, after the loan guarantee [for Chrysler] was approved, we were doing a photo shoot of Iacocca walking out of the plant, and these two big burly guys, one black guy and one white guy, come running out with tears in their eyes. 'Mr. Iacocca, I can't tell you how much we love you. You saved our lives, our careers, everything we've ever done, by saving this company.'

Interestingly, von Bertrab (1997) actually credits himself with the idea to recruit Lee Iacocca to sell NAFTA because he thought Iacocca would offset the damage Ross Perot was doing. Either way, USA*NAFTA solicited Iacocca to be their spokesperson, and the White House

¹¹⁷ See Heredia (1994) on media monopoly in Mexico.

¹¹⁸ Walter Cronkite was also on the list, but considered impossible to get for the job.

simultaneously sought him to be both the national NAFTA spokesperson for business and the Clinton administration.¹¹⁹ Iacocca refused to join until the President contacted him directly, and assured him that he would not back away from NAFTA if it lost popularity (MacArthur 2000). When Iacocca was in Italy, Clinton called him at three in the morning, catching him when he least expected it, and secured Iacocca for the job. Ironically, Iacocca was not a major enthusiast of free trade, but became the poster boy of NAFTA. In his eponymous best-selling autobiography, Iacocca (1984) criticized free trade:

When people ask me whether I'm in favor of free trade or protectionism, my response is: None of the above. I'm opposed to protectionism. I'm opposed to local content legislation. But the United States is just about the only industrial country left in the world that doesn't have an enlightened, modern day trade policy. We're the only country in the world that comes close to practicing free trade – and we're getting clobbered...Let's look at what is really going on here. We ship them [Japan] wheat, corn, soybeans, coal, and timber. And what do they ship us? Cars, trucks, motorcycles, oil well equipment, and electronics. Question: What do you call a country that exports raw materials and imports finished goods? Answer: A colony.

Four other major problems still troubled the Allied Signal Corporation in meeting its goals. First, at that time, few major Democratic players were overly interested in passing NAFTA (Gephardt and Wessel 1999). Second, and relatedly, Richard Gephardt and his longtime adviser on trade issues, Michael Wessel, were making a serious effort to derail NAFTA. Gephardt was holding true to his caveat during NAFTA fast-tracking. Both were not pleased by the NAFTA side agreements, viewing them as essentially toothless, even weaker than Bush's Action Plan. Third, House Republicans, although supportive of NAFTA, did not want to give a victory to Clinton, but more importantly, they were hesitant because the Business Roundtable was largely uninvolved, to that point, in promoting NAFTA (MacArthur 2000). Newt Gingrich gave private lessons on political organizing to the lobbyist team which woke them up to the

¹¹⁹ See *Sun Sentinel*, September 10, 1993 at http://articles.sun-sentinel.com/1993-09-10/business/9309100044_1_nafta-proponents-nafta-battle-nafta-task-force.

arduous path of passing NAFTA that lay ahead. Fourth, billionaire businessman Ross Perot had a wide body of supporters who were putting out anti-NAFTA publications.¹²⁰ Perot's most famous contribution was his co-authored book with Pat Choate entitled, *Save your Job, Save our Country* (Perot and Choate 1993).

At the outset, USA*NAFTA hired both Democratic and Republican political organizing firms to create the illusion of widespread political support (MacArthur 2000). The Republican firm hired a telemarketing company to generate pro-NAFTA letters to be sent to members of Congress. The Democratic firm ran a "grass tops" campaign that organized high standing individuals in several voting districts to tell real stories about business (MacArthur 2000:217). A "grass tops" campaign was all about recruiting people with close relationships with congressional members to consolidate as much political clout as possible.¹²¹ USA*NAFTA used its enormous wealth to purchase the best advertisers and public relations firms money could buy.¹²² Iacocca, as lead salesman, spewed unsubstantiated claims about NAFTA in nationally aired commercials mostly revolving around its likelihood of creating high-paying jobs.¹²³

Although it is difficult to measure each strategy's impact on the NAFTA vote, the public debate between Vice President Al Gore and Ross Perot may have been the major momentum shifter for the NAFTA proponents.¹²⁴ Von Bertrab (1997) was well aware of the threat Perot posed to getting NAFTA through, and was largely in favor of a debate to discredit him. Von Bertrab's team handled scheduling the national debate between Al Gore and Ross Perot. Both

¹²⁰ One of Perot's most threatening actions was purchasing half an hour of network television for an anti-NAFTA advertisement (Gerstenzang 1993a).

¹²¹ Members of USA*NAFTA met with members of Congress in their home districts to garner support (Bradsher 1993d).

¹²² The anti-NAFTA coalition had an advertising campaign of their own that was not completely overshadowed by USA*NAFTA's (Arndt 1993).

¹²³ See also Kolbert (1993).

¹²⁴ Gerstenzang and Richter's (1993) *Los Angeles Times* article captures the tension of this critical juncture in the NAFTA debate.

von Bertrab and Luis Donaldo Colosio, the PRI presidential candidate in the upcoming Mexican election, helped prepare Gore's notes for the debate. During the live debate, Perot stumbled and failed to rebut many of Gore's fallacious points, resulting in a resounding victory for NAFTA supporters (MacArthur 2000).¹²⁵

As time edged closer to the ratification vote, Clinton, himself, played a major role in getting NAFTA through down the stretch. Ken Cole told MacArthur (2000:253) that "Bill did something I've never seen before or since. He brought the private-sector people into his whip meetings every week and sometimes two times a week." Clinton also directed the USA*NAFTA team to find out each congress member's needs to get his or her vote.¹²⁶ The creation of the North American Development (NAD) Bank was one such deal that secured Esteban Torres's vote, which was symbolic in swaying labor-sympathetic voters. The NAD Bank ideally was a binational bank designed to fund environmental projects, but never delivered on its promise, suggesting that this move was only to secure votes for NAFTA (Public Citizen 1999). Clinton's furtive deal with Oklahoma Representative Bill Brewster demonstrates how fickle some of these decision makers were despite the potentially widespread effects of NAFTA on the populous. Clinton secured Bill Brewster's vote with the promise of a golf trip to which Clinton held true to the deal (MacArthur 2000). Phillips and the Haliburton Corporation, along with the Business Roundtable, strategically placed op-ed pieces glorifying NAFTA in Brewster's local district to also help persuade him by swaying the voters. Other voters wanted more, for example, the Florida delegation required protection and cash, mostly for the Florida Fruit and Vegetable Association.¹²⁷ These deals ranged from promises of investigating certain imports, to guaranteed

¹²⁵ Investors were happy with Gore's performance (Stein 1993).

¹²⁶ *The New York Times* reported on USA*NAFTA meeting members of Congress on August 22, 1993 (Bradsher 1993d).

¹²⁷ See Boyer, Wallach, and Watzman (1993) for a list of these deals, and Austen (1993).

protections for particular industries, to extraditing a Mexican citizen accused of raping the niece of Florida Representative Clay Shaw's secretary. Other players in the NAFTA game were later rewarded directly for their involvement in getting NAFTA through Congress, like Bill Daley who landed a job at the Department of Commerce.

Clinton, with the encouragement of Anne Wexler, the public relations executive partially responsible for the secret meeting at Allied Signal Corporation, held a dinner for several CEOs soliciting them for money to finance a pro-NAFTA campaign (Snow 2010). The White House even created a special office that vetted companies and people who might cause public relations problems (MacArthur 2000). For instance, corporations that were promoting an environmentally green approach were weeded out. Alternatively, pro-NAFTA businesses were using the White House property to further their cause. Von Bertrab (1997) attests to Clinton's side deals, private sector invitations, and personal phone calls. According to him, when it approached time to vote, over 20 amendments to NAFTA were proposed. Clinton's last-minute concession deals, in large part, appeased these concerns, and von Bertrab (1997:133) even classifies some of the deals as "democratic bribery." Although he defines the deals as legal, he sees it as an abuse of power to receive benefits oftentimes unrelated to NAFTA. Both the sugar and citrus industries received last minute deals which, according to von Bertrab (1997:137) "reflected the political clout of the groups involved far more than the importance of the issues to the United States as a whole."

The Canadian election was one of the last scares for NAFTA promoters. When Jean Chrétien, the anti-NAFTA Liberal Party candidate, won the election for Prime Minister of Canada, uncertainty struck the NAFTA crowd.¹²⁸ USA*NAFTA immediately leaked a story on health care to sidetrack the media away from the election (MacArthur 2000). Despite the

¹²⁸ See Bryden (1992) for news coverage on Chretien's concerns and hesitancy over NAFTA.

worries, Chrétien was on board, but he needed political cover against the anti-NAFTA members of his party. For that, a symbolic NAFTA renegotiation on sensitive issues fit the bill (Bradsher 1993b). In the end, not a single word of the entire NAFTA document was changed, and Chrétien continued to give his support behind the scenes (MacArthur 2000). As a seemingly last ditch effort, David Bonior, ostensibly the last Congressman vocally opposed to NAFTA, appeared on *Meet the Press* to debate Bill Bradley and Mickey Kantor.¹²⁹ In pro-NAFTA thematic fashion, Bradley and Kantor offered the public some well-versed talking points silencing the critics (MacArthur 2000).

The day of the NAFTA ratification vote, the NAFTA lobbying team was instructed to follow ambivalent members of Congress around to influence them before the vote, but it turned out the anti-NAFTA coalition was not there as expected (MacArthur 2000). They had already considered the vote lost, and they proved to be correct when the vote was cast. Although the vote was lost, the public tuned in to the vote as if it were a major sporting event. The public was interested in a congressional vote unlike any before. The massive U.S. and Mexican NAFTA campaigns proved successful when the Senate passed NAFTA on November 20, 1993.¹³⁰ In addition, major surveys revealed that citizens of both the United States and Mexico generally expressed positive views of NAFTA, and believed the policy would bring socioeconomic growth and a higher quality of life (Davis 1998; Nicholson et al. 1994).¹³¹

¹²⁹ The transcript of this debate can be found at <http://search.alexanderstreet.com/preview/work/2407442>.

¹³⁰ See Clinton's radio address at <http://www.presidency.ucsb.edu/ws/index.php?pid=46147>.

¹³¹ Primarily, lower to middle-class workers viewed NAFTA as likely to bring higher qualities of life in Mexico, and Americans actually predicted job losses despite the overall positive view of NAFTA.

NAFTA as a Violation of International Law

Building on the information discussed thus far, this section argues that NAFTA was criminal and criminogenic on two counts. First, the negotiation process, responsible for creating the type of NAFTA contained in the final text, was criminal and criminogenic. The negotiation process was criminal and criminogenic for three interrelated and overlapping reasons: (1) a TCC heavily influenced the outcome; (2) it was undemocratic; and (3) the opposition was often repressed. And secondly, the NAFTA policy itself was criminal and criminogenic. This argument is comprised of two major components. First, NAFTA as a policy encapsulates only state and corporate interests while neglecting average citizens and the various intellectual voices that criticized NAFTA by predicting negative social outcomes. In short, the final policy does not reflect the multitude of risks highlighted by NAFTA critics. Second, the written text of NAFTA is criminal for failing to include protections of human rights for average citizens, and instead, providing business interests with a litany of rights to protect their investments.

NAFTA Negotiation Process as Criminal

TCC Heavily Influenced NAFTA Negotiations

The TCC had a massive influence on the progression of NAFTA as seen in the massive campaigns to sell NAFTA executed in the United States and Mexico.¹³² Corporate interests influenced NAFTA negotiations directly (Pastor and Wise 1994). For instance, General Motors, Chrysler, and Ford had establishments and interests in all three countries. Much of the auto industry agreements correlated with the interests of these mega corporations (Mayer 1998). In some instances, the Mexican business elite was reported as running the negotiations (Morris

¹³² See Weisskopf's (1993) *Washington Post* article for a summary of how business rallied to get NAFTA through.

1995). Pro-NAFTA business leaders had access and relationships with Bush, Clinton, Salinas, and their respective administrations (Hogenboom 1998). And, even the supposedly “neutral” international financial institution, the World Bank, actively supported NAFTA. In Mexico, SECOFI established the NAFTA Advisory Council which played an integral role in creating an image of unanimous support for NAFTA (Heredia 1994). The council consisted of trade union bosses, leaders of small farmers’ leagues, and leading academics who were all tied to the PRI in some way. Despite the existence of substantial criticism of NAFTA, the government and the COECE (large Mexican conglomerates who were already involved in international trade and export markets) pushed for its ratification (Thacker 1999; Alba and Vega 2002). These mechanisms allowed the key players in the NAFTA negotiations to ignore the concerns of those most likely to be negatively affected by NAFTA – indigenous groups, small subsistence farmers, and small and medium-sized businesses. The potential and likely costs and harms of NAFTA were never addressed by Salinas and his constituents, or their U.S. counterparts. No democratic debate was held. Mexican television – where most Mexicans received their information – overwhelmingly disseminated pro-NAFTA propaganda and excluded critical analysis of it (Heredia 1994). Radio commentators and journalists who aired material that questioned the benefits of NAFTA faced extreme repercussions.¹³³ NAFTA supporters from both the United States and Mexico publically insisted that Mexican citizens expressed widespread support for the agreement, despite clear evidence to the contrary (Banamex 1993). The side agreements to NAFTA demonstrate the small concessions made by the initial authors of NAFTA to some of its so-called “nonexistent” critics. The business community never wanted to discuss the side agreements, as even the U.S. Chamber of Commerce was against bringing these issues to the

¹³³ Heredia (1994) explains that this happened to Miguel Angel Granados Chapa who was expelled from Express Radio after hosting Cuauhtémoc Cárdenas.

table (MacArthur 2000). In fact, the Chamber of Commerce was more direct and clear about its disapproval.

To understand the position of the TCC on NAFTA, consider the case of Collectron, a company that taught business managers and leaders the tactics and advantages of outsourcing to Mexico. Collectron held a seminar in Tuscon, Arizona, which MacArthur (2000) secretly attended. The seminar encouraged outsourcing to Mexico by describing it as a very secure opportunity for major profits. The Mexican workforce was described as extremely exploitable with wages essentially locked in place with a low ceiling. The instructors of the seminar informally taught NAFTA loopholes such as circumventing rules of origin. Instructors at Collectron described the restricted salaries and lack of unions, with one Collectron employee even observing that Nogales, the city in Mexico they advocated as a relocation site, was “virtually union free” (MacArthur 2000:340).¹³⁴ Companies avoided bidding wars over keeping good employees to secure low wages. Another internet brochure also advertised relocating to Nogales (MacArthur 2000:344).

Consider also the common theme of secret meetings, such as the one at the mansion of Ortiz Mena, a Mexican economist who previously served as President of the Inter-American Development Bank and as Mexico’s Secretary of Finance. This meeting, as described by Oppenheimer (1998), demonstrates the massive amount of wealth influencing macro-level structural changes.¹³⁵ On February 23, 1993, thirty of the wealthiest men in Mexico, who had acquired their wealth in the recent privatization, met with President Salinas to discuss the upcoming Mexican election. Since the fate of NAFTA could continue into a presidency after

¹³⁴ See MacArthur (2000:344) for one internet brochure for Dabdoubs suggesting relocation to Nogales.

¹³⁵ Oppenheimer’s (1998) account is based on six interviews with participants at the PRI fundraiser, including PRI president Genaro Borrego, president of a major construction firm in Mexico, Gilberto Borja, and Senator Miguel Alemán.

Salinas, the election was paramount. The primary goal on the agenda was to secure funding for the PRI without relying on government finances. Those at the meeting agreed with this proposal unanimously. Carlos Slim was among those who agreed with the proposal, but wished that these discussions were done more privately without public exposure that could “turn into a political scandal” (Oppenheimer 1998:86). His fears were quickly realized when the press caught wind of the surreptitious meeting (Golden 1993b; Oppenheimer 1993). A \$25 million dollar contribution was requested from each meeting attendee, and the Mexican public was at a loss trying to figure out how these seemingly middle-class businessmen could afford such large contributions. Some of the attendees expressed their concern over coming up with the \$25 million, but Don Emilio stood up and urged all of them to contribute by saying, “I, and all of you, have earned so much money over the past six years that I think we have a big debt of gratitude to this government” (Oppenheimer 1998:87). Emilio more or less openly admitted to ongoing state-corporate collusion. By the end of the meeting, \$750 million was raised, and the men swore each other to secrecy and left in their limousines. To put the \$750 million contributions into context, that figure was more than five times the total Democratic Party expenditure for Bill Clinton’s successful campaign in 1992 (Alexander 1996). Keep in mind that this is at a time Mexico’s GDP was only ten percent of that of the U.S. economy.¹³⁶ With the amount of money flowing back and forth between the state and business, one should not be surprised that the final NAFTA heavily favored business, and the TCC more generally. For instance, although NAFTA was built around the premise that government protectionism would be removed, the Mexican government offered its big business friends a head start in the game by keeping protections for 12 to 15 years

¹³⁶ See OECD GDP data at <https://data.oecd.org/gdp/gross-domestic-product-gdp.htm>.

after NAFTA. The major influence of corporate money largely contributed to an undemocratic negotiation process.

NAFTA Negotiations were Undemocratic

NAFTA's negotiation process was a violation of international law, specifically a violation of the United Nations (UN) International Bill of Human Rights including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), due to its negotiation process being undemocratic and repressing the opposition.¹³⁷ First, the negotiation process was undemocratic for a variety of reasons including its secrecy, lack of oversight, screening of popular involvement, restraints on future governments, and quid pro quo political deals.¹³⁸ The first article of the ICCPR and ICESCR state:

All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Although NAFTA negotiation secrecy and lack of transparency have been extensively discussed, the NAFTA text was not made available to the public until after Clinton was inaugurated. Even at that time, the NAFTA text came with a hefty price tag, \$42 despite it likely costing about \$5 to print with a commercial printer (Nader et al. 1993). If a concerned citizen successfully navigated all of these obstacles, there was still the uphill battle of deciphering the purposely recondite 1,000+ page document. In Mexico, the public never endorsed the neoliberal policies of the

¹³⁷ It is important to note that the United States has signed, but not ratified the ICESCR, thus it is not legally binding to the United States. Thus, any part on the United States that violates the ICESCR is not an actual HRV because it is not binding. However, using the definition of crime laid out in Chapter 1, any U.S. violation of this international treaty will be regarded as criminal.

¹³⁸ See Dent (1994) for an in-depth examination of NAFTA as a violation of international law.

1980s (Dent 1994). Instead, an illegitimate, authoritarian government furtively negotiated the agreement while circumventing national debate and prohibited the involvement of the Mexican Chamber of Deputies (Grinspun and Kreklewich 1994). Meanwhile, no independent body provided oversight to ensure that the negotiations were democratic. The TCC led the efforts to shape a policy that would be most beneficial to it.

Considering that one of NAFTA's aims was to cement the neoliberal policies of the 1980s making them more difficult to remove for future administrations, many of the steps taken to achieve such a goal restricted democracy. Largely related to NAFTA's lack of transparency and secrecy, popular involvement was restricted through various mechanisms. Corporate leaders were connected to many of the negotiators, and consistently received weekly briefings on what was happening during the negotiations (MacArthur 2000). While business elites effectively had seats at the table, the opposition lacked the resources and cohesiveness to fight back effectively (Mayer 1998). Furthermore, anyone who was opposed to a free trade deal was screened out of participating in the negotiations. Thus, everyone involved agreed on a free trade deal, and merely the details were up for negotiation. Whereas the state inhibited the public from joining the negotiations, political elites received furtive deals to secure their votes.

Repression of Opposition

The second major reason why the NAFTA negotiations violated international law was the repression of the opposition that accompanied these negotiations, such as in Salinas's efforts to arrest major union leaders. Dent (1994) argues that NAFTA did not necessarily violate civil and political rights per se, but oftentimes opposition arose due to the poverty and inequality that stemmed from neoliberal policies. The state then, at times, responded to the opposition with

repressive measures. Several physical integrity rights violations have been documented in Mexico since the late 1980s following this pattern (Acosta 1993). Most commonly, the victims of these violations were political opponents and union members. Oftentimes, Mexican unions are forced to be affiliated with the PRI, and many union leaders are bribed to keep their members in line (Bacon 2004). A labor protest at the Ford Motor Company in Cuautitlán offers one example of CTM strikebreakers attacking workers, leading to the death of one worker (America's Watch 1990). The Mexican state also gave near immunity to the military after the atrocities committed in the Chiapas region before and after the Zapatista uprising (America's Watch 1994). In Mexico, repression took the form of violence, while in the United States, repression of the opposition resulted more in the form of withholding information, as in the NAFTA campaigns that focused on highlighting its benefits and neglecting or even hiding its potential costs.

Although NAFTA opposition arose in all three countries, the Mexican coalition held the least power and influence over changing the course of neoliberal policies. Organized labor was particularly weak in Mexico because the national labor organizations were predominantly affiliated with the PRI, and thus capitulated to the business elite (Massicotte 2009). The PRI also actively worked to disrupt and dissolve social movement organizations to weaken the possibility of a threat to PRI's political stranglehold (Cadena-Roa 2009). The opposition in all three countries banded together, striking common ground on appeals to democracy, human rights, economic justice, and environmental sustainability, yet their strength through integration did not really solidify until after NAFTA was ratified (Ayres and Macdonald 2009). While the opposition in Canada and the United States successfully mobilized a large segment of their populations and drastically shifted public opinion on NAFTA to slightly favor a rejection of the

treaty, NAFTA still was signed and implemented. In both countries, the possibility of rejecting NAFTA through a popular referendum was blocked (Dent 1994). The U.S. success of altering public opinion is owed to opposition on both sides of the political spectrum with key figures such as Ralph Nader and Pat Buchanan (Scott 1998). As for Mexico, the authoritarian governmental structure was too much to overcome for these social movement organizations to alter public opinion on NAFTA. However, these groups likely constructed a new identity and solidarity for North Americans that strengthened future social movements' ability to shape major policy decisions (Robinson 2015).

The PRI Mexican government was masterful at quieting public discontent through service projects that would distract the poor from their troubles and causes of them. In addition to PRONASOL and PROCAMPO, other concessions included numerous basketball courts that the state provided in nearly every Indian community (Oppenheimer 1998). Oppenheimer observed that most of the people in these communities had no idea how to even play the sport. Another example was the ostentatious \$11 million opera house built in the jungle. Arguably, the enormous amount of money spent on projects like these may have provided more benefits if spent on real infrastructural improvements such as water filtration plants, power plants, or garbage disposal facilities.

NAFTA Policy as Criminal

NAFTA, as a policy, was criminal on two counts. First, the NAFTA policy was criminal because it ignored or failed to address the numerous studies and predictions that suggested potential negative effects of implementing NAFTA. The expediency of passing NAFTA, and the lack of caution, contributed to the criminal and criminogenic nature of the policy. Second, the

NAFTA text itself is criminal for its failure to include protection of human rights, the passages that criminalize state-corporate crime controls, and the bias toward business interests.

People's Voices Unrepresented

NAFTA was partly criminal because it did not consider the voices of the people which relates directly to the undemocratic negotiation process and repressive measures taken against the opposition (Brown 1993). NAFTA negotiations did not include the opposition or many citizen groups, thus, the final NAFTA policy did not address ordinary people's concerns.

Kingsolver (2001) explores the various stories of NAFTA by conducting interviews and doing ethnographic work with a widely diverse set of people, both for and against NAFTA.¹³⁹

People's social interactions and social positioning fed into a struggle over the symbolic representation of NAFTA, where a more positive image of NAFTA dominated the major public coverage, particularly in Mexico. The amount of power possessed by the differing groups and individuals reflected their influence over the public discussion on NAFTA. Most of the differences between Kingsolver's NAFTA stories rested in the answer to the question "who did NAFTA benefit?" The two answers to this question are best summarized as a neoliberal NAFTA story and a counterstory that fits well with the writings of Karl Marx and Friedrich Engels.

The conflicted NAFTA story, pieced together by Kingsolver's (2001) interviewees, was one of a TCC that was portrayed as benefiting all of society despite only really being beneficial to a select few. For instance, the Canadian government seemed to promote NAFTA, while the public did not support it (Daly 1990). While members of the TCC touted the marvels of NAFTA, workers questioned the benefits of NAFTA they would likely experience (Kingsolver

¹³⁹ The entire transcripts are available in the archives of the National Institute of Anthropology and History in Morelos and the Department of Anthropology at the University of South Carolina.

2001). With such a large number of Salinas's administration's cabinet members having a U.S. education from elite schools, their stories reflected an agreement on the fruitfulness of free trade and market liberalization. Similarly, members of the Clinton and Bush administrations and corporate executives viewed NAFTA as a remarkable opportunity for economic progress (Chavolla Nava 1993). In response to farmers' concerns, President Salinas' rhetoric attempted to comfort *campesinos*. However, he also used the military to remove indigenous activists from the central town square where he gave this "comforting" speech (Kingsolver 2001). Salinas and the Mexican state used tactics of exclusion to create an image of support for his policies, and even took repressive measures to discourage worker organization. Many workers' stories displayed trepidation for leaving their futures to an unregulated free market. The RMALC drafted an alternative to NAFTA that took into consideration the possible negative outcomes of NAFTA for workers with 52 NGOs as signatories.¹⁴⁰ Yet, their suggestions were never addressed in the NAFTA text. Various stories of farmers expressed even more fear than other laborers. Most of the farmers expressed concern for economic survival. Many of them articulated a willingness to surrender their land if a factory was built on it and jobs were guaranteed for them and their children.

Critical Intellectual Voices Unrepresented

Citizens were not alone in expressing their concerns, as many academic scholars and policy analysts raised serious issues surrounding NAFTA. Although both positive and negative outcomes of NAFTA were acknowledged, some potential costs and harms of NAFTA should have been cause for concern. For instance, in response to Kehoe's (1994) conclusions that

¹⁴⁰ In a letter from Alliance for Responsible Trade/Citizen Trade Campaign to President-elect Clinton on Dec. 15, 1992 as cited by Kingsolver (2001).

Mexico had much to gain from NAFTA, Grinspun and Cameron (1996:170) demonstrate that classic neoliberal assumptions built into many of the economic models assessing NAFTA lack the inclusion of a series of complicating factors such as:

political instability, structural unemployment and other institutional characteristics of the labor market, eroding educational and health-care systems, societal tensions, rural impoverishment, financial speculation, environmental degradation, and a chronic lack of investment in research and technology, particularly by subsidiaries of transnational corporations.

Despite such complicating factors, nearly all economists early on believed NAFTA to be a positive development-enhancing policy (Nasar 1993), although some economists did provide economic analyses that predicted negative effects on labor (Cypher 1993). Faux and Lee (1993) criticize the ongoing groupthink of economists as evidenced by the use of general equilibrium models in most economic studies. They demonstrate that these models make the dubious assumption of full employment and do not assume a shift in productive investment from the United States to Mexico despite there being overwhelming evidence that the latter would occur. Of course, NAFTA was primarily crafted for that specific purpose.

Another major argument perpetuated by NAFTA proponents was that neoliberal economic policies would improve productivity and increase wages (Orme 1996). Thus, Mexican wages were assumed to be low because of low productivity. Through fieldwork research, Shaiken (1990) demonstrated the fallacy of high productivity's link to higher wages. Shaiken demonstrates that productivity gains did not bring wage increases to Mexico, despite claims to the contrary. Instead, he provides more evidence for social dumping, or the use of cheap labor, occurring in Mexico. Rendón and Salas (1993) offered some reasons why the focus on increased wages and job creation was problematic. First, they predicted NAFTA to inspire the acquisition of existing plants more so than the creation of new ones. Even if new plants could be expected,

they would need to create a large number of jobs to offset the losses expected from technology and plant closings. Second, technological advancement was expected to increase productivity levels while decreasing the demand for workers. Third, some existing firms were expected to close due to increased competition. Fourth, the suffering manufacturing sector struggled throughout the 1980s and the mean size of those sectors shrunk dramatically leading to more instability. Small firms with few personnel were not very profitable and had high rates of failure (Salas 1992).

During the time of NAFTA negotiations, official unemployment appeared low, but this was illusory. The International Labour Organization (1988) considered people employed if they worked just one hour a week, and unpaid work was considered employment. In addition, anyone who spent more than two months looking for work was considered no longer unemployed, but “economically [in]active” (Rendón and Salas 1993:114). No unemployment insurance was offered in Mexico, and likely coerced people to take menial employment over nothing. Lastly, if people were not working, but did not look for work during the reference period, they were not considered unemployed. Little pre-NAFTA attention was paid to the massive un- and underemployment in Mexico—largely due to these miscategorizations—amounting to somewhere between 30 and 70 percent of the labor force leading up to 1992 (Rothstein 1992). With the proposed NAFTA, Mexico expected increases in capital concentration and the inequality gap, and conducted virtually no research on how NAFTA might impact employment (Hogenboom 1998). Overall, the NAFTA policy does not consider the asymmetries of social welfare between the three countries in the agreement, and was not expected to positively impact workers in Mexico. Spain’s similar position in the European Union provided evidence that when

foreign investment flowed in after 1986, extant firms were purchased, new plants were not established, and virtually no job creation occurred in the export sector (Serrano 1993).

Downward harmonization of wages was another fear expressed by critics of NAFTA, this meant that the higher wages of U.S. and Canadian workers would likely decrease to come in line with lower Mexican wages rather than the other way around. The fear of downward harmonization is not unfounded, as this phenomenon was present in the earlier *maquiladora* program (Bognanno and Ready 1993) between the United States and Mexico, and in the years following the CUFTA agreement (Campbell 1993). In the *maquiladora* sector, Mexico's strong labor standards rarely were enforced, keeping wages low and inviting foreign investment (Heredia 1994).¹⁴¹ Yet, the United States was able to praise Mexico for its progressive labor laws, but in practice, enforcement is often left to unaccountable government officials who have more at stake in securing their own political and economic interests.¹⁴² U.S. political leaders have failed to criticize the authoritarian regime in Mexico as long as U.S. economic interests are being met. U.S. corporations engaged in union busting tactics in Mexico to thwart organization of workers. They also kept wages low by the weakening unions through corrupt relationships between the PRI and national union organizations. For example, the CTM is the official PRI government national labor union association where its secretary general, Fidel Velazquez, has controlled the CTM since the 1940s, and has actively subverted union wage and benefit demands in exchange for public office access and political favors. Compounding the corruption, only 35 percent of Mexican workers are unionized, and of those that are, about 75 percent are

¹⁴¹ NAFTA perpetuates the use of the U.S.-Mexico border as a tool for maintaining the access of cheap, complacent labor for exploitation by U.S. manufacturers. The *maquiladora* industry demonstrates how this tool was effective for corporations before the signing of NAFTA (Erfani 1992). The *maquila* program was implemented under a partnership between wealthy corporate investors and an authoritarian Mexican government.

¹⁴² Von Bertrab (1997) similarly praised Mexico's labor law as more progressive than the equivalent U.S. labor law without recognizing how poorly those laws are upheld in practice.

represented by the CTM. Similarly, after CUFTA, downward harmonization occurred, but it was not U.S. workers, but rather Canadian workers who saw their wages and benefits erode as manufacturing jobs were outsourced to the U.S. Sun Belt states or the maquiladora sector (Campbell 1993). Canadians had enjoyed better wages, benefits, and stronger unions than U.S. workers, but in the immediate years after CUFTA these conditions deteriorated (Nichols 1993). The Business Council on National Issues (BCNI), the major business lobbying group in Canada, actually promised to leave social spending untouched, but reneged on that promise after CUFTA passed (Campbell 1993). The Canadian government was swayed by the BCNI's lobbying efforts to cut social programs and began its austerity approach after CUFTA. More corporations in Canada were foreign owned after CUFTA. Similarly to CUFTA, NAFTA was predicted to shift power away from the Canadian government towards multinational corporations, primarily those that were U.S. owned.

Most early analyses also demonstrated the likely dire outcomes for both grain and maize producers in Mexico (Robinson et al. 1991), and even the World Bank came to a similar conclusion (Levy and van Wijnbergen 1992). Differences in labor productivity were used as a justification in the agricultural sector as well, since U.S. productivity was higher for nearly every crop, but this ignores the fact that less than 50 percent of *ejidatarios* have access to resistant seeds, advanced fertilizers, or mechanical tractors (Cornelius 1992). Peasants were not the expected benefactors of increases in foreign investment, and changing intellectual property rights were thought to be a major obstacle to farmers.¹⁴³ Foreign investors were much more likely to

¹⁴³ Grinspun and Cameron (1996) accredit Vandana Shiva for raising concern over the imminent intellectual property rights, around the NAFTA years, and the expected limitations it would place on creativity in biodiversity. Shiva projected that the new laws would remove the farmer as a true competitor with TNCs and make the farmer dependent on corporations for supplies. Traditional farmers shared information for years with a loose concept of ownership and were most likely to be victims of the new policies.

invest in large-scale production outfits. Young (1995) noted the difficulty for farmers in switching their current crops or traveling long distances to change work. Furthermore, since U.S. agricultural workers were paid as much as six times more than their Mexican counterparts, more workers were expected to “compete for these jobs, working under worse conditions and earning less for it” in Mexico after NAFTA (Young 1995:55). Alain de Janvry and de Anda (1995) argued that smaller maize producers would be affected very differently by NAFTA. The most at risk were nondiversified maize sellers heavily dependent on the price of maize (39.8% of maize producers in Michoacán, 27.8% in Sinaloa, and 42.9% in Veracruz). Although this constituted a minority of maize producers, it was significant for the welfare of the rural population. NAFTA did not establish institutions to help ease transitions by providing local buyers (for diversification) and technical assistance to increase yields (for modernization). Barry (1995) emphasizes that even when neoliberal economic policies brought some general benefits to Mexico, indigenous communities did not reap those benefits. Instead of protecting the indigenous, NAFTA favored investors collaborating with large-scale agribusiness. Overall, maize-dependent producers were placed at the mercy of institutions capable of providing skills, resources, and relief. NAFTA and the Mexican government neglected family farms.¹⁴⁴

As with labor, the environment was another major concern prior to NAFTA, specifically numerous studies highlighted the environmental pollution and degradation on the U.S.-Mexico border (Hogenboom 1998; Simon 2014). Much like with wage harmonization, critics of NAFTA feared U.S. downward harmonization of environmental policy or enforcement (Hogenboom 1998). Unlike the strong written labor laws in Mexico, Mexican environmental laws were lax and in their infancy. During the NAFTA debates, Mexico created policies mostly as window-

¹⁴⁴ See Barry (1995) for his suggested *campesino*-directed NAFTA alternative.

dressings to save face, but they were largely ineffective. Simultaneously, Mexico slashed expenditures for environmental programs. Furthermore, the issues related to the deteriorating condition of workers under NAFTA were linked to environmental problems. For instance, industrial development and poverty contributed most significantly to environmental degradation, and neoliberal policies increased both. Agricultural industrialization in Mexico particularly created several environmental problems including soil erosion, water scarcity, and deforestation. Salinization contributed to enormous crop reductions, and a dwindling water supply complicated irrigation and agricultural growth (Barry 1995).

Issues of oil drilling, sprawling urbanization, and uncontrollable urbanization added to the precarious environmental situation in Mexico (Hogenboom 1998). The United States has strategically engaged in policy to control the North American oil supply, and NAFTA was a mechanism partially built to secure control of major oil reserves (Morton 1992; Dillon 1993). Since Mexico's constitution was written in such a way to keep oil publicly owned, U.S. oil interests crafted the NAFTA text to "respect" the Mexican Constitution while maintaining purposely vague passages that could be interpreted in favor of their interests (Cameron and Tomlin 2000).

While criticism of the potential negative environmental impact of NAFTA mounted, NAFTA proponents relied on untested arguments. For example, the aforementioned work by Grossman and Krueger (1991) was probably most cited to support the notion that environmental harm caused by NAFTA was unlikely. However, as with other classical neoliberal economists, complex phenomena were ignored including "transformations in agriculture, the regime of exploitation of natural resources, the role of the state in enforcing environmental standards, [and] the power relations that affect those standards" (Grinspun and Cameron 1996:176). In one

interesting economic analysis, Shrybman (1993) investigated the potential impacts of NAFTA on the environment. He argued that reducing export controls, import controls, and the use of non-tariff trade barriers – all of which are included in NAFTA – have negative effects on the environment. Despite these environmental costs, the initial NAFTA text dealt very little with protecting the environment.

The hasty and haphazard push for NAFTA led it to fall short in protecting the environment (Barry 1995). Natural resource extraction was left unregulated by NAFTA. NAFTA offered no protections for sustainable agriculture. Even mainstream U.S. ENGOs supported unsustainable patterns of economic growth and reduced communal capacity for future development. Massive government subsidies fueled the capitalist penetration of the agricultural sector producing crises of sustainability. Lax regulations allowed for extreme pesticide use resulting in Mexicans having one of the highest levels of toxins in their bloodstreams in the world in 1993 (CNDH 1993). In addition, U.S. corporations operating in Mexico before NAFTA contributed greatly to the toxicity levels in the waterways and sewers without any government sanctions (Bognano and Ready 1993). Governmental hydroelectric dam projects did not consider the effects of inhabitants in the area contributing to the displacement of poor *campesinos* (Barry 1995).

To summarize this half of the argument, NAFTA was criminal because it embodied and symbolized neoliberal economics, and research on neoliberal economic policies provided evidence of widespread harmful effects (Galbraith 1993; Nader et al. 1993; Roett 1993; Grinspun and Cameron 1993; Bognanno and Ready 1993; Betts and Slotje 1994). Despite the existence of such evidence, the NAFTA policy addressed very few of the concerns raised about its potentially harmful outcomes. The overwhelming neglect of these legitimate concerns makes the policy

criminal considering that many of the likely outcomes, as listed, were violations of the UN Declaration of Human Rights. The NAFTA text itself helps support this argument.

The Criminal Text of NAFTA

Bognano and Ready's (1993) edited volume is a collection of essays by a myriad of experts, community leaders, and government officials who engaged in a debate over NAFTA on November 19-20, 1991, at a conference held at the Minneapolis Convention Center. Although the arguments throughout the book range from highly favorable to highly critical of NAFTA, a middle ground appears quite frequently among many of the contributors: NAFTA, in its proposed form, needed to include some more protections, most importantly a social charter of some sort. A majority of the authors saw NAFTA as potentially dangerous if there was to be no inclusion of a social charter that could address the large differences between the U.S., Canadian, and Mexican populations, primarily standards needed to be universally stated and enforced to ensure that wages, labor standards, and environmental conditions would harmonize upward towards the United States and Canada rather than downwards towards Mexico. The European Union's social charter offered both free mobility of labor and a common external tariff to ensure the harmonization upwards and to avoid pressures toward the gutting of worker protections such as retirement, proper work breaks, unemployment, and paid leave. Furthermore, the European Union's social charter includes social assistance, collective bargaining, vocational training, and health and safety standards.

Despite the extensiveness of NAFTA, it never mentions human rights — albeit twice to name the Canadian and Mexican human rights commissions — even though linking human rights with international trade has been a strategy implemented by the United States since World

War II (Smith 1994). The United States and most of the developed world have ideologically linked market economies with democratic values, and economic trade policies have been the primary instrument for manifesting this ideological linkage. However, the United States has historically relied more on unilateral action than multilateral agreements to uphold human rights (Abbott 1981; Smith 1994). In particular, the United States has used economic sanctions to enforce human right standards in other countries, more so than any other country.¹⁴⁵ More often than not, the United States has used measures such as export and import restrictions, military and economic aid removal or reductions, and restrictive votes in IFIs over loan issues to address its security interests (Malloy 1990).¹⁴⁶ In addition, the United States has not granted trade preferences in response to a country's HRVs which typically stops tariff reductions that other countries receive.¹⁴⁷ Although U.S. support for the human rights regime has wavered at times, it has remained consistently subservient to security concerns (Cohen 1982).

The United States is the most unique of the NAFTA countries with its avoidance of multilateral agreements and resistance to ratification of several major UN human rights conventions. At the time of the NAFTA negotiations, the United States was a signatory to three of the seven major UN human rights conventions: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, Convention Against Torture, and Convention on the Prevention and Punishment of the Crime of Genocide (Smith 1994). In fact, the United States has still, to this day, not ratified the UN International Covenant on Economic, Social, and Cultural Rights, despite the ratification by every other developed nation. Even when treaties are signed, the U.S. Constitution may allow federal legislation to override any

¹⁴⁵ Talk by Mark Sommer entitled *Smarter than Bombs: How to Fortify the Still-Spotty Effectiveness of Sanctions* as cited by Smith (1994).

¹⁴⁶ See Smith (1994) for a list of countries the United States has sanctioned.

¹⁴⁷ See Smith (1994) for specific examples of countries.

international agreement when discrepancies arise. Smith (1994:812) argues that the Organization of American States (OAS) provides an opportunity to establish the much needed linkage between human rights and trade policy, but notes that the United States has “been hostile to the OAS human rights regime.” NAFTA appeared to be the perfect opportunity to establish this link since HRVs were without question occurring (America’s Watch 1990; 1992; Shepack 1991). Congress and the public recognized that human rights were a concern given that little discussion over NAFTA covered workers’ rights and social dumping was a major issue. Yet, the United States continued its unilateral approach at addressing human rights in face of various violations. On a larger scale, the unilateral pursuit of improving human rights distanced Mexico from a future possibility of a multilateral agreement.

Even with an overwhelming recommendation to link NAFTA to human rights coming from various NGOs, the United States sided with NAFTA proponents who touted that the agreement was “only a trade deal” and it did not need to include human rights (Dent 1994:69). In response, Dent (1994) demonstrates not only the need, but the human rights failures of NAFTA. Neoliberal globalization eased the move of capital without changing labor’s mobility, which freed the way for exploitation of third world nations’ cheaper labor in producing goods with the intent of selling them in first world markets. Therefore, Dent (1994) argues that human rights provisions are a necessity in major trade agreements, especially NAFTA because of its inclusion of a peripheral nation — Mexico.

Considering the overwhelming neglect of human rights in NAFTA, the text of the agreement can be viewed as criminal and criminogenic primarily for what it lacks. However, aspects of the text also violate human rights. Economic rights are only superficially mentioned in NAFTA and Grinspun and Kreklewich (1994) argue that NAFTA’s policies are more in line

with the opposite of its promises. For instance, Dent (1994:79) summarizes the NAFTA text and its likely economic outcomes, while also grouping it with the CUFTA and its actual outcomes:

[D]ue to their recessionary biases, their monetarist policies which drive interest rates and exchange rates higher, their reduction of fiscal expenditures, the negative impact of lowered protection on weaker sectors, privatization layoffs, and labor market segmentation, neoliberal economic agreements have the opposite result of instead increasing unemployment and inequality and lowering incomes.

Article 1106 in Chapter Eleven of NAFTA sets performance requirements that restrict the nation receiving foreign investment from gaining full benefits. Furthermore, policies are in place to disallow governments from creating jobs in high technological industries. More generally, NAFTA regulations reduced any government's ability to grow the public sector in providing secure employment.

Various other rights never made it into NAFTA. Despite the UN International Covenant on Economic, Social, and Cultural Rights guaranteeing all state parties the right to social security and social assistance to all people, social programs are not guaranteed and no standard for social security is set in NAFTA (Dent 1994). The Mexican social security system has drastically changed under IMF structural adjustment programs resulting in it shrinking by 40 percent from 1981 to 1991 (Ecumenical Coalition for Economic Justice 1991). Thus, NAFTA did not change the Mexican social security system, rather it allowed for the trend towards reducing social security to continue and further cemented the changes. Article 12 of the ICESCR also covers the right to health, holding all state parties responsible for assuring medical service and attention to all in need. Yet, no basic rights to health care were ensured by NAFTA, and the trade policy incentives further cuts of the public health system in Mexico (Dent 1994). The intellectual property provisions in Chapter Seventeen of NAFTA greatly benefited multinational pharmaceutical companies by establishing a 20-year monopoly on drug patents, while offering

nothing for the common citizen. Similar to social security, the IMF policies reduced the public health sector, shrinking the per person budget of the Ministry of Health by 50 percent from 1983 to 1990 (Laurell and Elena Ortega 1992). These cuts led to decreased access and quality of care, depressed salaries, and deskilled workers.

NAFTA also either failed to include or obfuscated many environmental rights. The right to a clean environment is subsumed within the right to health in the ICESCR. Not only is it unaddressed, NAFTA provisions are conducive to environmental degradation (Dent 1994). NAFTA did not provide protection for people who have had their environmental rights violated, and it offered them no recourse or method to make a claim. Since each country maintains its own right to enforce its own environmental standards, no minimum environmental standards were set. NAFTA also did not attempt to address the problem of competitive advantage that allowed companies to relocate from a country with high environment standards to one with low standards. In regards to subsidies, NAFTA clearly favored gas and oil companies by permitting subsidies while prohibiting similar subsidies for alternative, cleaner energy sources. NAFTA Article 607 specifically states the preference given to “oil and gas exploration.”¹⁴⁸ Sanchez (2002) further noted the limits of environmental enforcement provisions in NAFTA. First, the demands of environmental groups and the public were not incorporated into the agreement. Second, the Secretariat of the North American Commission on the Environment has limited power of investigation and enforcement under NAFTA. Daly (1992:129) also argued that NAFTA might negatively impact the environment by simply solidifying the neoliberal ideology that assumes “the whole world and all future generations can consume resources at the levels current in today’s high-wage countries without inducing ecological collapse.” Lastly, although

¹⁴⁸ See also *The Economist*, February 29, 1992: 25 for details on Texas’ oil and gas constituency’s interest in free trade.

NAFTA side agreements allowed for one or both countries to impose economic sanctions on a country that fails to uphold its own national laws, sanctions were never used (Simon 2014).

Unsurprisingly, side agreements were not effective in accomplishing stated goals. Although this could not have been known at the time, much of this chapter should serve to illustrate the warning signs.

The North American Agreement on Environmental Cooperation (NAAEC) hardly alleviated any of these issues. No commitment to increase environmental enforcement budgets was included in the NAAEC. Environmental law does not include laws that primarily focus on natural resource extraction, and accordingly, there is no clarity as to whether the NAAEC covers “strip mining, soil conservation, energy extraction, coastal fishing, and sustainable timber harvesting” (Charnovitz 1994:7). The NAAEC circumscribes the environment to include only the territories of the nation under investigation. Thus, if Mexico imposed a law affecting the Gulf of Mexico it would not be subject to NAAEC reporting or dispute settlement because it is not restricted to only Mexican territory. In the case of embargos on particular products for environmental reasons, if the United States placed an embargo on Mexican corn, for instance, Mexico could challenge the embargo with the United States bearing the burden of proof under the NAFTA dispute settlement laws according to Chapter Nineteen. In other words, trade is placed before the environment. In addition, a large amount of uncertainty surrounds how an NAAEC dispute panel is to deal with enforcement failure.

Labor rights received more attention than many of the other human rights resulting in the North American Agreement on Labor Cooperation (NAALC), but some critics have argued it is “toothless” since it does not require compliance with international labor standards (Dent 1994). Instead, the NAALC allows states to meet only their own national labor standards which can be

much worse. Therefore, the NAALC allows a country to gain a competitive advantage by not recognizing international labor standards, such as the right to form a union, and worker protections were limited. Trade unions, in particular, experienced high rates of repression by the Mexican government, and the Mexican workplace was at least twice as dangerous as those in Canada and the United States (Velasco Arregui 1992). Yet, the NAALC offered no protections for the heavily exploited Mexican workforce. Furthermore, despite a widespread consensus that unskilled workers were the most likely group to suffer from NAFTA, programs to help these workers adjust to the economic changes, such as unemployment payments, job training, or job dislocation programs designed to help workers find new gainful employment, were all missing from NAFTA (Bognano and Ready 1993). Labor organizations actually sought this help by urging Congress to pass the Save American Jobs Act in 1992, but this bill did not show up in Congress until 2012 under Barack Obama. If countries wished to dispute labor practices, they would be limited to cases involving child labor, the minimum wage, or occupational safety violations.

Although NAALC may have been the most ambitious agreement to link labor rights with trade, Human Rights Watch (2001) argued it is remarkable for its deficiencies. Both international and national institutions were erected to deal with complaints and cooperation. Unfortunately, key labor rights are not the primary focus of the agreement, including freedom of association and the right to collective bargaining. Four structural problems were apparent in the side agreement according to Dombois, Hornberger, and Winter (2003). First, national sovereignty was emphasized over supranational legal standards, and thus external bodies had little jurisdiction over enforcing HRVs. As mentioned, the United States is notorious for disregarding international bodies of law. Second, limitations are placed on regulatory agencies'

ability to redistribute resources or compensate complainants for their conflicts. Conflict resolution was heavily influenced by U.S. industrial relations. Third, the political and economic dominance of the United States led to unequal policy agreements. Fourth, there is a lack of mechanisms to include public participation in conflict resolution and regulation. Independent unions had an uphill battle to stake claims and receive compensation as they typically faced a cooperative force of corporatist unions and state officials. Paradoxically, these public bodies were responsible for making claims while being excluded from the complainant's process. Although NAALC offered regulations for a minimum wage, child labor, and health and safety in the workplace, Heredia (1994) considered these regulations empty since there was no guarantee for rights to collective bargaining, union formation, union strikes, and freedom from interference from the government in the unionization process. He also criticized mechanisms for filing complaints and punishing corporate infractors. The government was to be held responsible for paying corporate penalties, thus taxpayers would be experiencing double victimization.

Consistent with NAFTA's shortcomings, all labor complaints in the first nine years following NAFTA, even those regarding the "more serious" breaches of labor law, resulted in ministerial consultations with no substantial changes in legal practices in any of the countries (Dombois et al. 2003). Furthermore, conflict resolution has consistently been delayed, sometimes lasting over two years. The bilateral ministerial consultations create a circumstance in which both countries benefit from few complaints, and resolutions of conflict that do not create labor conflicts. Since governments emphasize their sovereignty over labor laws, these complaints likely have little influence over labor practices. In addition, the emphasis on cooperation obfuscates the complaint by providing only limited publicity resulting in little pressure for change. Dombois et al. (2003) argued that more severe sanctions would not have

improved the NAALC. Its failure lies in the structure of interactions among the parties involved. For one, international or trilateral institutions play a marginal role in labor law creation or enforcement. Also, actors of civil society had next to no involvement in NAALC practices. Lastly, the need for conflict resolution was inhibited by distrust among participating governments.

NAFTA's Bill of Business Rights

Although the average citizen's rights were not respected by NAFTA, several articles covered rights for businesses and investors. As stated, investors had protections such as Article 1105 that provides an exit plan for investors. More or less, the article states that investors can revert to international law protections on investment if the environment in Mexico goes awry. Furthermore, Article 1108(7) (b) offers more protections to investors specifically in times of "armed conflict and civil strife." In other words, if unions or other members of political opposition protest, investors have an exit strategy. One of the major fears, that business elites had was expropriation of private property by future governments since Mexico had a history of nationalizing U.S. and other foreign-owned businesses. Article 1110 appeased these fears:

No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except: (a) for a public purpose; (b) on a non-discriminatory basis; (c) in accordance with due process of law and Article 1105(1); and (d) on payment of compensation in accordance with paragraphs 2 through 6.

Although a few exemptions existed, expropriation must be accompanied with compensation:

Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value. 3. Compensation shall be paid without delay and fully realizable.

Also, to protect against the Mexicans paying in pesos, the NAFTA stipulated that this compensation must be paid back in a G7 currency or by a means of compensation commensurate with currency fluctuations and accrued interest. Confidence in the peso was clearly questioned considering this NAFTA article.

One of the most important protections of business interests was in response to an aversion to protectionist policies.¹⁴⁹ The view of regulatory policy as threatening to free trade was not new with NAFTA and still exists today. In a recent policy analysis, Watson and James (2013:1) articulate the major problem threatening free trade as “the practice of using domestic environmental or consumer safety regulation as a way to disguise protectionist policy.” Such a fear was obvious in NAFTA by its removal of the common subsidies code, an agreement originating in the CUFTA, allowing the United States to interpret policies supportive of farmers, health, safety, labor rights, social equity, and regional development as unfair trade subsidies (Dent 1994). NAFTA Article 1907 2(b) states that a new system to deal with “government subsidization” should be created, but it is left open to accepting the current standards indefinitely.

NAFTA went a step further than simply removing a subsidies code to criminalize regulatory policies. In other words, NAFTA, far from protecting human rights, actually criminalizes policies that may further human rights such as regulatory policies protecting the environment or workers. Section C in Chapter Three of NAFTA provides businesses security from non-tariff trade barriers—restrictions, prohibitions, policies, stipulations, or other mechanisms, typically implemented by a government, that make the importation or exportation

¹⁴⁹ Many Republicans were particularly afraid that the NAFTA side agreements included too many regulations (Bradsher 1993b).

of a product more difficult and/or expensive. Thus, any environmental and/or worker protection policy that increases the difficulty or price of goods production could be classified as a non-tariff trade barrier and disputed under NAFTA. For instance, a U.S. company could challenge the Mexican government if it implemented a policy to protect the environment by reducing the amount of oil to be extracted, under the assumption that this policy would increase the price of oil. Natural resource preservation strategies, in general, are viewed as violations under NAFTA (Barry 1995). Furthermore, the burden of proof would be on Mexico to prove that its policy is in accordance with Article 712. Such a dispute would then be settled by an appointed panel of representatives according to Chapter Twenty of NAFTA. The power held by these dispute settlement panels is another undemocratic element of NAFTA (Brown 1993). In all elements, NAFTA restricts a state's ability to regulate social harms such as worker rights violations and environmental degradation (Hogenboom 1998).

One major case that illustrated the likely scenario of dispute settlement under non-tariff trade barrier provisions during NAFTA negotiations was the well-known Tuna Dolphin Case.¹⁵⁰ U.S. ENGOs boycotted Mexican tuna because Mexican tuna fisheries used driftnets to catch their tuna leading to a rise in the number of dolphins accidentally killed, exceeding the restrictions in place by the U.S. Marine Mammal Protection Act. Mexico disputed this restriction as a violation of GATT (viewed as a non-tariff trade barrier). A GATT dispute panel, much like the way NAFTA envisioned, ruled in favor of Mexico stating that an environment outside U.S. borders was beyond its jurisdiction. Even efforts to label tuna "dolphin free" was viewed as a violation of GATT as this likely would increase the difficulty for Mexico to sell its tuna. Cases such as this one offered insight into how protective policies, even if they were for

¹⁵⁰ See <http://www1.american.edu/ted/TUNA.HTM> for a summary of the case.

the good of the environment, workers, or even consumers, would ultimately be determined under NAFTA by businesses and governments more concerned about profit than the environment, workers, or consumers.¹⁵¹

Overall, NAFTA refers to human rights only superficially, while missing the opportunity for advancing human rights more substantially, yet seizes the opportunity to provide rights and protections for the financial and corporate elite. Dent (1994:93) points out that instead of the NAFTA making true on its promises to workers and the environment:

Rather, the NAFTA is remarkable for its omission of minimum civil rights, labor standards, wage standards, health standards, environmental standards, and social policy standards which could have been employed to advance, or at least protect, human rights in NAFTA-participating countries. Yet while silent on human rights, the NAFTA text is explicit concerning the rights of State Parties, financial institutions, intellectual property holders, other corporate actors.

The existence of the European Union's social charter provided a noteworthy example of member states creating a binding human rights agreement linked to economic and trade policy (Smith 1994).¹⁵² In other words, another multilateral economic policy that protected human rights already existed for NAFTA use as a model, yet its negotiators opted for an agreement void of human right protections. To top it off, some NAFTA proponents such as Galbraith (1993) admitted to a high probability of socially harmful outcomes resulting from NAFTA, like the destruction of the agricultural sector. In particular, he predicted local farmers would be displaced and environmental degradation would worsen. The worst part, however, is that, despite these insights, he did not criticize negotiators for ignoring these issues when they were aware of them. Shockingly, one reason Galbraith (1993:32) argued for others to support NAFTA is "if NAFTA fails, Mexican elites are more likely to step up repression, and less likely to play

¹⁵¹ See also Watkins (1993) for coverage on NAFTA's favoring of TNCs.

¹⁵² See the Treaty of Maastricht.

fair, than if it succeeds.” In other words, critics should accept and support NAFTA because, if it fails, many people will be violently oppressed. He even admits that NAFTA is part of a corporate and elite agenda, but weakly suggests that the lower-classes should support it or potentially face the arguably worse consequences for not doing so. With Galbraith’s warning and ultimatum in mind, the next chapter investigates the socially harmful outcomes of NAFTA.

Analytical Summary

The last chapter demonstrated the context under which NAFTA was negotiated. Most importantly, NAFTA was negotiated among members of the TCC from the three North American countries. Although Mexico was at a disadvantage due to its position in the world-system, the TCC was overwhelmingly influenced by neoliberal ideology which motivated their pursuit of a neoliberal SSA, strengthened by NAFTA. This chapter focused more on the actual negotiations and their result. Using the analytical model from Figure 2.1, NAFTA negotiations can be investigated from a state-corporate crime framework. Following the state corporate-crime framework (Kramer and Michalowski 2006; Rothe and Mullins 2009), Figure 6.1 was constructed to demonstrate the various catalysts influencing the NAFTA negotiations at the different levels of analysis.

First, consider the motivations for NAFTA, at the state level, Mexico desired NAFTA because of its compromised position from the economic crisis in 1982 (Golob 2003) and sought foreign investment and debt restructuring to address its failing economy (Cameron and Tomlin 2000; Fairbrother 2007). The United States desired NAFTA to solidify the unilateral moves towards trade liberalization already taken by Mexico (Grinspun and Cameron 1996). Canada joined negotiations more reluctantly to protect its interests previously established in CUFTA

Table 6.1 State-Corporate Crime Catalysts for Action Influencing NAFTA Negotiations

<i>Levels of Analysis</i>	<i>Catalysts for Action</i>			
	Motivations	Opportunities	Constraints	Controls
International Level	TCC Neoliberal global market Compete with other trade blocs Investors' rights	TCC Massive collusion of power/wealth Media control Information campaign IFIs commitment Classified negotiations	Environmental and labor groups NAFTA side agreements Popular opposition Public Opinion NGO criticisms	International Bill of Human Rights
Macro Level (State/Structural)	Solidify Mexico's trade liberalization (US) Economic crisis 1982 (US/Mexico) Foreign investment (Mexico) Protect CUFTA (Canada)	Desperate Mexico (US) US domestic market (US) Undemocratic (Mexico) Repressive techniques (Mexico) Proximity to US	Canadian election U.S. election U.S. congressional opposition (e.g., Gephardt)	US Fast-track approval US Ratification process
Meso Level (Organizational)	Neoliberal ideology Investment opportunity US domestic market	Financial resources Business coalition with state Access to negotiations	CANACINTRA	
Micro Level (Interactional)	Advance individual career Belief in neoliberal policies Similar social and economic backgrounds Maintain power	Connected in a powerful web (TCC) TCC groupthink		Morality of human rights

(Cameron 1991; Goar 1992). According to world-system theory, Mexico was desperate to secure investment due to its position as a peripheral nation and dependence on core nations, while the United States and Canada pushed to maintain the current world-system to which they were beneficiaries.

Although there were differences among the three countries in motivations at the state level, internationally, there was much more overlap. The overlap is best explained by the TCC, consisting of political elites, business leaders, leading intellectuals, and members of the IFIs among others (Faux 2005). Members of the TCC sought a neoliberal global market exemplified by deregulation and trade liberalization.¹⁵³ Furthermore, investors' rights, a major piece of NAFTA, was a goal of the TCC, designed to shift power away from the state, which could be held in check by the people, and give it to corporations.¹⁵⁴ NAFTA also created a North American trade bloc that could rival the European Union, and gain leverage in the GATT negotiations (Baggaley 1998). This motivation was likely held by the North American segment of the TCC (Robinson and Harris 2000).

At the organizational level, many of the corporations pushing for NAFTA were informed by a neoliberal ideology that saw NAFTA as an investment opportunity to expand their scope of influence (Chavolla Nava 1993; MacArthur 2000). For Canadian- and Mexican-based TNCs, the massive U.S. domestic market was also on the table (Cameron and Tomlin 2000). Individuals involved in the NAFTA negotiations, primarily members of the TCC, held a common belief in neoliberal policies as a panacea for the economic woes in North America. Many of them had similar social upbringings with similar educations, and likely viewed NAFTA as a way to either

¹⁵³ Although this chapter attempted to demonstrate this as it relates to NAFTA, see Robinson and Harris (2000) and Ozekin (2014) for a summary of TCC motivations.

¹⁵⁴ See Dent (1994) for a major criticism of NAFTA's Chapter Eleven – built to protect investors. See also NAFTA's Chapter Eleven at <http://www.sice.oas.org/trade/nafta/chap-111.asp>.

advance their careers or maintain power (Petras and Morley 1990; Ángel Centeno and Mexfield 1992). For example, many of the U.S. politicians simply advanced NAFTA to appease their donors and political partners, and Salinas and his administration tried to push NAFTA through while simultaneously securing the PRI's dominance (Oppenheimer 1998; MacArthur 2000; Dombois, Hornberger, and Winter 2003).

Second, the opportunities for getting NAFTA through were nearly limitless for those in favor, while those opposed faced extreme odds. At the state level, Mexico was able to use its undemocratic structure to advocate for NAFTA (von Bertrab 1997). The Mexican state benefited from its single-party dominance, corporatist mechanisms to control union opposition, and hierarchical structure and informal *camarilla* networks (Cameron and Tomlin 2000). Mexico also was able to violently oppress the opposition if necessary (America's Watch 1994; Orme 1996). On the other hand, the United States benefited most from Mexico's desperation and its control over information (Fairbrother 2007). The United States was able to get more concessions from Mexico because of its dire need for investment (Mayer 1998). Canada mostly stayed under the radar during the NAFTA negotiations which likely helped, given the unpopularity of the recent CUFTA (Rohter 1990; Magnusson et al. 1991). The proximity between the three countries also provided an opportunity to hasten negotiations.

The opportunities at the international level revolved largely around the massive collusion of wealth and power concentrated in the TCC. With these resources, segments of the TCC including von Bertrab's (1997) team and USA*NAFTA were able to control the media and dominate the information disseminated on NAFTA (Baldwin et al. 1993; Heredia 1994). The TCC exposed the public to overwhelming favorable information on NAFTA. The negotiation meetings were secret and classified, blocking the public from having any meaningful

involvement in the negotiations (Mayer 1998; MacArthur 2000). These moves by the TCC further evince their motivations listed in Figure 6.1. Similarly, at the organizational level, nearly all of the largest corporations coalesced their boundless resources in USA*NAFTA (Baldwin et al. 1993). Furthermore, these corporate leaders had access to the negotiations, while the public did not (Hogenboom 1998).

At the interactional level, the bonds formed between members of the TCC created an opportunity for them to work together to influence passage of a favorable policy (Pastor and Wise 1994). The last chapter also discussed at length the groupthink that persisted among the TCC (Clarkson 1993). The TCC groupthink likely existed for two reasons. First, members of the TCC involved in the NAFTA negotiations likely sought to gain what they could rather than question NAFTA which would have compromised their own position by creating conflict (Heredia 1994). Second, neoliberal economic philosophy was heavily influential in harmonizing many of the members in favor of NAFTA (Golob 2003). Otherwise, critics of neoliberalism likely took a back seat to what appeared to be a consensus in favor of neoliberalism.

Third, since NAFTA was an international policy, most of the constraints were at the international level. The largest opposition to NAFTA was environmental and labor groups which, of course, led to the signing of the NAFTA supplemental agreements (Mayer 1998). Without this opposition, NAFTA would likely have passed without the side agreements, thus resulting in fewer protections to workers and the environment. Popular opposition rallied behind politically diverse intellectuals who posed major threats to NAFTA, including Ross Perot, Pat Buchanan, and Ralph Nader (Scott 1998). These anti-NAFTA leaders fostered a large segment of the North American population to oppose NAFTA. Despite their efforts, however, public opinion was at best only slightly unfavorable to NAFTA, and more often remained split

(Molyneux 1994; Ayres and Macdonald 2009). The resources possessed by the TCC seemingly were too much to overcome (Mayer 1998). NGOs also played a role in constraining NAFTA through their criticism of the policy and the players involved (Human Rights Watch 2001). Most notably, they pointed to the abysmal environmental and human rights record in Mexico (America's Watch 1990; 1992; 1994; Hogenboom 1998).

At the state level, both the Canadian and U.S. elections threatened NAFTA (Bryden 1992; Cameron and Tomlin 2000). In both cases, NAFTA proponents overcame a brief scare when liberal candidates won in each election. Although NAFTA may have passed without its side agreements with a Bush win, Clinton's presidency did not kill NAFTA, and may have actually helped to get it through by quieting some of the opposition since both environmental and labor groups were long time members of the Democratic constituency (Cameron and Tomlin 2000). In the case of the Canadian election, Chrétien's win did little to slow down NAFTA (MacArthur 2000). Maybe most problematic at the state level was the opposition to NAFTA found in the U.S. Congress, most principally, Gephardt (Bradsher 1993b). Again, this constraint on NAFTA from members of U.S. Congress, at best, led to the NAFTA supplemental agreements. In the end, the congressional opposition was offered political cover from its voting constituency via the side agreements, and that was good enough for them (Mayer 1998).

Few, if any, constraints existed at the organizational and interactional level. In fact, there was little resistance to NAFTA among large businesses. CANACINTRA was the major opposition in Mexico representing small- and medium-sized business, but eventually shifted its view to favor NAFTA (Poitras and Robinson 1994; Shadlen 2000). Since members of the TCC experienced similar socialization, there was little constraint offered by its members (Ángel Centeno and Maxfield 1992; Camp 1995). The public also likely trusted the members of the

TCC such as political elites, business leaders, and the media, and had little reason to question them based on limited knowledge.

Finally, more formal controls were also limited. The most important were likely the need for fast-track approval and ratification of NAFTA by the U.S. Congress which were the major battles ultimately won by the TCC through their vigorous information campaigns (Cameron and Tomlin 2000; MacArtur 2000). Although this existed at the state level for the United States, the U.S. Congress was the safeguard to potentially stop NAFTA from happening for all three countries (Mayer 1998). Other than the U.S. Congress, there was virtually nothing that could stop NAFTA. As discussed in this chapter, the body of law known as the International Bill of Human Rights can be applied to NAFTA to make an argument that NAFTA was criminal and a criminogenic policy and therefore should not have been passed. However, this was not a common argument made, and only Dent (1994) made a similar argument, albeit after NAFTA was implemented. During the NAFTA negotiations, the arguments against NAFTA did not discuss NAFTA or its probable outcomes as human rights violations or criminal. Thus, this control virtually did not exist, even though the argument was there to be made. Lastly, at the interactional level, a morality of human rights appeared to exist among the opposition, but seemingly did not influence members of the TCC evinced by the near complete remission of human rights language in the final NAFTA text.

Overall, the TCC actively pursued a NAFTA that was sympathetic to business interests while neglecting the concerns of the people. Connections within the TCC ran deep with seemingly boundless resources utilized to win public and political support for NAFTA. Although the opposition was successful in winning supplemental agreements, these side agreements arguably fell well short of the opposition's desires. Thus, the constraints on NAFTA

were relatively weak, and the controls were virtually non-existent. Ultimately, NAFTA was largely shaped by the TCC who saw NAFTA as an opportunity to further its goal of achieving a neoliberal global market that favored investors. The resultant NAFTA reflective of these interests should then, unsurprisingly, bring outcomes favorable to those who played a role in creating it and campaigning for it. It would also not be surprising if the reckless neglect of legitimate concerns over NAFTA led to the negative social outcomes predicted by its critics. In other words, this particular NAFTA was criminogenic. However, in addition to being criminogenic – creating conditions conducive for criminal outcomes – NAFTA was also demonstrated as being criminal for its negotiation process and policy itself. For many of the same reasons, NAFTA was both criminal and criminogenic. For example, the undemocratic nature of NAFTA was criminal for its violation of international law as explained, and the undemocratic formation of NAFTA also increased the likelihood that criminal outcomes such as poverty may occur for those groups unrepresented in NAFTA negotiations such as Mexican corn farmers. The next chapter looks at the last 22 years since NAFTA was ratified to highlight its negative social and economic consequences. By highlighting these negative social and economic outcomes, NAFTA can be argued a criminogenic policy giving rise to multiple criminal outcomes or HRVs. The focus will be on the social harms (crimes/HRVs) primarily experienced by indigenous farmers in Mexico.

Chapter 6 Appendix: NAFTA Sources

This chapter pieces together a wide variety of sources to retell the story of the NAFTA negotiations. However, four particular sources were invaluable to reconstructing the negotiation process, while others simply filled in minor gaps or reconfirmed the information in the primary sources. Two of these sources are books written by people who actively participated in the negotiations from opposite sides. Frederick W. Mayer (1998), a political scientist, took a leave of absence from Duke University to eventually be offered a position handling foreign matters for U.S. Senator Bill Bradley. When NAFTA hit Capitol Hill, Mayer became a participant in the NAFTA negotiations, writing presidential memos, talking with a wide variety of NAFTA agents including officials at the Office of United States Trade Representative, Mexican and Canadian leaders, and lobbyists for business, labor, and the environment. He spent most of his time tracking the public politics of NAFTA and informing Bill Bradley on strategies for intervention. His book attempts to write “NAFTA’s story, not [his]” (Mayer 1998:xii) by placing its story in the larger context. He included a myriad of newspaper articles, transcripts, press releases, reports, advertisements, and other documents on NAFTA in his analysis, while he also interviewed around two hundred people involved in the NAFTA negotiations from both Mexico and the United States.

On the other side of the NAFTA negotiations, Hermann von Bertrab provides a memoir of his account working on a NAFTA team to negotiate the trade deal. He was recruited by the Mexican private sector to organize a negotiating team for Mexico. After Herminio Blanco was named chief negotiator for NAFTA in October 1990, he asked his long-time friend von Bertrab to head up a negotiating team for Mexico. Blanco was an old student of von Bertrab’s at Mexico’s Monterrey Institute of Technology who remained friends with him well after

graduation. Both von Bertrab and Blanco were U.S. educated obtaining PhDs in economics from the University of Texas at Austin and the University of Chicago respectively. Von Bertrab was in Blanco's *camarilla*, thus by association in Salinas's *camarilla*. Von Bertrab's book is more of a personal account than Mayer's, although he does state that he tried to present an account closest to the truth.

The most valuable source of all was a study by Maxwell A. Cameron, a political scientist and Brian W. Tomlin (2000), a professor of international affairs, that strived to conduct a balanced and behind the scenes account of the negotiations including all three countries perspectives and major players. Through the use of an informant in the Canadian government, they were privy to crucial insider information and established various contacts. This relationship led to extensive interviews with the key players in the NAFTA negotiations as well as other tangential negotiators. With the privileged information they accessed, they were able to probe their participants further than otherwise would have been possible.

Lastly, John R. McArthur provides an investigative journalistic account of the NAFTA deal and how politicians and business elites worked together to subvert public opposition on NAFTA. His book is told in a narrative format, but still, offers some powerful stories of his personal experience and interviews with those involved and affected by NAFTA. The overall story begins and ends with a Swingline plant that relocates from Long Island to Nogales, Mexico since one of his primary interests was how NAFTA was affecting workers in the United States. Ironically, President Zedillo was at the ribbon-cutting event for its grand opening in Mexico.

CHAPTER 7

THE CRIMINOGENIC EFFECTS OF NAFTA ON MEXICO'S POPULATION

Overview of NAFTA Effects

NAFTA immediately impacted Mexico leading to a repressive effort to quell the Zapatistas who declared war against the Mexican state on January 1, 1994, the day NAFTA went into effect (La Botz 1995; Rochlin 1997; Cuninghame and Corona 1998), a peso devaluation near the end of NAFTA's first year of implementation (Peach 1995; Lee 1995; Thacker 1999; Wise 1998), and a subsequent economic crisis beginning in 1995 (Cameron and Tomlin 2000; Morris and Passé-Smith 2001). Given that NAFTA was an economic policy, some Mexicans felt its economic effects soon after its implementation. Although NAFTA's economic impact was devastating, dissidents who adamantly opposed the neoliberal economic model culminated by NAFTA faced a worse fate. One such example is the Acteal Massacre.

On December 22, 1997, heavily armed paramilitary soldiers surrounded a chapel in Acteal where several pro-Zapatista civilians were gathered.¹⁵⁵ The paramilitary opened fire on the villagers and pursued all those who fled, killing 45 Tzotzils, an indigenous group, including 36 women and children. Despite knowledge of the onslaught, government security forces failed to intervene. Some of the victims were mutilated by machetes, and in at least one instance, a pregnant woman's belly was cut open and her baby ripped from her womb. The paramilitary

¹⁵⁵ See Stahler-Sholk (1998) for more details. The story that they were praying while being attacked has been disputed.

was linked to the PRI and tasked with targeting those opposed to NAFTA (Human Rights Watch 1997).¹⁵⁶

Although the Acteal Massacre was not the only attack of its kind, the majority of NAFTA's victims did not experience violent repression. Rather, they felt the wide-ranging negative economic impact of NAFTA. While most pro-NAFTA studies praised the success of NAFTA by pointing to the increased foreign direct investment flowing into Mexico, expanding exports to the massive U.S. market, rising productivity in Mexico, and/or increasing macroeconomic stability (Fitzgerald 2001; Weintraub 2004; Hufbauer and Schott 2005; 2007; 2008; USTR 2008; Villarreal and Fergusson 2015; McBride 2017), these studies neglect the crippling effects of NAFTA experienced primarily by the rural indigenous farmers of Mexico, and the Mexican population more generally. Studies show that Mexico has experienced little or no job growth, and often a net loss of jobs (Zepeda, Wise, and Gallagher 2009; Cypher and Wise 2010). While job growth did occur in the *maquiladora* sector, the over 2.3 million jobs lost in agriculture (over a quarter of the total jobs) offset these gains (Zepeda et al. 2009), resulting in a high level of un- and underemployment.¹⁵⁷

Farmers throughout Mexico were the hardest hit by job loss with about 20 percent of agricultural jobs disappearing from 1991 to 2007 (Weisbrot, Lefebvre, and Sammut 2014), forcing many to find work in the *maquiladoras* or the United States (Kim 2013). Even more troubling, of the over 8 million workers left in agriculture, nearly 55 percent were underemployed, working seasonally or less than six months a year (Weisbrot et al. 2014).¹⁵⁸

¹⁵⁶ See also articles written by Jesús Cuevas Ramírez in *La Jornada*, January 2 and 3, 1998.

¹⁵⁷ Mexico has no unemployment insurance or any social safety net for the unemployed. Scholars suggest that the official unemployment rate is superficially low, failing to take into account high levels of underemployment (Laurell 2015). According to the CIA (See CIA World Factbook), Mexico's unemployment rate in 2016 was 4.4 percent, but they estimated the underemployment rate as high as 25 percent.

¹⁵⁸ Seasonal agricultural workers increased 151 percent over the same time period of 1991 to 2007 (Weisbrot et al. 2014).

Those lucky enough to secure a job after NAFTA found their wages stagnated (Zárate-Hoyos and Spencer 2003; Rello 2008; Zepeda et al. 2009; CONEVAL 2013; Laurell 2015), their job was unlikely to offer basic benefits (Zepeda et al. 2009), and their working conditions probably were abysmal.¹⁵⁹ The PRI and transnational corporations (TNCs) undermined unions, further exacerbating the poor working conditions (La Botz 1995; Wise, Salazar, and Carlsen 2003; Bacon 2004; Bacon 2014b).¹⁶⁰ Instead of causing U.S. and Mexican wages to converge, NAFTA widened the gap (Jus Semper Global Alliance 2016) and sustained high levels of economic inequality in Mexico (Esquivel and Rodríguez-López 2003; Airola and Juhn 2005; Esquivel 2015).¹⁶¹ The southern states saw few benefits from NAFTA, and the rural peasants were left to fend for themselves in a harshly competitive global economy (Robertson 2000; Esquivel et al. 2002; Chiquiar 2008; Baylis, Garduno-Rivera, and Piras 2012). Poverty skyrocketed after the Mexican peso devaluation in 1994, subjecting 69 percent of Mexicans to poverty in 1996 with 37.4 percent living in extreme poverty (Laurell 2015).¹⁶² Since then, poverty has returned to pre-NAFTA levels.¹⁶³ Rural poverty has followed a similar trend, but has been more pronounced than overall poverty, with 55 percent of the population experiencing rural poverty and 25 percent

¹⁵⁹ In interviews, several workers have discussed conditions such as improper ventilation of toxic chemicals, inoperable exhaust systems, faulty equipment, high levels of dangerous chemical exposure, long hours, missed payments, and no vacation time (MacArthur 2000; Simon 2014). Workers experienced a series of chronic physical conditions including carpal tunnel syndrome, weakened or injured shoulders, glue addiction, incessant sinusitis, and other musculoskeletal injuries (Simon 2014). Workers who experienced these types of crippling chronic conditions were referred to as *jonkeados*, meaning junked workers, and treated as such.

¹⁶⁰ Fake unions – those created by the firm itself – commonly existed with no knowledge of them held by workers (Bacon 2004). Previous studies have shown that 90-95 percent of labor contracts are signed without the knowledge of the union in order to prevent real organizing (Bacon 2014b). The PRI held several voters/workers “hostage” by offering them aid for party loyalty as noted earlier (Bacon 2004).

¹⁶¹ Although NAFTA did not ostensibly increase the GINI coefficient for households, Mexico’s GINI remained high in comparison to other countries in the Western Hemisphere (Zepeda et al. 2009). See also Galbraith (2014) for a sophisticated look at inequality in Mexico.

¹⁶² Poverty is defined as “income less than needed to cover food, clothing, housing, health, public transportation, and education,” while extreme poverty is defined as “income less than needed to cover the basic food basket defined by INEGI and CEPAL” (translation by Zepeda et al. 2009:21).

¹⁶³ See the World Bank’s poverty headcount ratio at national poverty lines (% of population) at <http://data.worldbank.org/indicator/SI.POV.NAHC?locations=MX>.

living in extreme poverty in the countryside during 2006 at a time when overall poverty was relatively low (Zepeda et al. 2009).

At a NAFTA conference in November 1991, Stephen Schlossberg (1993:219), Director of Washington Branch International Labor Organization raised the following question about NAFTA's future:

NAFTA gives this nation, Canada, and Mexico the opportunity to demonstrate that they are worthwhile societies that recognize people as social as well as economic beings. Shall we have a fair and compassionate society – in essence, a decent society – or shall we opt for greed and the law of the jungle?

His question seems best answered by the latter. The devastating economic effects have forced Mexicans to adjust their agricultural strategies, migrate to northern Mexico or the United States, or seek work in the informal economy. Those who challenged the Mexican government over the harsh conditions brought by NAFTA and other neoliberal policies often faced a fate similar to the Tzotzils in Acteal. This chapter attempts to further answer Schlossberg's question by examining several deleterious outcomes influenced by NAFTA, and argues that NAFTA largely contributed to their severity due to the type of NAFTA described in Chapter 6.¹⁶⁴ These NAFTA outcomes consist of four overlapping types: (1) agriculture; (2) environment; (3) migration; and (4) the drug war. Although these are not all of the negative effects influenced by NAFTA, they are some of the most important and impactful ones. Each type will be discussed in turn.

¹⁶⁴ However, the multitude of policies passed during the neoliberal age, such as those discussed in the previous chapters, make it nearly impossible to isolate NAFTA as a sole cause of these negative outcomes. Thus, the effects presented here are due partially to NAFTA, while also influenced by the other neoliberal policies as well. However, this chapter will attempt to argue that NAFTA greatly exacerbated these social harms.

Agriculture

The agricultural section of NAFTA was particularly interesting in that it was the only part of the agreement that was bilateral rather than trilateral. The U.S.-Mexico agreement actually had fewer protections than the U.S.-Canadian agreement despite Mexico's status as a developing nation. Many of the major changes to agriculture were also done as part of the NAFTA sales package, primarily the amendment to Article 27 which put an end to the *ejido* system and effectively privatized the countryside. Furthermore, the poor economic performance after implementation of NAFTA translated into serious harms for many small farmers, probably more so than any other group in Mexico. Together, these policies created a neoliberal agricultural model that displaced and impoverished peasants while enriching TNCs. The struggles of the rural poor were further complicated by poor nutrition, induced by the changes to food production. Lastly, Mexico's new focus on importing many staple foods left it helpless to feed its own population when global food prices increased.

Neoliberal Agricultural Model

NAFTA and the other neoliberal policies brought a new agricultural economic strategy to Mexico, shifting the focus to crop specialization and global exportation. Yet, production specialization degraded natural and human resources, subordinated local producers to the whim of foreign-based TNCs and governments, impinged on the food security of Mexico's poorest populations, threatened Mexico's food sovereignty, and sacrificed domestic consumers' nutritional diets (González 2014). NAFTA envisioned a particular strategy for agricultural production in North America based on comparative advantage. Most capital- and land-intensive production was expected to shift to the United States, due to its superiority in high-yield,

mechanized agricultural production, while labor-intensive production was expected to shift to Mexico. Thus, crops such as fruits, vegetables, nuts, and coffee were expected to expand in Mexico where cheap labor could be exploited. Since NAFTA, seasonal fruits and vegetables have been grown in Mexico, while staple crops, such as corn and soybeans, have been largely produced in the United States, and, to a lesser extent, Canada.

The neoliberal corn regime created under NAFTA promotes food quantity over all else (Fitting 2011). Thus, TNCs are typically favored over small-scale farmers since they produce corn in massive quantities. In *Defense of Maize*, a grassroots peasant organization, critiqued the new agricultural approach, arguing that food sovereignty and quality should be the primary goals of corn production, not to mention that this agricultural model was costing millions of Mexicans their livelihoods. NAFTA simply continues a long Mexican history of maize struggles.¹⁶⁵ Both pre-and post-revolution, corn was targeted to either displace or modernize indigenous peoples, a trend that has accelerated under NAFTA (Fitting 2011). NAFTA has continued the legacy of the Green Revolution by benefitting major agricultural producers while having devastating effects on smaller-scale farmers.¹⁶⁶

Another major strategy in the neoliberal food regime is monoculture or monocropping—the agricultural practice of cultivating a single crop every growing season within the same land area (Pechlaner and Otero 2010). Corn, particularly, became heavily concentrated in Sinaloa.

¹⁶⁵ Part of the struggle is racial and cultural, beyond simply being about corn. The history of corn production is tied to natives, and more recently, mestizo history, while wheat is linked with whiteness (Pilcher 1998). Throughout Spanish colonization, the ruling elite viewed corn production with a paternalistic and condescending attitude. At one point, tortilla consumption was an official measure of poverty.

¹⁶⁶ The Green Revolution, often viewed as an equally enjoyed historical achievement, actually benefited primarily large-scale farmers in the North. Although the Green Revolution was touted for its ability to alleviate hunger in poor societies, a major meta-analysis concluded that inequality actually intensified after the Green Revolution (See *Boletim da Comissao Pastoral da Terra-CPT* as cited by Lappé, Collins, and Rosset (1998:65). TNCs that fueled the Green Revolution, funded by the U.S. government, were primarily motivated by profits and not humanitarian reasons or environmental sustainability (Kloppenburg 1988).

The use of genetically modified (GM) corn also threatened biodiversity by growing one or limited species of corn. Given the focus on production specialization, production of specific fruits and vegetables also increased while other crops were abandoned. Emphasis on monocropping was paired with forced urbanization of rural peasants to sustain a cheap labor force necessary to attract foreign investment (Bartra 2004). These changes were justified by increased productivity.

Overall, the neoliberal agricultural strategy to focus on high-value exports has resulted in three major outcomes. First, regional concentration of specific crop cultivation subordinated itself to foreign priorities of governments and TNCs, primarily by the changes to tariffs and subsidies. Second, Mexico's integration into the North American agromarket increased food vulnerability by prioritizing external demands rather than domestic needs, and destroyed the traditional Mexican diet. Third, monocropping degraded the land, thus depriving Mexicans of natural resources and damaging the health of workers.

Struggling Peasants and Thriving TNCs

The typical NAFTA story concerning agriculture is one of struggling small- to medium-scale farmers and prospering agricultural producers tied to TNCs.¹⁶⁷ Effectively, NAFTA removed Mexican tariffs on a variety of crops, most importantly corn, eliminated most supports for small farmers, and allowed the United States to subsidize its agricultural sector without penalty. The amendment of Article 27 of the Mexican Constitution, combined with other changes in the agricultural sector, were also made in the lead up to NAFTA. All of these policies

¹⁶⁷ Nearly 66 percent of corn producers are considered small farmers defined as those with less than five hectares of land, using 57 percent of their harvest for self-consumption (Rivera 2009). Contrarily, large agricultural producers have more than five hectares of land and only consume 13.6 percent of their own harvest.

came together to create the perfect storm crippling smaller scale corn farmers. NAFTA impacted corn more than any crop (Rivera, Whiteford, and Chávez 2009). In 1990, corn accounted for a third of Mexico's agricultural production. In comparison, the United States produced 14 times more corn than Mexico. After implementation of NAFTA, cheap U.S. corn flooded the Mexican market and decreased farmers' income from corn by 66 percent (Wise 2009). From 1994 to 2008, Mexican corn imports from the United States more than tripled, according to the USDA, and more than quadrupled, according to the Mexican Agricultural Secretariat (Browning 2013). Many farmers found growing corn no longer sustainable (Public Citizen 2001) with entire towns being abandoned as their farmers could not compete with heavily-subsidized U.S. corn production (Clark 2006).

Exporting products to a country below their production value is referred to as product dumping. NAFTA did not impose penalties for subsidies, unlike the World Trade Organization, and thus provided the opportunity for U.S. product dumping in Mexico. For example, Wise (2009) examined the production of eight agricultural exports—corn, soybeans, wheat, rice, cotton, beef, pork, and poultry—subsidized by the U.S. government. Overall, Wise finds that both U.S. policies and subsidies affected the competitiveness of U.S. exports. The United States exported many crops at dumping-level prices (or below production costs). The cost to Mexican producers was monumental for corn, soybeans, wheat, cotton, and rice, resulting in a combined loss of \$9.7 billion from 1997 to 2005, with corn accounting for around 66 percent of the total loss. Since livestock producers used cheap corn and soybeans as feed, Mexican livestock producers lost an estimated \$3.2 billion over the same period. When all eight products are combined, the losses account for 10 percent of all Mexican agricultural exports and are greater than all Mexican tomato exports, one of the primary crops designated to replace corn. Dumping

margins increased significantly after 1996, with all eight products having positive dumping margins (higher for crops than livestock), and product prices fell. Ironically, corn production in Mexico increased, while the other crops all showed a decline in production.¹⁶⁸

NAFTA was not the only reason for the U.S. product dumping. Mexico's major farm subsidy program, PROCAMPO, was actually found to contribute to U.S. product dumping, rather than helping rural Mexican farmers, since the PROCAMPO support payments were less than the losses from U.S. product dumping (Wise 2009). Wise argued that compensatory tariffs would be more likely to be effective in reducing U.S. product dumping than Mexico matching U.S. subsidies, but NAFTA blocks such efforts. In addition, NAFTA eliminated tariffs while ignoring subsidies, which actually incentivized agricultural subsidies. Before NAFTA, the United States shifted agricultural strategies towards overproduction. However, the 1996 Freedom to Farm Act changed the game by abandoning a strategy of managing supply.¹⁶⁹ Almost immediately, a crisis ensued where millions of acres of land were brought back into production leading to overproduction and low prices (Ray, Ugarte, and Tiller 2003; Wise 2009). The burden of price failures was shifted from consumers to taxpayers, and government payments flowed to farmers as compensation. Although product dumping was punishable under NAFTA, the Mexican state never pursued this line of adjudication. Instead, Mexico chose not to impose tariffs, accelerating the effects of NAFTA. For example, corn tariffs were not set to be completely eliminated until January 1, 2008, under NAFTA, but Mexico allowed corn to be imported over quota immediately after NAFTA was implemented. The 15-year transition period was actually compressed into only 30 months (Nadal 2000; Rivera, Whiteford, and Chávez

¹⁶⁸ Relinger (2010) finds similar results.

¹⁶⁹ See *The New York Times*, April 5, 1996 at <http://www.nytimes.com/1996/04/05/us/clinton-signs-farm-bill-ending-subsidies.html>.

2009). U.S. subsidies were much higher than Mexican subsidies for all crops except wheat and soybeans (Wise 2009; Rivera, Whiteford, and Chávez 2009). The United States also gained some advantage through export credits, although it was quite small (Wise 2009). Subsidizing agriculture has not been limited to the United States. Massive subsidies by OECD countries do not tend to offer any help to small-scale agricultural production (Lazio 2003).

Surprisingly, gross production of and total surface area used for corn cultivation increased (Browning 2013). Such an outcome flies in the face of the overall NAFTA agricultural strategy, yet reflects how the average Mexican small farmer responded to NAFTA. Mexican peasants likely continued to grow corn despite a major decline in its price for a variety of reasons. First, horticultural crops suffer from fewer commercial applications, a shorter shelf life, and tend to use more destructive production practices that are harsher on the land. Second, the neoliberal agricultural strategy severely underestimated the cultural importance of maize production and consumption. Mexico is the cradle of maize cultivation where it has been grown since as early as 5000 BC and throughout the Mayan and Incan empires (MacNeish 1972). Corn is used for ancient religious practices, the main staple of the Mexican diet, the major crop grown by peasants, and even used as a social safety net (Bellon and Hellin 2010; Fitting 2011; Lewis 2011). In rural areas, corn is treated as a secondary currency for trade and survival. Around 40 different maize varieties are grown in Mexico dating back thousands of years (Audley et al. 2004). Thus, maize is more than just a crop, it is a cultural identity for many Mexicans.

Third, small farmers lacked adequate support to allow for a switch to alternative crops (Avalos and Graillet 2013). These farmers often lacked credit, technology, quality land, and infrastructure needed to cultivate alternative horticultural crops. Instead of switching crops, those farmers unable to survive with corn cultivation commonly migrated north to urban centers.

In addition, the lower price of corn was accompanied by large increases in tortilla prices, ultimately allowing the two largest Mexican corn flour mills, Gruma and Grupo Minsa, to control 90 percent of the domestic corn flour production, pocketing most of the gains (Zahniser and Coyle 2004). While corn prices plummeted, tortilla prices skyrocketed 279 percent by 2004, but medium and small farmers did not reap the benefits (Henriques and Patel 2004). The Mexican government abandoned tortilla price controls and subsidies in 1999 after 25 years of support, further inflating the tortilla oligarchy's power (Avalos and Graillet 2013). The preferred alternative crops, fruit and other horticultural products, provided few employment opportunities since most of the production increases were due to technological improvements, and these sub-sectors constitute only 3 percent of total exports.

Using municipal data from 1991 and 2001, Alvarez et al. (2011) found that producers with larger farms and greater access to insurance and information were more likely to abandon corn production for alternatives by 2001. Smaller producers knew very little about potential new markets for agricultural products available from NAFTA (Chávez 2009), while large-scale agribusinesses had access to pertinent information to transform their firms into profitable enterprises. For small-scale producers, the government never intervened to offer help or an alternative. For some states, farmers increased corn acreage in congruence with other horticultural crops, while other states increased corn replacing other less lucrative staple crops (Alvarez et al. 2011). Some factors such as literacy, irrigation, and access to credit led to a diversification in crops, while other factors such as a lack of pesticides and fertilizers led subsistence farmers to continue growing their traditional crops. Thus, policies with cash payouts, credit access, or support for chemical inputs likely would not help farmers switch their crops. Alvarez et al. (2011) concluded that small farmers are unable to transition their crop

production without government support, but subsistence farmers react very differently to governmental programs and may not benefit the same as commercial farmers from the same policies.

Groenewald and Van Den Berg (2012) used fieldwork, household surveys, focus groups, and key informant interviews to explore what adaptive strategies farmers employed to survive the neoliberal agricultural model. Although informants considered cattle more lucrative than corn, most farmers did not make that switch. Peasants receiving PROCAMPO funds indicated that they spent most of these funds on production costs for corn, suggesting that PROCAMPO was enabling corn production rather than encouraging farmers to switch crops. Evidence from one government program developed to subsidize livestock production, *Caja por Caja*, suggests that the program only helped those farmers who had at least some money to invest in the program rather than the most impoverished (Browning 2013). The program was also extremely complicated to follow and navigate with the proper documentation, often creating more costs than benefits.

Groenewald and Van Den Berg (2012) found struggling Mexican farmers used three primary coping strategies. First, the overwhelming response from small-scale farmers (67%) was to continue producing maize. Nearly all of their time and land was dedicated to maize production. Second, 16 percent of households supplemented their corn cultivation with cattle grazing. They used PROCAMPO funds to invest in cattle-breeding. Third, a diversified income approach was adopted by 16 percent of households. These households used all of their land for corn cultivation, but supplemented their wages by spending most of their time not working the fields. Instead, they found temporary work on plantations or in the non-farm sector. The peasants gave several reasons for continuing maize production in the face of dwindling prices.

The most prominent response (24.5%) was the lack of knowledge on how to grow other crops. Many responses suggested that maize was of significant cultural importance, describing maize cultivation as a family tradition (18.5%) or a village tradition (6.0%). Several respondents also mentioned maize's importance to the local diet (20.5%), suggesting concern over food security. If government support did exist, the programs were often not understood, and many people did not know how to apply for them (Browning 2013).

Transitional support for small farmers has either been nonexistent, severely lacking, or misguided. In addition to the large dumping margins, access to credit decreased for rural peasants with only 4 percent of rural farmers having access to credit by 2007, inhibiting them from competing (Fernández, Wise, and Garvey 2012). According to surveys conducted with poor rural farmers in Alamso, PROCAMPO payments were more likely allocated to purchasing basic necessities rather than improving farmers' competitiveness (Keleman 2010). In another survey in Chiapas, PROCAMPO funds were reportedly used mostly to pay off debts, invest in non-livestock agricultural goods, and purchase household supplies (Bellon and Hellin 2011). Larger-scale farmers, however, received over-allotments of these funds (Palmer-Rubin 2012). About a quarter of the respondents reported that PROCAMPO payments accounted for half of their agricultural income (Keleman 2010). A large portion of participants (42%) applied their funds to necessities such as food, transportation, clothing, and medicines, while agricultural land preparation was secondary with only a quarter of respondents claiming it was their first choice. Only around a quarter of respondents actually changed their crops, and even fewer, only 6 percent, said that PROCAMPO improved their access to agricultural technology. Unfortunately, local maize did not fit well into NAFTA's scheme for short-term profitability and required more long-term support. Keleman (2010) qualitatively assessed several institutions and programs with

the majority of findings suggesting negative effects for rural farmers often due to exclusion. He concluded that the neoliberal agricultural policies actually made conditions more difficult for small-scale farmers. He suggested government support for maize diversity conservation is necessary given the lack of collective cohesion among small farmers.¹⁷⁰ In other words, the lack of transitional support left farmers to fend for themselves in a viciously competitive post-NAFTA economy flooded with cheap U.S.-subsidized corn.

Although neoliberalism revolved around a rhetoric of removing governmental intervention, the government simply changed its intervention methods establishing connections with the private sector (Radcliffe 2005). Instead, a few large firms remained after massive consolidation and raked in enormous profits with virtual monopolies, while corn farmers suffered (Public Citizen 2014). TNCs such as Cargill, Maseca, and Minsa were favored under these policies, and particularly by NAFTA (Liverman and Vilas 2006; Aguilar Soto 2007; Appendini 2014). In addition to transnational food producers, transnational food retailers benefitted from NAFTA by seizing control of 75 percent of the market by 2001 (Chávez 2009). Mexico's northwest region was particularly favored for post-NAFTA agricultural growth given its rare irrigated lands produced higher and more stable yields (Scott 2010), while the non-irrigated sector is more erratic since it experiences more climate-induced crop failures (Sweeney et al. 2013). Poor rural farmers were overwhelmingly located on rain-fed land, while the Northwest continued to experience growth in market share. Thus, the NAFTA strategy left the small farmers further behind.

¹⁷⁰ Groenewald and Niehof (2015) conducted surveys and focus groups with farmers in Morales and found that farmers do not benefit from farmer groups – formal networks that provide members with services to help increase profitability – because group members rarely help each other or share information. Only households actually display high levels of cohesion. Furthermore, poverty exacerbates the issues complicating what would likely help these farmers escape poverty. One example of this is the loss of credit among rural farmers. Consequently, the exhibited individualistic behavior weakens the community resources. The end result of all these various complications is unsustainable farmer groups.

In particular, the Free and Sovereign State of Sinaloa disproportionately received much of the government funding for farm subsidies (Scott 2010; Eakin, Buasch, and Sweeney 2014). According to one Trust Funds for Rural Development (FIRA) informant, Sinaloa subsidies accounted for 16 percent of national agricultural finances. FIRA (2006) officially claimed that possibly over a quarter of the corn production cost in Sinaloa was subsidized by farm subsidies. In another analysis, Sinaloa was found to be the main beneficiary of federal policies, receiving more than 12 percent while only 4 percent went to the nation's agricultural workers (Scott 2010). Some programs contributed extremely large portions of their funds to Sinaloa. For example, the Ingreso Objective program allocated 68 percent of its budget to Sinaloa subsidies (Appendini 2014). These subsidies created a Sinaloa monoculture that often flooded the market with corn.

NAFTA preparations led to the dismantling of CONASUPO (Compañía Nacional de Subsistencias Populares) beginning in 1991 and a full liquidation by 1999, removing most crop subsidies, and then replaced the program with ASERCA¹⁷¹ in 1991, which preserved crop subsidies for corn during times when corn prices drop below production costs (Yunez-Naude 2003; Rivera, Whiteford, and Chávez 2009). However, ASERCA price supports directed aid at large-scale commercial maize growers (Fox and Haight 2010; Appendini 2014). Salinas wanted to focus on helping commercial farmers demonstrate to the world that Mexico had a modern agricultural sector (Smith 1992). Part of this strategy was to make Mexico more attractive for NAFTA as well. The government made several efforts to disseminate information on maize cultivation and the available subsidies to attract more growers in Sinaloa (Eakin et al. 2014). Technological innovation was important to Sinaloa's success in maize cultivation. Seed

¹⁷¹ See the ASERCA (Agencia de Servicios a la Comercialización y Desarrollo de Mercados Agropecuarios) webpage at Mexico's government website for more information on ASERCA at <http://www.sagarpa.gob.mx/quienesomos/datosabiertos/aserca/Paginas/default.aspx>.

innovation was particularly important, allowing Pioneer and Monsanto to dominate the market. In interviews, several members of private organizations and public officials in Sinaloa expressed concerns such as new “super pests” resistant to pesticides, excessive use of synthetic nitrogen, the overproduction of maize (the largest concern), and transportation costs (Eakin et al. 2014). The concentration of maize production in Sinaloa also left Mexico vulnerable to any disaster that threatens maize production in that region such as drought, low reservoir levels, and the frost of 2011. The state-engineered maize boom in Sinaloa may have created an artificial food security and potentially led to a major food crisis to be discussed in the next section.

In a key analysis of farm subsidies, Fox and Haight (2010) drew four major conclusions. First, the loss of rural employment was not due to a lack of government funding, which had increased significantly during the 2000s, rather government aid has targeted large-scale commercial farmers while not prioritizing support for subsistence farmers. Second, the lack of transparency in Mexican subsidy programs has limited attempts to hold them accountable. Third, although PROCAMPO was the only program officially designed to compensate peasants for their losses after NAFTA, it more often excluded these individuals from receiving such aid while disproportionately benefiting large commercial agricultural producers. In addition, seed subsidy programs were reduced to virtually nothing by 2006, and fertilizer subsidies were removed, alongside rising prices in fertilizers resulting in few gains for small growers (Bellon and Hellin 2011). Fourth, other non-PROCAMPO subsidies were even more skewed towards benefitting larger farmers. Taken as a whole, the Mexican farm subsidy strategy exacerbated the negative effects of NAFTA on small agricultural producers thus intensifying inequality in Mexico (Fox and Haight 2010).

Food

Although NAFTA affected food production and consumption in various ways, this section focuses on two particular deleterious effects. First, Mexico was hit by a national health crisis after NAFTA. Poor nutrition in Mexico is primarily attributed to what some scholars have called the “neoliberal diet” (Otero, Pechlaner, and Gurcan 2015: 1). Second, and arguably one of the most devastating impacts of NAFTA, Mexico lost its ability to produce enough food for its population, thus becoming dependent on food imports.

Neoliberal Diet

The neoliberal diet is defined as a diet that is “largely composed of ‘energy-dense’ foods with high contents of fat and empty calories with low nutritional value” (Otero, Pechlaner, and Gurcan 2015: 1). This diet is a direct result of the changes to agriculture in the neoliberal age. Before NAFTA, Mexico removed its guaranteed floor prices for crops, thus favoring imports (Clark et al. 2012). With nearly 40 million Mexicans living on less than five U.S. dollars a day, major nutritional problems have arisen because Mexicans are spending exorbitant amounts of money on tortillas, which constitute a large part of their diets (USDA 2010; Levitt 2011). If current trends continue, this diet could be responsible for the younger generation having a lower life expectancy than its elders. The change in diets has more to do with agrarian restructuring (Otero et al. 2015) than the poor’s lack of education (Guthman 2011). For instance, the change in caloric contribution of cereals has risen since NAFTA, while cereal consumption itself remained relatively stable. Preliminary analyses show a rising junk-food-risk index (measure that considers the food-import dependency, GINI coefficient, food-uniformity index, rate of urbanization, and economic-globalization rates of change) during the neoliberal age increasing

from 36 to 40 from 1985 to 2007.¹⁷² This increase suggests that the neoliberal diet disproportionately affects the poor.

The changes due to NAFTA have largely impacted the Mexican diet by shifting power from the Mexican state to TNCs. For example, protections for soybeans under NAFTA were removed in 2003, and soybean trade intensified thereafter. The United States since then has had a virtual monopoly on soybean production, and Mexican soybean producers have been nearly all displaced (Clark et al. 2012). Livestock and meat imports from the United States also increased after NAFTA, and this was particularly the case in the fast food industry (Zahniser and Crago 2009; Clark et al. 2012).¹⁷³ U.S. investors found the Mexican pork and poultry industry especially lucrative. Transnational firms control a significant portion (35%) of the pork industry in Mexico (Wise and Rakocy 2010). When Mexico imposed a sales tax on soda to combat the obesity epidemic, investors challenged it, and eventually high fructose corn syrup rapidly poured into Mexico (Clark et al. 2012).¹⁷⁴ Ready-to-eat meals and snack foods also began flowing into Mexico in larger numbers (Clark et al. 2012).

Both the United States and Mexico face serious obesity epidemics, while NAFTA, and more generally trade policy, has played a major role in this crisis spreading to Mexico (Clark et al 2012). Public policy changes intended to increase crop yields and productivity, along with other programs designed to manage supply and production, have led to an abundance of high-caloric foods. By the end of the 2000s, Mexico and the United States ranked number one and two in percentage of overweight and obese citizens among OECD countries (OECD 2010). As

¹⁷² See a radio interview with Gerardo Otero for more details on the junk-food-risk index at <http://www.rabble.ca/podcasts/shows/redeye/2013/02/quantifying-junk-food-risk>.

¹⁷³ See also the USDA Foreign Agricultural Service for statistics on Mexico's agricultural imports and exports with the United States at <https://www.fas.usda.gov/regions/mexico>.

¹⁷⁴ See the WTO dispute on this measure at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds308_e.htm.

many as 39 percent of children in Mexico are classified as obese, and Mexico ranks first in child obesity in the world according to Mexico's ministry of health.¹⁷⁵ Child obesity is on the rise, and obesity is occurring more rapidly in children than in the past (Instituto Nacional de Salud Pública 2012). Mexico is in the midst of a health crisis brought on by increased consumption of processed foods – full of sugar and refined carbohydrates – and soda, and a lack of physical activity (Wilhelm 2016) which has given rise to not just obesity, but increasing mortality rates, diabetes, and heart attacks as well (Rivera et al. 2002).

The high consumption of these processed foods is directly related to changes in foreign investment. Mexico is one of the leading recipients of U.S. foreign direct investment in the food and beverage industry (USDA 2009). Around 75% of this investment is in highly processed foods, such as snack foods, meat, and ready-to-eat packaged foods (Bolling, Elizalde, and Handy 1999). For example, Yum! Brand Inc. –owner of KFC, Pizza Hut, Taco Bell, and Long John Silver's–profits more from Mexico than any other regional market (Hawkes 2002). Although Mexico began its processed food frontier in the 1980s, it accelerated during the 1990s under NAFTA (Chavez 2002; Schwentesius and Ángel Gómez 2002). NAFTA contributed to increasing consumption of soda, snack foods, meat, and dairy products (Clark et al. 2012). For instance, the number of Wal-Mart stores grew rapidly from 1993 to 2001, along with other major chain food retailers (Chavez 2002). Such changes have led to a major shift in Mexican diets which now consist of processed foods high in fats and sugar (Barquera et al. 2006; Rivera, Irizarry, and González-de Cossio 2009). The average total food energy from fat found in foods actually increased most dramatically during the NAFTA years (Rivera et al. 2004). As of 2006,

¹⁷⁵ See Mexico's Gobierno de la República website at <http://www.imss.gob.mx/salud-en-linea/obesidad-menoredad>.

34.8 percent of Mexicans were at risk for excessive carbohydrate intake, and 12.7 percent had a similar risk for fats (Barquera et al. 2009).

In response to the health crisis, the Mexican state issued a national soda tax in 2014.¹⁷⁶ This move is significant given that Mexico is the world's greatest soda consumer (Kilpatrick 2015). The politics of soda are even more interesting in Mexico considering their president from 2000 to 2006, Vicente Fox, was also the president of Coca Cola Mexico. The World Health Organization (WHO) has been one of the major NGOs tasked with protecting consumer health, but it has been infiltrated by corporate influence through large contributions. For example, in 2012, several donations were made to the WHO including \$50,000 from Coca Cola, Co., \$150,000 from Nestle, and \$150,000 from Unilever (Wilson and Kerlin 2012).

Personal choice does not appear to be to blame for the obesity epidemic. The overwhelming number of children (30%) and adults (70%) who are obese or overweight speak against the idea of individual agency.¹⁷⁷ Furthermore, aggressive advertisement campaigns are run to sell the foods high in sugar, fat, salt, and calories (Gallo 2012). In particular, children are subjected to over 5,500 food advertisements a year, with 95 percent of them dedicated to these types of junk foods (Novak and Brownell 2012). NAFTA has uniquely contributed to the rapid increase in processed foods (Hing 2010). The influx of junk food was compounded from 2008 to 2010 due to the soaring prices of food and rampant food poverty (Carlsen 2011). Healthy food prices increased in price at twice the rate of cheaper processed foods during the neoliberal era from 1985 to 2000 (Novak and Brownell 2012).

¹⁷⁶ See PRI's The World news story at <https://www.pri.org/stories/2014-12-02/mexicos-soda-tax-starting-change-some-habits-say-health-advocates>.

¹⁷⁷ See PRI's The World news story at <https://www.pri.org/stories/2014-12-02/mexicos-soda-tax-starting-change-some-habits-say-health-advocates>.

Loss of Food Sovereignty

The loss of food sovereignty may have been the most devastating effect NAFTA had on Mexico. Before continuing, three important terms need to be defined. First, the WHO defines *food security* as “when all people at all times have access to sufficient, safe, nutritious food to maintain a healthy and active lifestyle.”¹⁷⁸ Food security is often used by NAFTA proponents because it does not require Mexico to produce its own food, thus allowing major importation of food products. Second, *food self-sufficiency* is defined by the Food and Agriculture Organization of the UN (FAO; 2003) as the ability of a country to produce enough food to feed its domestic population. Lastly, *food sovereignty* goes even further and is defined by *Via Campesina*, a social justice organization, as “the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems.”¹⁷⁹ Although Mexico had been losing its food sovereignty since 1970, NAFTA exacerbated this precipitous drop and made any recovery of food self-sufficiency difficult (Rivera, Whiteford, and Chávez 2009).

Since NAFTA, Mexican agricultural and food exports grew fivefold, but imports grew even more rapidly (FAO 2013). Mexico went from being food sovereign before NAFTA to 42 percent food dependent in 2008, with an overwhelming dependence on foreign imports of staple grains (Suárez 2008). The primary reason for the increased dependence was the flooding of the market with U.S.-subsidized corn after NAFTA. With major subsidies, U.S. farmers were able to sell their crops, particularly corn, under the actual cost of its production, which devastated the Mexican competition (Clark et al. 2012). Most corn is actually exported for cattle feed rather than for feeding humans. The flooding of the market with cheap subsidized crops paradoxically

¹⁷⁸ As cited by Couch (2013).

¹⁷⁹ See Nyéléni, Declaration of Nyéléni at <https://nyeleni.org/spip.php?article290>.

led to widespread hunger and put many rural farmers out of business. All the while, elites argued against food sovereignty suggesting that it is an “old-fashioned concept” (Rodriguez-Gomez 2013:6). Instead of supporting “inefficient” peasant farmers, elites felt Mexico only needed the resources to buy food from the global market, in other words, food security. Meanwhile, private sector agricultural oligarchies have been on the rise with two TNCs—Cargill and Archer Daniels—along with two national corporations—Maseca and Minsa—controlling 66 percent of Mexico’s maize market (Rubio 2013).

The policies enacted by the Mexican government and NAFTA have transformed most Mexicans from food producers to food consumers, thus making them more vulnerable to global and domestic food price volatility than ever before (Rodriguez-Gomez 2013). For example, the price of tortillas skyrocketed since NAFTA, increasing 733 percent from 1993 to 2006, while inflation remained 376 percent higher in rural areas compared to urban (González and Macías 2007). This trend has coincided with the rapidly rising corn imports to Mexico, multiplying sixfold since the implementation of NAFTA (Rodriguez-Gomez 2013). The rise in corn prices defeats the logic of NAFTA based on comparative advantage. NAFTA was advertised as good for consumers due to lowering prices through productivity gains, thus legitimizing the elimination of the peasant maize producer. Since food prices initially decreased after NAFTA, Mexico continued to shift farmers away from many staple crops, but once the food prices skyrocketed, Mexico’s lack of food sovereignty and self-sufficiency was exposed (Sanchez and Moreno 2013). Due to these changes, Maseca and Minsa have enjoyed virtual monopolies on corn and corn flour since 2008, making most Mexicans dependent on a handful of large corporations for their food (Appendini 2008).

As global food prices began rising in 2007, the tortilla crisis in Mexico further exposed its hidden problem of food sovereignty. The tortilla crisis brought an unprecedented 75.5 percent increase in corn prices internationally, as well as increases domestically as high as 67 percent (Rodríguez-Gómez 2007; 2008; Lustig 2008; Appendini 2008). NAFTA, combined with the removal of Mexico's state subsidy that held the tortilla price stable, allowed for these conditions. Under NAFTA, Mexico was converted into the world's number one importer of maize, sorghum, and milk powder (Sanchez and Moreno 2013). Ironically, Mexico's National Development Plan 2007-2012, designed to soften the blow of high food prices, attempted to help increase farmers' incomes through more exports. Food sovereignty was not the main goal of the agricultural developmental programs despite the negative outcomes of their export-oriented strategy. Unfortunately, food prices soared to their highest level in 2008 causing catastrophe in Mexico (Sanchez and Moreno 2013). After these prices skyrocketed in 2008, eventually a fixed price was agreed upon among the elite, but the price was still more than twice the average (Rodríguez-Gómez 2013). Only weeks later, supermarket chains, Soriana and Wal-Mart, undercut the market to establish their control over the vulnerable populations. Such unexpected volatility in the corn market sparked outrage among the public engendering popular movements, such as *Sin Maíz no hay País y sin Frijol Tampoco*, raising the issue of food sovereignty. By emphasizing agroexporting, Mexico eventually faced the reality of its decreased food sovereignty and food security (Sanchez and Moreno 2013). Mexico has not even attempted to offset these issues by improving grain storage programs. The increasing investment and interest in the biofuels sector, specifically the U.S. ethanol biofuel initiative, compounded the issues of corn prices (Wise 2012). Furthermore, large flows of speculative finance inflated the price of corn (Vidal 2011),

severely threatening people's food security since food costs did not decrease alongside cheaper corn production (Public Citizen 2004).

While consumption of maize, soybeans, and major meats increased generally, wheat, maize, and soybean consumption decreased during the food price hikes of 2008-2009 (Yunez-Naude 2013). Expenditures for food after NAFTA most pronouncedly increased for the poorest 30 percent of Mexicans. Data on the proportion of household expenditures spent on food suggests that *Oportunidades* (poverty alleviation program) contributed to increased expenditures. Although some may tout the program as a success, increased expenditures on food do not necessarily signify more food is purchased considering the soaring prices. Rather, more money was spent on food. More troubling is that expenditures on high-nutrition food declined, while purchases of processed foods increased. This trend is of concern beyond the obesity implications discussed earlier and suggests high levels of food poverty.

Mexico also experienced price increases in wheat, and many wheat farmers abandoned wheat production for more lucrative crops, thus making them more vulnerable to global price increases (Otero 2011). The food vulnerability experienced by Mexico was not unique; it occurred worldwide giving rise to around 40 popular food-related uprisings. The strategy to focus on exports has enriched a small portion of food industry firms, and only consumers in the wealthier nations like the United States and Canada benefited from cheaper prices. While 32,000 firms still exist in the food industry, only a small fraction (1,692) engage in exports and 300 firms account for 80 percent of all exports (González and Macías 2007). Most Mexicans did not achieve increased living standards after implementation of NAFTA, rather they have fallen victim to Mexico's increased food vulnerability and dependency (Otero 2011).

The direct result of Mexico's loss of food sovereignty and food price increases was food poverty and widespread hunger. After the food price hikes in 2008, over 18 percent of the entire Mexican population lived in food poverty—the inability to purchase nutritious food – and poorer rural areas such as Chiapas saw food poverty rise as high as 47 percent (USDA 2010). Nearly half of the country's population experienced some form of food insecurity (CONEVAL 2008), and over one in every three indigenous children suffered from malnutrition (USDA 2010). A majority of rural families in the states of Guerrero, Oaxaca, Tlaxcala, and Puebla reported trouble obtaining sufficient amounts of food (INEGI 2008). From the years 2001 to 2010, Mexican data suggest that more deaths have occurred as a result of malnutrition, including starvation, than due to the drug cartels.¹⁸⁰

Food sovereignty is directly related to another major problem, labor sovereignty. Otero (2011:385) argues that food self-sufficiency is a prerequisite for labor sovereignty, or the “ability of a nation to generate employment with livable wages for the vast majority of the population.” When these forms of sovereignty are lost, countries experience high levels of emigration, and more migration to richer countries deteriorates workers' rights. When comparing the NAFTA countries, only Mexico experienced significant food price increases during the global food crisis. High food prices are even more troubling when comparing the average percentage of income spent on food among the three NAFTA countries. Mexican families spend on average 35 percent on food, while the United States and Canada spend 12 and 11 percent respectively. Some of the impacts of losing labor sovereignty will be discussed in a later section on immigration.

¹⁸⁰ According to CEIDAS (Centro de Estudios e Investigación en Desarrollo y Asistencia Social) and INEGI (Instituto Nacional de Estadística y Geografía) data, 85,343 people died from malnutrition over these years, while 49,804 died from organized crime.

Environment

Many of the negative environmental effects arising from NAFTA are due to changes in agricultural cultivation. Thus, this section begins with various agricultural environmental harms before moving on to other environmental harms less connected to agriculture, such as air and water pollution and deforestation. These harms are more linked to the poverty and inequality perpetuated by NAFTA. Several forms of corporate environmental harms are also discussed in relation to NAFTA, such as biopiracy, bioprospecting, and ecotourism. Finally, this section ends by demonstrating the enrichment of TNCs via NAFTA investor rights and their contribution to environmental degradation.

Agriculture and the Environment

Agricultural changes have led to some devastating impacts on the environment. As small and medium farms were put out of business, large factory farms took their place, contributing to water shortages, increased levels of nitrogen and other agrochemicals, a loss of maize diversity, and deforestation. In relation to the environment, the changes in agriculture, more than anything else, threatened biodiversity, the variety of flora and fauna in the environment. Threats to biodiversity are particularly troubling in Mexico considering its tremendous amount of biodiversity, accounting for nearly 10 percent of the entire Earth's biological diversity, while only occupying 0.51 percent of its land mass (CONABIO 1998; Carlsen 2004). Around the time of implementation of NAFTA, Mexico ranked in the top ten for diversity of most life forms, second for reptiles, third for mammals, fifth for amphibians and vascular plants, and eighth for birds (CONABIO 1998).

The new NAFTA agricultural strategy replaced traditional crop diversity and sustainability with monocropping and tied agricultural exports to Wall Street speculation (Mendieta 2006). Venture capitalists began investing enormous amounts of money in biotechnology, which has typically taken the form of genetically modified (GM) crops or seeds (Dibner, Trull, and Howell 2003). The United States strongly supported intellectual property rights domestically, and efforts to homogenize these rights globally (Pechlaner and Otero 2010). NAFTA effectively furthered this goal. TNCs began their quest to patent various genetically modified organisms (GMOs). Although GMOs have been met with criticism, the United States has pushed for deregulation of biotechnologies and sided with industry against GMO critics. In addition to blocking regulations on transgenic crops, such as the Cartagena Protocol on Biosafety, the United States, joined by the Food and Agriculture Organization of the UN, has praised transgenic crops as a panacea for world hunger (Gillis 2004). President Bush charged African governments and members of the European Union for causing starvation by not allowing U.S. imports of GM high-yield crops (Fleischer 2003).

One of the most pressing concerns about using GM crops is that they cross-pollinate with landraces (naturally evolved seeds/crops), thus destroying biodiversity by creating a single species. Some scientists were predicting that even if farmers only planted a single row dedicated to GM corn, a large majority of corn would turn GM within seven years (Mendieta 2006). Some researchers even experienced backlash when studying GMOs. When one researcher, Ignacio Chapela, attempted to publish his findings with David Quist on GMOs that showed GM corn contamination happening in Mexico, his article was accepted, but later unprecedentedly rejected

by *Nature* (Ross 2004).¹⁸¹ The North American Commission on Environmental Cooperation (CEC; 2004a) found, much to U.S. chagrin, that transgenics contaminated some Mexican landraces, and will likely be irremovable from Mexico's ecosystem.¹⁸²

Most scientists weighing in on the GM corn debate are opposed to GM corn because of the threat to biodiversity.¹⁸³ Yet, these scientists did not oppose biotechnology, rather they rejected weak regulation and industry priorities. Industry sought control over seed by passing a new law in 2007 that required all seed, even native seed, to be registered in a national seed catalogue before they could be sold. Paired with intellectual property rights, peasants' ability to plant seed was restricted, especially considering the cross-pollination of GM crops. Seed producers charged farmers for using their seed even if it was saved or exchanged. With the influx of primarily U.S. GM corn under NAFTA, farmers lost control and access to seeds fundamentally important to their survival (Harvey 2003). GMOs could be banned in Mexico, but required a scientific basis under Article 26 of the Secretariat of the Convention on Biodiversity. Yet, this evidence was particularly hard to come by because no evidence really existed for or against GM corn and its health impacts (Fitting 2011), not to mention the harsh ridicule experienced by some scientist studying GMOs.

On another side of the GMO debate, Mexican citizens have fought back against GMOs by filing a major lawsuit in 2013. The lawsuit has been challenged an astonishing 93 times in 17

¹⁸¹ Eventually, he lost his tenure at Berkley by trying to take on the seed industry. It was later revealed that Bivings Group – an internet advocacy group with Monsanto as a client – was responsible for smearing Chapela and Quist (Worthy et al. 2005). By 2004, the scientific community agreed with Chapela (Mendieta 2006).

¹⁸² In this report, the CEC went as far as to suggest the United States sell only milled corn to Mexico. The CEC report expressed concern for the cultural contribution of corn in Mexico, and also recognized the importance of small-scale farmers to maintaining biodiversity in Mexico. In response, the Office of the U.S. Trade Representative and EPA have challenged the findings of the CEC as “unscientific” (See the USTR press release at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/archives/2004/november/us-calls-nafta-environmental-report-8220>).

¹⁸³ See Fitting (2011) for interviews with scientists on the GM corn debate.

different federal courts.¹⁸⁴ The outcome of such lawsuits is pertinent to the overall health of corn diversity, which is of paramount importance given that corn is ranked as the second most important crop globally (Cummings 2002). Although peasants have been disparaged for continuing to use “lower-yielding” traditional seed, at least four reasons exist as to why they would continue this practice despite its appearance as inefficient (Fitting 2011). First, traditional seeds can be reused every growing cycle, while GM corn seed would need to be repurchased from seed sellers. Thus, the seed patents have prevented poorer farmers from growing traditional crops. When their traditional seed is cross-pollinated by the GM seed, they are required to pay user fees to the seed owners. Second, smallholders trust particular traditional seed variants that have proven to grow well in particular climates and conditions. Third, many traditional seed variants grow without the use of pesticides and fertilizers, while GM corn seed requires these for optimal results, leading to soil degradation. Fourth, peasants prefer the taste and texture of their traditional corn varieties.

TNCs, allied with the United States, have been invested in the sale of GM crops in other countries which has been quite successful considering the United States leads the world in GM crop exports (McAfee 2008). Although this alliance argues for the superiority of GM crops, their claims are not supported by the empirical evidence.¹⁸⁵ In spite of the empirical evidence, the World Bank still pursues a GM crop strategy, and the corporate-driven biotechnology strategy has appeared to work (Otero 2008). By 2008, Mexico ranked 13th in the world in total transgenic acreage.¹⁸⁶ Mexico’s food consumption overall remained relatively similar after NAFTA (Otero

¹⁸⁴ See Organic Consumers Association article at <https://www.organicconsumers.org/news/mexico%E2%80%99s-gmo-corn-ban-and-glyphosate-cancer-findings>.

¹⁸⁵ GM crops have not been found to regularly produce higher yields (Carpenter 2001; Elmore et al. 2001; Benbrook 2003) or require less pesticides (Benbrook 2004).

¹⁸⁶ See the International Service for the Acquisition of Agri-Biotech Applications Brief at <http://isaaa.org/resources/publications/briefs/39/pptslides/default.html>.

and Pechlaner 2009). However, once food consumption is broken down by protein, vegetables, and fats, it is apparent that protein came to replace some of the vegetable consumption in Mexico. Ironically, NAFTA allowed fruit and vegetable exports to increase in Mexico, but this apparently signifies that average Mexican consumers were not benefiting from this with their dwindling purchasing power, rather large agroexporters were pocketing these profits. Although transgenics are praised by proponents as the panacea for world hunger, as noted earlier, cheap imports did little to help Mexico protect itself against the exorbitant increases in corn prices during 2008. By the late 2000s, several studies concluded that major problems are associated with corporate-driven biotechnology including rises in pesticide use, extreme bias towards TNCs, and few benefits experienced by small farmers or those who are hungry (McAfee 2008; Otero and Pechlaner 2009). Since most of the GM crops are engineered to be pesticide resistant, they often are paired with pesticides to get the highest yields. However, pesticide use has increased to a dangerously high level that is harmful to both humans and the environment (Thrupp 1998).

Environmental Harms of NAFTA Agricultural Strategy

Water usage is heavily concentrated on commercial farms. In a country where 82 percent of the land depends on rainfall, irrigated areas are crucial resources because they offer higher crop yields (CONAGUA 2008). The majority of water (77 percent) is used for agriculture. Land surface area is also heavily concentrated in nine states, accounting for 59 of planted vegetables and 89 of fruits, which is a result of the NAFTA-driven export strategy (González 2014). Due to crop specialization, only a handful of fruits and vegetables are widely produced. Seven of 114 fruits and seven of 88 vegetables account for the majority of production. The large commercial

farms producing most of these crops are heavily dependent on imported technology from TNCs (Massieu 2004). Such intensive cultivation methods have contributed to serious human and environmental issues of soil erosion, depletion of external inputs, air, water, and soil contamination, and major illnesses (Alieri and Nicholls 2004; Gliessman 2007). Monocropping techniques also tend to render future cultivation unfeasible because of their vulnerability to plagues and plant disease, and overexploitation of subterranean water sources (González 2012). Renting and buying of water shares has become commonplace, thus exacerbating the concerns over water (Barkin 2006). With the privatization of water, most peasants cannot afford irrigated land, and thus rely on rainfall. Also, the focus on horticultural crops has led to depletion of underground aquifers in those regions (Maisterrena and Mora 2000; Moreno 2006).

After the water is tapped out and the land is assumed to be infertile, the agricultural TNCs tend to simply move to untapped fecund lands. Critical resources are depleted by the TNCs. For instance, enormous amounts of water are used in tomato cultivation and most of those tomatoes are exported, thus water is exported (Allan 2003). Studies that have quantified this “virtual water” use have found that it has risen among Mexico’s export sector (Arreguín-Cortés and López-Pérez 2007). The concentration at the domestic level has also taken place globally, with much of the fruit and vegetable production originating in Mexico. This concentration increases the vulnerability of both the country and agroexporters who are affected by international changes impacting the price of crops. Furthermore, major weather calamities create severe scarcities primarily affecting the poorest consumers in Mexico (Thompson and Wilson 1997). Although the average price of fruits and vegetables in Mexico increased drastically since NAFTA, average to poor workers have not seen increases in their wages (González and Macías 2007). Agricultural workers and local citizens are the ones who bear the

major burden of this unsustainable production strategy by sacrificing their water and precious natural resources, enjoying no real economic improvements, and suffering from exposure to noxious pesticides (Arellano et al. 2009). Regions high in pesticide use have also been found to have higher incidences of cancer among other diseases (Acedo 2011).

Biopiracy and the Enola Bean

NAFTA's revision of intellectual property rights gave rise to biopiracy, the exploitation of fauna and flora by claiming ownership via patents. In ethnocentric fashion, the United States patented old knowledge long held by indigenous farmers in a form of biopiracy (Shiva 2000). In addition to the new GM crop innovations, TNCs have taken out patents on seed used for centuries (Press and Washburn 2000). The "Enola" bean is probably the best-known case of biopiracy. The case of the "Enola" bean demonstrates how these new intellectual property laws have been detrimental to indigenous and peasant groups (Carlsen 2003). Larry Proctor purchased bean seed in Mexico and harvested a common yellow bean endemic to Sinaloa, Mexico. Later, he acquired a patent from the U.S. Patent and Trademark Office on the yellow bean, naming it "Enola" after his wife. Bean farmers in Mexico increased exportation of the beans to the United States after NAFTA and this exportation was shaping into one of the few Mexican farmer success stories. Then, Proctor demanded six cents on every pound to be paid to his company, Pod-Ners, for use of the patented bean. In response, Rio Fuerte farmers abandoned the profitable bean as they saw no other choice. Such patents have been predominantly held by wealthy nations much to the detriment of developing country farmers. OECD nations accounted for 97 percent of all patents (Mexico only nominally a part of this), and patented production contributed about half of these countries' GDPs (RAFI 2000; UN Development Programme

2000). Furthermore, TNCs hold over 90 percent of all technology and product patents.

Although the patent on the “Enola” bean was later ruled invalid by the U.S. Court of Appeals, it was allowed to stand for an entire decade, about half the life of the patent.¹⁸⁷

Corporate Conservationism

With the rise of the influence of TNCs in the neoliberal age, a trend of corporate conservationism has appeared in the post-NAFTA era. In the name of environmental conservation, many corporations have enacted policies that effectively secure long-term, unrestricted access to natural resources for the purpose of production, not conservation (Carlsen 2004). There is a fundamental contradiction with corporate-driven consumerism in the name of environmental conservation. Due to the lush biodiversity in Mexico and other parts of Latin America, three major business opportunities arose within the context of corporate conservationism: (1) environmental services, (2) bioprospecting, and (3) ecotourism. The corporation offers its resources and ability to protect the environment as part of environmental services. However, while the corporation offers to conserve rich natural areas, it buys the rights to raise its pollution cap, thereby negating its environmental stance. Bioprospecting provides an opportunity to patent and privatize the building blocks of life, such as plant and animal species’ genomes, allowing them to be marketed as pharmaceuticals, cosmetics, and food products. The “Enola” bean and biopiracy are examples of bioprospecting. The indigenous peoples who inhabit the lands that are bioprospected have been displaced and often left uncompensated for their land’s exploitation (Barreda 2003). Many of them remain opposed to the process but are simply not consulted about the excavations. Companies also privatize indigenous lands to allow

¹⁸⁷ See the ETC group’s news release at http://www.etcgroup.org/sites/www.etcgroup.org/files/publication/pdf_file/etcnr_enola_14july09.pdf.

for beautiful nature retreats for tourists (Carlsen 2004). The tourist workers often experience deplorable living conditions while the ecotourism industry flourishes. As a result of such projects, Mexico has experienced a wave of extinctions and biodiversity loss.

Pollution

Air pollution in Mexico, primarily Mexico City, is serious and responsible for increases in the mortality rate, chronic bronchitis, and other respiratory problems (Molina and Molina 2002). Although an upsurge in automobiles is one noted cause, Gallagher (2004) demonstrated that industrial production is a significant source of many air pollutants such as particulate matter, sulfur dioxide, nitrogen oxides, hydrocarbons, and carbon oxides. Although there appeared to be some decreases in pollution due to changes in production, NAFTA increased the scale of industry in Mexico. The increase in scale far exceeded the contributions of compositional changes, resulting in an accelerating increase in pollution in Mexico. Overall, Mexican industry is 14 times more pollution intensive than U.S. industry, albeit some industries are actually cleaner in Mexico, and most of Mexico's pollution is driven by the paper and pulp industry. For the most part, Mexican industries are dirtier because they are either more energy intensive or use dirtier fuels, and for industries that produce high levels of byproduct waste, Mexico lacks requirements for end-of-pipe technologies.

Several other studies reach similar conclusions. One study found evidence suggesting that trade openness between the United States and Mexico has contributed to the majority of increases in greenhouse gas emissions in Mexico since 1994 (Yu, Kim, and Cho 2011). Similar to Gallagher (2004), Stern (2007) investigated the technique, scale, and composition effects of NAFTA on Mexico's environment, and found that most of the pre-NAFTA pollution trends

continued after NAFTA, albeit in some cases improved. Energy use and carbon emissions trended upwards, but the other pollutants (nitrous oxide and sulfur dioxide) converged at lower levels than the United States and Canada. NAFTA was found to have no effect on technology diffusion, and the technology gap between Mexico and its northern neighbors has widened, likely contributing to environmental problems. Lipford and Yandle (2010) found NAFTA to have mixed effects on Mexico's air quality. Particulate matter emissions were decreasing before NAFTA and continued to decline after NAFTA. Most positively, NAFTA appears to have reduced the rate of growth in per capita carbon dioxide emissions in Mexico, albeit carbon dioxide emissions are still increasing. Most troubling, nitrogen oxide emissions were declining prior to NAFTA, and reversed direction and began increasing after NAFTA. Some environmentalists have warned that the changes in trucking brought by NAFTA could lead to increases in child asthma (Rosenberg 2004). A CEC (2002) report also found air pollution increasing since NAFTA, caused particularly from the increases in freight. Generally, the CEC (2002; 2004b) has only reported minimal environmental degradation caused by NAFTA.

Evidence of NAFTA's effect on water pollution has also not been completely straightforward. Hufbauer and Schott (2005) found pronounced water pollution around the U.S.-Mexico border along with inadequate sewer systems, and hazardous wastes. In addition, several studies have noted a chronic drought plaguing the Rio Grande region during the ten years after NAFTA (see Mumme 2016). Lipford and Yandle (2010), similar to their results on air pollution, found mixed results for water pollution. NAFTA was associated with greater access to improved water sources and better sanitation treatment. However, organic water pollution emissions in terms of biochemical oxygen demands (BODs) have risen significantly as a result of NAFTA. In fact, from 1980 to 1993 BODs were declining in Mexico. Then, once NAFTA was

implemented, BODs stabilized then began rising. Lipford and Yandle (2010) conclude that NAFTA did not produce the economic growth necessary to reduce pollutants in Mexico.

Conducting fieldwork, Simon (2014) discovered that *maquiladoras* commonly contributed to a stream of waste that contaminated nearby neighborhoods and the environment, and children living in the contaminated areas had noticeable spotty and discolored skin. Most notorious of these waste areas was the *Dren Cinco de Marzo* that originally was a mechanism for flushing city water as a flood prevention method, but became a cesspool for sludge and *maquila* waste. Many children living near the *Dren* were covered in rat bites with blotchy skin and missing patches of hair. Areas exposed to this waste also had high rates of tuberculosis, hepatitis, and dengue fever. Several migrants told Simon a similar story about moving from rural ejidos northward to the border in search of employment. They often reminisced about life on the farm conveying a sense of nostalgia while detailing a process of forced urbanization.

Poverty and Deforestation/Soil Degradation

The lack of economic gains along with the poverty and inequality after NAFTA also is related to another form of environmental degradation (Esquivel and Rodríguez-López 2003; Baylis, Garduno-Rivera, and Piras 2012; Galbraith 2014; Laurell 2015). Considering agriculture is the most destructive force of biodiversity, and poverty is a major cause of environmental degradation, Soto (2012) studied the impact of NAFTA on agriculture and poverty, and thereby the environment. He found NAFTA contributed to substantial percentages of deforestation in several states: 24 percent of jungle and forest lost in Chiapas; 37.3 percent in San Luis Potosí; 31.5 percent in Tabasco; 17.3 percent in Oaxaca; and 10.4 percent in Campeche. This deforestation is most attributable to peasants in these states increasing their cultivation of corn to

compensate for economic losses. Since corn prices decreased, they simply cultivated more corn to compensate. Unfortunately, these states also had the highest levels of endangered species and likely experienced other biological diversity losses. Despite protections on the trade of endangered species, profitable black markets still exist and will likely continue if inequality and poverty are not addressed (Rosenberg 2004). Although deforestation is correlated with poverty, Pascual and Barbier (2007) argue that the causal link is rooted in the macroeconomic policy underlying NAFTA. They find support for Soto's logical conclusion that as farmers' household incomes dip, they make shifts in cultivation. Interestingly, the costs of soil degradation appear highest among the non-poor and poorest households. Thus, two trends contributing to deforestation and soil degradation occurred after NAFTA. Peasants increased their land cultivation to compensate for economic losses, and wealthier farmers, often connected to TNCs, increased their scale of cultivation and used massive quantities of water, fertilizers, and pesticides. Both trends caused environmental degradation.

TNCs and the Environment

TNCs Empowered by Lax Enforcement

Although some cases exist where U.S. firms relocated to Mexico for its lax pollution caps (Gallagher 2004), most of the environmental degradation is due to the restructuring of Mexico's agricultural sector (Zepeda et al. 2009) and the Mexican government's lack of commitment to environmental protection (Carrillo and Schatan 2006). Little funding went to important aspects of protecting the environment, such as inspection of manufacturing firms (Carrillo and Schatan 2006), despite the rhetoric surrounding NAFTA's environmental side agreement.¹⁸⁸ The

¹⁸⁸ See Behr (1993a) and Farnsworth (1993) for some examples of news coverage on the praise over NAFTA's environmental friendly proposals.

Mexican state has done very little in the way of comprehensive environmental policy reform, and the CEC has been underfunded (Zepeda et al. 2009).

Interestingly, just prior to NAFTA, Mexico's environmental enforcement and regulation was at an all-time high. From 1990 to 1993, Mexico strengthened its environmental regulatory and enforcement capability, during a time environmental concerns were raised around the NAFTA negotiations (Logsdon and Husted 1997). In 1993, there were over 30,000 inspections of firms, dozens of plants were closed daily, and there were 1,500 partial or complete plant closures (Harvie 1998). After 1994, Mexico continued to strengthen its policies (See Logsdon and Husted 2000 for specific examples), but these changes seemed to be only window-dressing. Enforcement never really increased after NAFTA despite the pre-NAFTA preparation. Compliance began to drop in 1998, although participation in a voluntary audit program supervised by the Mexican government increased. A large majority (86%) of TNCs made environmental investments and began voluntarily setting environmental standards (Husted and Rodríguez 1998).

Despite some of these changes, environmental outcomes did not significantly improve in the years immediately following NAFTA. Very little (14%) wastewater was treated (OECD 2000), air quality declined overall despite improving in some years after NAFTA, and Tijuana initially improved its air quality only to later see deterioration (Logsdon and Husted 1997). Per capita solid waste generation increased, and there was little engagement in recycling outside of plastics. Hazardous waste generation also increased (SEMARNAP 1997). Although grants for environmental programs were expected, most financing was in the form of loans, and World Bank loans applied user fees to repay loans (Logsdon and Husted 2000). Few loans were ever requested considering the rising interest rates due to the way the North American Development

Bank was functioning (Browne 1996). Generally, Mexico strengthened its environmental policies and the mechanisms for regulation and increased its environmental budget. However, Mexico has done little in the way of improving enforcement measures, and despite TNCs' environmental investments and voluntary participation in self-regulatory programs, compliance rates have decreased. The wave of environmentalism displayed by the Mexican government and TNCs may be more window-dressing than any real effort to protect the environment. These pre-NAFTA environmental moves ostensibly were made simply to sell NAFTA considering the lack of enforcement after NAFTA was passed.

NAFTA Favored Investors over Environment

The case of Metalclad, a U.S. waste removal company, provides an example of how NAFTA protects investors over the environment, to the detriment of the environment. Riding the wave of environmentalism surrounding the NAFTA negotiations, Metalclad made promises to clean up Mexico. Against the recommendation of the Mexican government, Metalclad purchased a piece of land from Coterin, a Mexican company that was contaminated with more than 20,000 tons of toxic waste residue (González 2003). Metalclad took control of the toxic waste dump with only two of the three necessary operating permits and without cleanup. Metalclad promised to clean up the dump if it was given authorization to reopen it. An audit was pushed through rapidly that granted authorization despite finding 18 violations. The wife of a federal environmental official was given \$100,000 by Metalclad, ostensibly to foster the expedited review (Perezcano Díaz et al. 2001). However, shortly after its reopening, local citizens protested due to birth defects recorded among local residents (González 2003). Metalclad responded by backing a local politician who sided with its interests, and using its

stockholders to influence U.S. senators towards efforts to reopen the site. Facing intense political pressure, Mexican authorities halted their investigation into the harms caused by the site.

Nearly two years later in January of 1997, with falling stock prices, Metalclad filed a lawsuit against the Mexican government under NAFTA's Chapter 11, claiming a violation of Article 1105 (González 2003). Metalclad claimed it had not been treated fairly since the local San Luís Potosí government denied it the operation permit. Metalclad sued for \$130 million in lost profits, despite its original investment of only \$20 to \$25 million.¹⁸⁹ In 2000, a NAFTA tribunal ruled in favor of Metalclad, ordering the Mexican government to pay Metalclad over \$16 million. Mexico appealed the ruling, but a Canadian judge upheld the decision despite his disagreement with it, basically stating that no court had any authority to overturn the original ruling (González 2003). Ultimately, Mexican taxpayers, many of whom already paid a price due to the toxic contamination, were ordered to pay just over \$16 million to Metalclad. Metalclad was also absolved of any responsibility for cleanup, and the taxpayers were left with the estimated \$8 million bill. Despite the apparent victory for Metalclad, its president expressed his contempt for the ruling, arguing that at least \$90 million in losses were not compensated, and the U.S. International Business Council also sided with Metalclad, claiming the ruling was a violation of investors' rights.

Although Metalclad is only one example, this case set a dangerous precedent for corporations suing sovereign governments, and many other TNCs followed suit (González 2003). This case also demonstrated that investors would not be assigned any responsibility, and

¹⁸⁹ See Metalclad's court proceedings at http://www.economia.gob.mx/files/Metalclad_v2.pdf and <http://www.italaw.com/cases/671>, and also news coverage at <http://articles.latimes.com/2001/jun/14/business/fi-10239>.

NAFTA tribunals' rulings could not be appealed. The power of these tribunals is even more troubling when considering their secrecy and public exclusion. Lawsuits such as Metalclad's are settled behind closed doors with no public scrutiny (Calton 2014). Furthermore, industry spokespersons often serve as the expert witnesses providing industry-friendly testimony while any real oversight is circumvented by eschewing it or simply disallowing it through holding closed-door trials. Even threats of a lawsuit have led to powerful victories for TNCs.¹⁹⁰ Inspection and regulation between the different NAFTA parties often vary significantly, but NAFTA allows such variability through its "equivalent" standards provision. The future is also bleak since NAFTA's Chapter 11 has been described as the "investors' bill of rights." However, this case demonstrates that Chapter 11 places the rights of corporations above citizens and the environment.

In general, when evaluating NAFTA on its environmental achievements, the most important gains have been procedural, not real improved conditions (Torres 2009). Ironically, environmental transnational actors have achieved less since the signing of NAFTA, and the U.S. government has been less willing to help with the environmental situation. Despite the development of new laws, the environment has received little attention after NAFTA. Thus, the environment was only a concern during the NAFTA negotiations. Yet, once the policy passed, the environment took a back seat. NAFTA's inability to produce sufficient economic growth in Mexico may have allowed for the ensuing environmental deterioration (Laurell 2015). The decreased environmental spending may be attributable to the economic struggles in Mexico. Nonetheless, Mexico has experienced great economic costs for the losses to its environment. Official Mexican government sources estimate about \$50 billion dollars in damages a year from

¹⁹⁰ See Calton (2014) for one example of the Canadian government backing away from tougher anti-tobacco advertisements.

environmental destruction (Gallagher 2006), or an estimated 10 percent of GDP per year (Zepeda et al. 2009). For every dollar generated, 10 cents are lost from environmental degradation (Gallagher 2006). As a result, soil erosion, solid waste, and air and water pollution have increased faster than GDP and population growth.

Migration

NAFTA influenced several negative outcomes related to migration through its lack of addressing labor flows in its text. Furthermore, considering the poor post-NAFTA economic outcomes in Mexico discussed earlier, NAFTA forced many Mexicans to migrate north to the United States in search of improving their economic condition, while not offering these migrants the possibility to migrate or any protections. In contrast, aggressive anti-immigration laws and actions have been taken by the United States. Consequently, the undocumented Mexican population has grown in the United States, an informal economy for smuggling and false documentation grew in Mexico, and immigrants have been criminalized negatively affecting workers' rights.

Economic development and migration are often linked. When traditional economic structures are disrupted by new policies, large shifts can occur in migration. When considering that nearly 20 percent of Mexicans depended on the corn industry, it is no surprise that around two million agricultural jobs were lost as a result of NAFTA (Healey 2013). After the agricultural restructuring and signing of NAFTA, *campesinos*, unable to provide food or a sufficient income, traveled north either to Mexico City, the border region, or the United States in search of employment. After NAFTA undermined Mexican corn production, Mexico's economy became subservient to U.S. agricultural policies (Bacon 2014a). Partially due to the more

substantial U.S. farm subsidies, about 75 percent of the U.S. farm workforce is comprised of undocumented immigrants, largely from Mexico (Luckstead 2012). Although the Bracero program may have set the precedent for hiring migrant workers, Luckstead (2012) found that free trade and increased farm supports led to more trade which magnified undocumented migrant labor flows. In addition, a simulation analysis confirmed this result for NAFTA. Even if subsidies are completely removed, NAFTA alone would account for significant labor migration. Additionally, an Immigration Reform and Control Act (IRCA) commission conducted a study that found poverty to be the main impetus for Mexican migration to the United States, and surprisingly, recommended that the United States promote more free trade without a focus on free movement of labor (Bacon 2013). However, the report did encourage the use of transitional support. Considering that rural poverty increased after NAFTA (Zepeda et al. 2009; Gonzalez 2011), the IRCA commission report's conclusions, extended into the years after NAFTA, seem to suggest that NAFTA played a large role in migration via increases in poverty.

Many Mexicans migrated to the northern border regions first before eventually crossing the border into the United States in search of work. *Maquiladora* plants increased 17 percent from 1993 to 1996 (Santillán 1997), and 10 percent of the formal labor force was employed by *maquiladoras* by 1997 (Kopinak 1998). Yet, *maquiladoras* were primarily hiring women, forcing men to look for work in the United States. Since most of the labor was simple assembly, job creation lagged dramatically behind demand, and *maquiladora* wages were often too low to keep workers from moving on to the United States. Mexicans reported that they did not intend to move to the United States, they only moved there when it was clear there was no work for them at home (Anguiano 1996). These decisions are supported by the fact that the number of deported Mexicans in 1996 equaled the number of workers in the entire *maquiladora* sector (Gatsiopoulos

1997). As noted earlier, the NAFTA-driven Mexican economic growth and job creation were not enough to absorb the displaced rural population (Cypher and Wise 2010; Blecker 2014; Laurell 2015).

Continuing a trend from the NAFTA negotiations, an increasing number of immigrants from Mexico entered the United States. Annual immigration from Mexico to the United States soared from 370,000 in 1991 to 770,000 in 2000 (Passel, Cohn, and González-Barrera 2012). After 2000, immigration continued, but at a slower pace. The Mexican-born population in the United States increased most drastically in the 1990s. Unauthorized Mexican immigrants in the United States increased from 2 to 2.9 million from 1990 to 1995, but then increased more rapidly, increasing to 4.5 and 6.9 million in 2000 and 2007, respectively (Passel and Cohn 2016). Since 2007, unauthorized immigration has declined in the United States. The mass exodus of Mexicans to the United States has largely impacted indigenous Mexican communities. Around half a million indigenous people from Oaxaca alone live in the United States (Hershberg and Rosen 2006). Indigenous people constituted only 7 percent of Mexican migrants in the United States just before NAFTA, but by 2008, they made up 29 percent (Mines, Nichols, and Runsten 2010). Unfortunately, these workers are largely underpaid, which depresses wages in the U.S. agricultural labor market.

Criminalization of Labor Migration

Since NAFTA contributed more to expanding intrafirm trade, consisting mostly of trade between parent and subsidiary companies, rather than bringing wealth to Mexico, some scholars have described Mexico's leading export as its labor force (Tello 1996). One of the major reasons why Mexico has relied on labor as their primary export is a direct result of NAFTA and the

agreement's neglect of migration policy (Wise 2004). While the free movement of goods and services received major attention during the NAFTA negotiations, the free movement of labor was left off the table with virtually no mention. Moreover, legislation was passed in the United States that criminalized labor migration. Under the Immigration Reform and Control Act (IRCA) and the 1990 Immigration Act, U.S. immigration policy shifted from tolerance to repression and criminalized hiring unauthorized workers in the United States. Major increases in funding went to militarize the border. Just as NAFTA was being implemented, Operation Blockade, and Operation Gatekeeper a year later, were launched resulting in spending massive amounts of taxpayer money on detaining illegal immigrants at the two busiest border entry points (Nevins 2002). Although IRCA may have set the precedent of criminalizing labor migration, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 created a hostile approach towards labor migration. This legislation was passed to address the uptick in Mexican immigration to the United States after NAFTA.

Over the past two decades, the United States has pushed for integration in nearly every market, except the labor market, and the 9/11 terrorist attacks strengthened the anti-labor market liberalization sentiment. The Department of Homeland Security was established in response to terrorism, but effectively "terrorized" Mexican and Central American migrant workers (Fernández-Kelly and Massey 2007:108). The strict immigration policies have not been effective in deterring illegal immigration (Massey 2005). Instead, they have led to increases in the growth of undocumented people in the United States. Since reentry to Mexico is more dangerous than ever, Mexicans, in more numbers, are electing to stay in the United States rather than risk traveling back home. The number of Mexicans dying at the border skyrocketed after the new immigration policies (Eschbach, Hagan, and Rodriguez 1999). Ironically, the likelihood

of being caught and arrested at the border actually decreased since the changes took place (Massey 2005), falling to as low as 5 percent in 2002 (Fernández-Kelly and Massey 2007).

The militarization of the border seemingly has only accomplished one thing—it made the costs and risks of crossing the border extremely high, tripling the rate of death along the border (Massey, Durand, and Malone 2002). The increased costs gave rise to unintended consequences such as the expansion of the border smuggling market. The cost of hiring a coyote to help cross the border has increased drastically, from about \$400 in 1993, to around \$1,200 in 1999 (Massey 2005), and closer to \$2,800 more recently (Fernández-Kelly and Massey 2007). Since these costs have also kept Mexicans from returning home, the population of Mexicans living in the United States has increased without accelerated migration. Despite numerous Mexican deaths along the border, little has been done to address the migration issue. The United States has resorted to violence along the border to secure its interests in locking out labor while freeing mobility of capital, and Mexico has remained subordinate to U.S. interests (Wise 2004). For example, the United States has delegated the task of securing Mexico's southern border from immigration and the Mexican presidency has reaffirmed this position. Interestingly, one analysis suggests that blocking labor mobility may have prevented potential NAFTA gains (Robertson 2005).

Forced Displacement and Union Busting

Many Mexicans migrated to the United States due to poverty and lack of work, but this was not the only cause of migration. Many Mexicans faced extreme political violence which later gave birth to armed opposition, further perpetuating the cycle (Bacon 2013). Political repression often took place during worker protests and strikes, exacerbating the poor working

conditions in Mexico, especially after the NAFTA negotiations started. Since Mexico's major selling point for NAFTA was its cheap labor, it took extreme measures to keep wages down. Many indigenous groups, such as the Triquis, are excluded from any autonomous decision making about their own communities, and have to fight nearly everyone for any autonomy. Miner unions are another example of groups that experienced severe repression (see Fischel and Nelson 2010). When repression did not manifest, the firms often used mass firings to control worker unrest (Bacon 2006; 2013). In the years following NAFTA, Mexican officials actively decimated unions.¹⁹¹ U.S. officials even authored some of the deregulation policy in Mexico in order to secure cheap labor.

These harsh anti-union tactics also increased in the United States, victimizing many Mexican immigrants. The criminalization of immigrants commonly manifested itself in immigration raids where the primary goal was union busting (Bacon 2008). Since 2008, the U.S. Immigration and Customs Enforcement (ICE) agency has been heavily involved in arresting immigrants.¹⁹² Unfortunately, criminalizing immigrants fails to take into account the various factors influencing their decisions (or lack thereof) to relocate in the first place. Most immigrants who are criminalized in the United States come from regions of the world that are poverty stricken (Bacon 2008). When considering Mexican immigrants, NAFTA played an integral role in creating the conditions of poverty and unemployment (Zepedea et al. 2009; Gonzalez 2011; Weisbrot et al. 2014; Laurell 2015). Most notably, NAFTA reduced the price of corn in Mexico rendering many corn farmers without their livelihoods and desperate (Browning 2013). Pair these circumstances with the widespread civil unrest and repressive state tactics to control opposition groups, many Mexicans had little choice but to seek both physical and

¹⁹¹ See Bacon (2006; 2013) for several specific examples.

¹⁹² See ICE's Immigration Removals FY 2016 at <https://www.ice.gov/removal-statistics/2016>.

economic security elsewhere (Blecker 2003; Lacey 2007; Petras 2010). For those Mexicans who still had work, the repression led to lower wages and weaker unions, and for many occupations, the workplace conditions were abysmal and life-threatening (Bacon 2008; 2013). Mexicans faced a conundrum: Should they stay in Mexico with no work or, at best, precarious employment, or should they seek work in the United States where they would be considered criminals? Many Mexicans chose the latter, or had no choice, but to migrate.

Another cause of migration was abrupt and cruel forced dislocation (Bacon 2013). One example where this happened was on mineral-rich lands. Salinas changed the Mexican mining laws in preparation for NAFTA, another often overlooked policy change designed to attract foreign investment and support for NAFTA. The new law stated that resources must be utilized, and thus mandated exploitation of resources. Consequently, resource extraction firms were granted the authority to demand that entire towns be vacated for extraction. Later administrations such as Calderón's made several concessions to mining companies in exchange for financial reimbursement (Bacon 2012). The same story repeated itself throughout Mexico where mining companies promised jobs and economic development only to bring displacement, environmental degradation, and mistreatment of workers (Bacon 2013).

Mexicans who entered the United States faced a series of new problems. NAFTA functioned as "an instrument of displacement," producing "a huge labor reserve in Mexico," and providing Mexicans with "no alternative but to migrate" (Bacon 2013;19, 59). Many of the displaced *campesinos* found work in the meatpacking industry with some of the most dangerous working conditions imaginable (see Bacon 2008; 2013). The border region was a popular place to settle because it was still close to home and populated mainly by Mexicans (Garcia 2006). These Mexicans suffered from poor health care since they could not afford U.S. health care

insurance, and reentering Mexico to obtain affordable health care was perilous. Many of the families were able to build their own homes through the *colonia* housing project, but these houses were often small with several problems such as uneven and unpaved streets, high flood risks when it rained, and dangerous neighborhoods ridden with drug trafficking.¹⁹³ In addition, families who wished to move were often unable to sell their homes. Some men commuted to work as far away as Detroit and Chicago and were gone for weeks or months at a time, leaving the women to care for their children, the household, and continue to work their own full-time jobs. Racism and anti-Mexican rhetoric is another problem. Proposition 187 demonstrated strong U.S. racism towards Mexicans that would not even grant some basic human rights, such as the right to health care and education, and U.S. legislation passed in 1997 intensified the deportation efforts in the United States (Kopinak 1998). Despite the xenophobic rhetoric that suggested undocumented workers were a drain on the economy, studies actually showed that they provided economic benefits (Brown 1997; National Immigration Forum 1997).

TNCs Favor Guest Worker Exploitation

In response to the massive influx of migrant workers, rather than offer permanent residency, U.S. employers advocated for guest worker policies. Yet, the history of guest workers is quite dark and ridden with exploitation. Gonzalez (2006) describes this history in relation to the trends after NAFTA. He challenges the common argument in the literature that Mexican migration shares several similarities with European migration. Instead, he argues that Mexican migration is much more explicable using a comparison to colonized labor in Britain and France. The key to understanding Mexican migration is U.S. capitalist expansion. Furthermore, the

¹⁹³ See Strickland (2016) and Hoffman (2015) for coverage on *colonias* in Texas.

Bracero program, as well as other “guest worker” programs between the United States and Mexico, are run unilaterally by the United States and are not interdependent.¹⁹⁴ The only interdependence is between elites in the TCC where Mexican elites agree to the terms and conditions of TNCs demanding cheap labor.

Looking at more recent NAFTA-era migration, employers have used a strategy of employing contractors to employ workers to shield themselves from any scrutiny over worker rights violations (Bacon 2008). Employers have also continually declared labor shortages to keep a large labor pool and wages down. Since guest workers are subject to deportation when they do not have a job, it is most troubling that several guest workers have been fired for very fickle reasons, such as “mother sick,” “death in the family,” “work hours too long,” and “slowing down other workers,” likely to keep them from gaining any power, and often a guise for union busting (Bacon 2008:94). These reasons were often mentioned by workers themselves, and they were fired by employers for complaining.

Although NAFTA attempted to integrate the economies of the United States, Mexico, and Canada, no political integration was sought, and labor integration was actively avoided. In sum, the creation of NAFTA with no discussion of labor flows has brought at least five problematic outcomes. This lack of discussion is reflective of the criminogenic nature of NAFTA, particularly the lack of worker representation in negotiations and its allegiance to the TCC motivated by a neoliberalism ideology that favored cheap labor. First, many Mexicans were displaced by NAFTA and other agrarian policies. Second, in response, there has been

¹⁹⁴ Gonzalez (2006) describes the Bracero program that lasted from 1942-1964 as an indentured labor program with terrible working conditions, similar to slavery, existing from the transition to recruiting centers to the actual work performed. Employers exerted all the control over workers even holding wages from them when they desired. Gonzalez (2006:35) describes the Bracero program as “identical” to colonized labor exploitation, using Indian indentured laborers and Algerian indentured laborers as comparisons.

intensified, often violent, attempts at curtailing migration. Third, the informal sector dedicated to providing smuggling services and false documentation grew. Fourth, there has been unprecedented growth in the undocumented Mexican population in the United States. Fifth, the criminalization of immigrants and classification of immigrants as guest workers has had detrimental effects on workers' rights.

Drug Trade

The changes brought by the neoliberal policies, including NAFTA, encouraged Mexicans to migrate north in search of work or secure employment in the informal economy in Mexico. Some displaced Mexicans turned to the drug trade (Dube, García Ponce, and Thom 2014; Arizpe 2014). In response, U.S. federal spending on drug control has increased, and the drug problem has been reshaped as an international problem (Andreas 1998b). Although drug concerns have multiplied since NAFTA, the NAFTA negotiations themselves never mentioned drug control. Mexico's desperate search for foreign investment has led to little scrutiny over the source of various funds (Mayer 1998; Cameron and Tomlin 2000). Also, the restructuring of the agricultural sector has encouraged the production of marijuana and other more profitable illicit crops, while also contributing to the rising number of migrant workers (Dube, García Ponce, and Thom 2014; Arizpe 2014). The slashing of government funding for electricity, fertilizer, water, and other necessities for farmers has resulted in a mass exodus from rural lands (Rivera, Whiteford, and Chávez 2009; Bellon and Hellin 2011; Fernandez, Wise, and Garvey 2012; Browning 2013). Due to the immigration activity along the U.S.-Mexican border, Border Patrol agents have proliferated, and several military-esque operations, such as Operation Hardline, Operation Gatekeeper, and Operation Blockade, have been carried out (Andreas 1998b). In other

words, many of the forces giving rise to Mexican emigration have also contributed to a growing informal economy centered around drugs and migration. By 2004, informal employment accounted for 57 percent of the actively employed population in Mexico (Zepeda et al. 2007), and has continued to remain steady at high levels (Laurell 2015). In addition, the acceleration of the drug trade and migration have been impetuses for increased military and security spending (Rochlin 1997).

Turning to the Drug Trade

After NAFTA furthered the trend of reducing government supports for the development of agriculture, and the availability of loans also declined, Arizpe (2014) contends that individuals in the countryside who were faced with bankruptcy had four choices: work as wage laborers in agriculture, obtain a higher education to attempt to climb the socio-economic ladder, migrate to the United States, or enter the drug trade. Agricultural laborers experienced some of the worst working conditions in the world facing deterioration of health, poverty, and repressive treatment (Bernet, Francis, and Lara Flores 2008). When rural families are able to send their children away to universities, it often results in high-skilled, unemployed workers who seek work in the United States and Canada (Arizpe 2006). If they are unable to escape their hometown, they often have nothing to do and suffer from many problems (Arizpe 2014). For those who seek migration to the United States, the new policies have made the passage much more dangerous. For many rural Mexicans, the drug trade was the only real alternative because when government funding was lost, drug traffickers invested in the abandoned countryside. Although the drug trade may have been a safety valve at first, some peasants began to collaborate with the traffickers who were funding social welfare programs and financing schools and hospitals (Rochlin 1997).

NAFTA made unique contributions to the drug war and escalation of violence that followed in Mexico. First, NAFTA destroyed corn peasants' ability to grow for subsistence, forcing them to find new livelihoods (Rivera, Whiteford, and Chávez 2009). Some turned to illicit crop growing and other illegal activities (Dube, García Ponce, and Thom 2014). Many traditional peasants were attracted to growing illicit crops considering the decline in prices of licit crops (Watt and Zepeda 2012). Second, large-scale displacement and widespread poverty created major waves of civil protest and acts of dissidence by the opposition to the new neoliberal economic model culminating in NAFTA (Rochlin 1997; Cuninghame and Corona 1998; Bacon 2004). NAFTA ineffectively addressed the poverty and unemployment in Mexico while unintentionally making the black market attractive (Zepeda et al. 2009; Weisbort et al 2014; Laurell 2015). Third, NAFTA linked the U.S.-Mexican highway system together and increased the flow of goods across the border, providing the infrastructure for the drug trade (Andreas 2001; Paley 2014). The opening of the borders provided the opportunity for the insatiable demand for drugs in the neighboring United States to spark a brutal turf war over supply (Watt and Zepeda 2012). Without U.S. demand, the drug war would not be lucrative considering how extremely low Mexico's domestic demand for drugs was prior to NAFTA. Fourth, long-standing political and military corruption in Mexico involving the drug trade was further integrated with U.S. government and business elites who had profitable connections to the drug trade (Reyes 2011; Paley 2012). Lastly, the neoliberal economic model culminating in NAFTA, needed defending which was done under the guise of the war on drugs (Watt and Zepeda 2012; Paley 2014).

Calderón and the War on Drugs

Although NAFTA created conditions conducive for the drug trade, it was not until Felipe Calderón won the Mexican presidency in 2006 that the drug trade turned extremely violent. A few days after his inauguration, Calderón—who won the election with widespread accusations of electoral fraud (Gibler 2011a)—declared a war on drugs, and immediately deployed more than 20,000 troops (Gibler 2009). Despite the massive campaign against drugs, violence in Mexico actually increased rather than decreased (Human Rights Watch 2011), and the Mexican government officially claimed that 47,515 were killed in drug-related violence between 2006 and 2011 (Cave 2012). Calderón steadily increased the number of deployed troops involved in the counter-narcotics effort, and the number of deaths quickly dwarfed those that occurred during the previous administration (Schneck 2012). The Mexican military engaged in brutal repression techniques including “beatings, asphyxiation with plastic bags, electric shocks, sexual torture, death threats, and mock executions” which were supposedly used to gain “information about organized crime” (Human Rights Watch 2011; Schneck 2012:930). Maybe most troubling are the tens of thousands of Mexicans who disappeared, at least 20,000 of whom were acknowledged by the military (Human Rights Watch 2011). Evidence surfaced that suggests the Mexican military and police force were involved in these disappearances despite their claims that drug cartels were behind them. However, the drug cartels have used the same repressive techniques of torture as well, contributing to the violent atmosphere in Mexico.

Corn’s Connection to Violence

Since NAFTA’s implementation, marijuana and other illicit drug crop cultivation have increased (USDS 2000; 2011). Over 600,000 agricultural workers had participated in illicit drug

cultivation by 2010 (Ronquillo 2011). Previous journalists and researchers have noted the connection between maize prices and activity in the drug sector (Bucardo et al. 2005; Ronquillo 2011; Castillo García 2012), but Dube et al. (2014) provide the most compelling argument. In their study, they found that the precipitous decline in maize prices in the 1990s was linked to both marijuana and opium cultivation in areas suited for growing maize, many of the same areas devastated by NAFTA. Drug seizures and criminal detentions for drugs also were connected to the price of maize. Most troubling, maize prices were associated with large increases in drug-related homicides. They estimated for every 10 percent increase in maize prices, drug war killings could be reduced 8 percent. All of these findings suggest that a rise in maize prices lowers the opportunity costs involved with the drug trade. NAFTA quotas and Chinese exports explained the majority of the variation in corn prices (84%). Thus, by reducing corn prices, NAFTA had a significant impact on the rise of illicit drug activity in Mexico. These effects of maize prices span the entire narco-trafficking chain from increasing cultivation of illicit crops to fatal violence over the drug trade. NAFTA proponents must ask themselves if such violence mitigates any of the potential gains from free trade.

Unemployment's Connection to Violence

The job creation by NAFTA was outpaced by unemployment, particularly in rural areas of Mexico (Cypher and Wise 2010; Blecker 2014). The lack of economic opportunities led many Mexicans into the informal drug economy and increased the lethal violence in Mexico. Arizpe (2014:142) discusses the “violence of joblessness” as the correlation between unemployment and violence. During the war on drugs in Mexico, unemployment increased to 5.17 percent and wages lost 51 percent of their purchasing power (Murayama 2010). The

joblessness of Mexican military soldiers was particularly troubling. After NAFTA took effect, around 250,000 soldiers deserted the Mexican army due to low wages (Morton 2012).

Unfortunately, drug cartels were hiring, offering much more enticing salaries and their military skills were transferable. In particular, women have been encouraged to stay out of the workplace to provide more work for men. The PAN has instructed women to have more children, and even rewarded them with scholarships for having children as teenagers to address the high unemployment rate (Arizpe 2014). Violence against women also intensified alongside the counter drug trade efforts (Gutiérrez Guerrero 2010). Arizpe (2014:145) classifies Mexico's current poverty as a new form of poverty that is "now deeply tinged with blood, rage and social disorganization."

Police, Military, and Political Corruption

The ineffectiveness of the war on drugs in reducing the drug trade and violence likely has much to do with the corruption of the police, military, and political officials who are tasked with addressing the problem. The military and drug traffickers are often discussed as a binary of good versus evil, but more commonly, there is a deep overlapping, even cooperative, relationship between the two (Poppa 2010; Hernández 2013). This cooperative relationship tends to hold regardless of the political party in power (PRI or PAN). Police officers commonly work for drug traffickers (Reyes 2011). The Zetas are just one example of the intricate ties of a drug cartel to various government structures. The Zetas largely consist of ex-military officials, many of whom were U.S. trained (Paley 2012). They also have various police officers on their payroll. Some estimates suggest more than 60 percent of police officers received some kind of compensation for their work in the drug trade, and nearly 50 percent of drug cartel members had either a police

or military background (Oppenheimer 1998). To complicate matters, several police factions exist, all notorious for their own crime specialization. Some of the most egregious acts were carried out by *madrinas*, or secret agents, paid discretely to perform the police's dirty work (Immigration and Refugee Board of Canada 2000). Police officers who speak out against corruption, such as Juan Carlos Valerio Roldan,¹⁹⁵ typically do not make much progress and may face a similar fate of demotion or worse (Oppenheimer 1998).

Despite the escalating violence, funds kept flowing, seemingly backing the violence. On average, the budgets for the four institutions¹⁹⁶ dedicated to confronting drug trafficking grew by 77 percent from 2007 to 2011 at the height of the drug war (Watt and Zepeda 2012). Yet, a positive correlation exists over these years between funding and violence. More specifically, a positive correlation has been recorded between military occupation/presence and violence (Human Rights Watch 2009). Funding for police training also benefited drug traffickers, since about 25 percent of those trained left to join drug cartels (Watt and Zepeda 2012). The violence committed by authorities, in the name of the drug war, was given near immunity. The Mexican government investigated less than 5 percent of drug-related murders, and not even 1 percent of criminal investigations involved the drug trade (Gibler 2011b). Only around 1 in 100 crimes actually result in punishment of offenders in Mexico (CNDH 2009). Since Article 57 of Mexico's military code stipulates that military human rights abuses are to be investigated by the military itself, it is not surprising that only one military official was convicted during the entire Calderón presidency (Amnesty International 2011). Moreover, the political corruption behind the drug war has been difficult to expose due to the harsh retaliation against those writing the

¹⁹⁵ See *The Arizona Republic*, June 25, 1995: 1, 251.

¹⁹⁶ The four institutions are the Secretaría de la Defensa Nacional, the Secretaría de la Marina, the Procuraduría General de la República, and the Secretaría de Seguridad Pública.

exposés. Several individuals in high profile positions who investigated the politics of the drug trade were assassinated.¹⁹⁷

Increased Security...for Capital

Rochlin (1997) traces the Mexican security paradigm shift to the neoliberal age. NAFTA, in particular, brought about regional integration that effectively shifted Mexican national security to focus on security for transnational capital and TNCs. Unfortunately, Mexico's military was arguably the most closed military in all of Latin American, severely inhibiting academic investigation, media coverage, or public scrutiny (Human Right Watch 2015). Migration issues were also seen as security concerns after NAFTA (Rochlin 1997). However, most importantly, Rochlin argues that the U.S.-led drug war (well before Calderón's declared war on drugs) in Mexico offered a cover for targeting subversive groups, particularly the political opposition to the neoliberal economic model. HRVs in Mexico were widely present in the years following NAFTA (Monroy 1994; Human Right Watch 1994; 2001; La Botz 1995; International Federation for Human Rights 2006; Bacon 2013). Mexico controlled its population in several instances with repression, while being cautious about its public image. Many dissidents suffered physical integrity rights violations at the hands of the government, as they were often tortured or executed as "suspected" drug traffickers while being blocked from having legal representation (La Botz 1995; Rochlin 1997; Vonow 2016). Wealthy ranchers hired hitmen (called *guardias blancas*) to remove *campesino* squatters attempting to regain land in rural Mexico, and Zapatistas were tortured to gain false confessions of weapons trafficking in 1994 during the Chiapas uprising (Amnesty International 1996; Rochlin 1997). Conflicts also

¹⁹⁷ See Watt and Zepeda (2012) for the cases of Manuel Buendía and Enrique Camarena.

occurred in Tabasco, Guerrero, and elsewhere.¹⁹⁸ Mexico constructed a major military base on the Guatemalan border to serve multiple security functions, most principally quieting Zapatistas/indigenous groups and halting Guatemalan immigrants, and Mexico's harsh anti-immigration stance has led to several harms for Central Americans (Isacson, Meyer, and Smith 2015).

A new security law passed in 1995 – *Ley del Sistema Nacional de Seguridad Pública* – made the repression of citizens even more justifiable as it identified all citizens as possible enemies (Rochlin 1997). In the face of this repression and fraud, the United States remained mostly silent. This silence may be less bizarre when considering the amount of U.S. funds and resources sent to the Mexican military for training and equipment.¹⁹⁹ NAFTA brought security integration, and now, maybe more than ever, the United States influences Mexico's military. The suppression of the Chiapas conflict, for example, was performed using U.S.-provided helicopters (Harvey 1994; 1998).

Although the relationship between the United States and Mexican military strengthened after NAFTA through a series of bilateral agreements, the Security and Prosperity Partnership (SPP) solidified the North American military regime designed to protect the NAFTA neoliberal economic model. In March 2005, the SSP was signed between the NAFTA countries as a way to improve “security cooperation” as described three years later by Thomas Shannon, the U.S. assistant secretary of state for western hemisphere affairs, and more bluntly when he stated, “we’re armoring NAFTA.”²⁰⁰ In other words, the regional security regime shifted its focus on protecting people from harm to securing the regional economic model. The SPP became a third

¹⁹⁸ See Rochlin (1997) for detailed events of violence targeting subversive groups.

¹⁹⁹ See *La Jornada*, February 8, 1997.

²⁰⁰ Thomas Shannon in a speech to the Council on the Americas on April 2, 2008 found at <http://www.as-coa.org/articles/us-asst-secretary-state-western-hemisphere-affairs-thomas-shannon>.

“side deal” of NAFTA built to protect against security issues and appease investors. SPP was later supplanted by the Mérida Initiative. Language about protecting economic interests was replaced with rhetoric about combatting drug trafficking (Watt and Zepeda 2012).

Mérida Initiative and U.S. Influence on Mexican Drug Policy

On June 30, 2008, the United States, Mexico, and the countries of Central America signed the Mérida Initiative (also known as Plan Mexico). Three components were officially laid out by the Mérida Initiative as described by Paley (2014). The first component encouraged privatization and foreign investment as a way to strengthen communities. Second, police and military power was enhanced and the borders were militarized. The last component created the emergence of new forms of social control, such as paramilitary forces used to address the drug problem. Due to this agreement, U.S. security spending in Mexico in 2010 (over \$500 million) actually surpassed that of what was spent in Colombia (\$434 million; Paley 2014). U.S. involvement has been associated with higher murder rates and violence (OAS 2011; Paley 2014). In particular, areas with U.S. military bases have higher rates of violence (Dube and Naidu 2015). The United States has trained Mexican police, but this strategy has been ineffective in reducing crime (Huggins 1998), and more likely leads to HRVs (Amnesty International 2002). Yet, massive police training efforts have continued (Thompson 2011). The failures of the Mérida Initiative to treat the drug problem have led scholars to argue that the Mérida Initiative was designed to protect the neoliberal economic model rather than any true effort towards drug eradication (Carlsen 2008a; Watt and Zepeda 2012; Paley 2014). Instead, Carlsen (2008a) argued that Plan Mexico was geared to repress grassroots protests or challenges to the economic model. Such a strategy “blocks avenues for development of civil society institutions,

criminalizes opposition, justifies repression, and curtails civil liberties” (Carlsen 2008a:18). NAFTA created a Mexican economic and political dependency that rivaled that of Spanish colonialism with the United States accounting for the majority of imports and 85 percent of exports. If not its goal, Plan Mexico helps fund the repression of political opposition such as autonomous Zapatista communities, the women’s movement, and Chihuahua grassroots leaders, among others (Cruz 2006).

Drugs Downplayed Before NAFTA

The United States largely downplayed the drug violence along the border to avoid further criticism of NAFTA (Payan 2006; Zarriello and Grey 2014). Mexican officials also omitted important developments such as the increased trade in methamphetamines, state corruption undermining antidrug measures, and increasing drug violence from their yearly reports. The massive \$30 billion revenue stream from the drug trade was ignored, along with the over \$460 million spent on bribes (Lindau 2011). Instead, only \$10 million was reported by Mexico to Congress, while the approximately 75 percent of the police force involved in corruption went unreported (Andreas 2001). Although intelligence agencies have proliferated, there is an enormous amount of faulty intelligence, and the intelligence is often purposely inaccurate. For example, both Presidents Bush Sr. and Clinton presented information to show that the Mexican drug trade was trending downward to further economic goals such as NAFTA by deflecting attention from the concerns of opening the border. When video and audio proof of corruption of the Mexican Secretary of Defense and among other officials surfaced, Operation Casablanca—a plan to arrest corrupt officials and intercept laundered money—was later mysteriously called off despite being nearly fully executed (Zarriello and Grey 2014).

Beyond simply selling NAFTA, the United States likely downplayed the drug war to hide its own involvement. Mexico's Dirección Federal de Seguridad (DFS), founded in 1947, was tasked with national security and dealing with drug trafficking. The United States suggested the creation of the DFS, thus it took the form of the FBI and CIA in the United States, and even shared information with the CIA on subversives during the Communist scare (Watt and Zepeda 2012). At its inception, Colonel Carlos Serrano was made director of the organization despite implications of involvement in the drug trade himself. Even during this time, anti-narcotic missions were used as a cover for removing political opposition (Scott 2009). Cocaine trafficking even subsidized some of these so-called anti-narcotic missions, but in reality supported right-wing death squads. Evidence suggests that the DFS was directly involved in drug trafficking even while supported by the CIA (Buendía 1988). The CIA did not wish to interfere because the DFS was highly effective at removing left-wing political opposition. The Mexican army filled a contradictory role, officially being dedicated to combating drug traffickers while directly profiting from the drug trade (Aguayo 2001).

U.S. and TNC Involvement

The United States has mostly been indirectly involved in the drug war, primarily via providing Mexico with funding of over a billion dollars worth of equipment for inspection and surveillance, helicopters, military training, and technology, all of which helped the Mexican security forces carry out their repressive tactics (Schneck 2012). Evidence also shows that the United States trained Mexican police in torture techniques.²⁰¹ President Calderón continued to acknowledge the state-sanctioned killings, while dismissing the deceased as criminals without

²⁰¹ See *Democracy Now!* Interview with Lauren Carlsen and John Gibler at https://www.democracynow.org/2008/7/31/plan_mexico.

any evidence (Sackur 2010). As noted earlier, around 95 percent of these deaths went uninvestigated (Gibler 2011b). The International Civil Commission on Human Rights documented a multitude of HRVs by Mexican security forces, with nearly all these atrocities being committed under the pretext that the victim was involved in the drug trade (Carlsen 2008b).²⁰²

Several groups raised threats to the new Calderón government in 2006. The Zapatistas responded to a Calderón presidency by launching the Other Campaign, while teachers went on strike and a rebellion broke out in Oaxaca (Mora 2007; Gibler 2011b). When San Juan Copala, supported by the Zapatistas, announced itself as an autonomous municipality in 2007, a state-supported paramilitary slaughtered several civilians.²⁰³ Kristin Bricker argued in an interview with Amy Goodman from *Democracy Now!* That, “the US-funded war on drugs certainly creates a cover for these kinds of politically motivated attacks.”²⁰⁴ After NAFTA’s implementation, the Mexican military went to war with the Zapatistas, displacing around 15,000 people (Stephen 2002). The people left behind lived under a military occupation of around 65,000 troops (Speed 2003). Zapatista women were subjected to rape and torture by the military, police, and paramilitary (Stephen 2002). Once the drug war escalated, the Zapatistas were terrorized again despite no evidence connecting them to the drug trade (Morales and Watt 2010). Considering that the grudge between the Zapatistas and the Mexican government revolved around the neoliberal economic model, much of these efforts have been political smokescreens providing the opportunity to suppress major opposition to NAFTA (Carlsen 2008a). In other words, a

²⁰² Even U.S. politician Hilary Clinton, has called the drug cartels an “insurgency” invoking political language maybe to legitimate some of the political repression that has followed (Carlsen 2010).

²⁰³ See *Democracy Now!* April 30, 2010 news story at https://www.democracynow.org/2010/4/30/paramilitaries_kill_two_human_rights_activists.

²⁰⁴ Id.

“neoliberal security state” operates without concern for human rights or the non-market costs while enforcing the neoliberal economic model via legitimate, state-sponsored violence (Reddy 2011), similar to what was documented in the other Latin American case studies in Chapter 3 (Hey 1995; Heinz and Fruhling 1999; Gómez 2003).²⁰⁵

In order to address the drug trafficking issue in Mexico, the lucrative nature of the industry must be considered. The drug trafficking industry generates an approximated \$45 billion annually (Gibler 2011a). As mentioned earlier, many peasants sought roles in drug cartels, cultivating poppies and marijuana when the price of legal crops collapsed, and as much as 78 percent of the Mexican economy currently is thought to be infiltrated by cartels (Garduno 2013). The insatiable U.S. demand for drugs kept the Mexican economy afloat. Around 80 percent of cocaine entering the United States was coming from Mexico, and Mexico was the largest foreign supplier to the United States of marijuana and methamphetamines (Gibler 2009). During the first four years of Calderón’s presidency, drug traffickers made an estimated \$132 billion—more than oil during the same time period. Put another way, if drugs were eradicated, the Mexican economy would shrink by 63 percent, and it is unlikely that both the U.S. and Mexican governments would want to destroy Mexico’s economy. Even those at the bottom of the drug hierarchy could not ignore the economic opportunity. U.S. customs officials earned on average around \$40,000 a year which offered a strong incentive to accept the \$10,000 to \$20,000 payments per shipment offered by drug cartels to allow them to move drugs freely across the border (Payan 2006). The newly integrated trucking industry also offered a lucrative form of moving large loads of drugs across the border, since only a fraction of trucks are inspected (Andreas 2001). Thus, the war on drugs has been considered a “war for drugs” that includes

²⁰⁵ See also Cruz (2006) for an in-depth analysis of rebellions in Mexico, often met with repression.

several beneficiaries including politicians, the police, and military, all looking for a cut (Gantz 2010: 27).

Aggressive extractivism also increased rapidly throughout the 2000s. Indigenous groups and peasants were often targeted with repression in an effort to remove them from resource rich land using the drug war as a guise (Paley 2014). In instances where communities have fought back out of self-defense to protect their land and resources, the Mexican military, police, or paramilitary groups were able to justify their repression as subduing a violent group.²⁰⁶ Mining activity has proliferated since the drug war and is now mostly foreign-owned (Dhillon 2007; Deloitte 2012). Despite oil being a major revenue stream for the Mexican government, the oil and electricity sectors were reformed to benefit TNCs (Seelke et al. 2015; Malkin and Krauss 2016). Extraction industries have funded the paramilitarization movement in Mexico, mostly to develop security forces to plunder and protect resource-rich lands (Servicio Geológico Mexicano 2011; Ocampo and Briseno 2013; Esteban 2013).²⁰⁷ Instead of waiting for disaster, many of these companies, with support from both the U.S. and Mexican governments, execute strategies of displacement and destruction, and then, investment flows in to rebuild an economy where TNCs reap the rewards (See Paley 2014). Carlos Slim was one of the Mexicans who profited from this type of economic rebuilding (Meyer 1992; Freeland 2013).

While Mexico ships drugs to the United States, the United States exports guns to Mexico. Strict Mexican gun laws are a major reason Mexican drug traffickers purchase arms from U.S. sellers.²⁰⁸ Both the drug cartels and Mexican security forces are primarily armed with U.S.

²⁰⁶ See *VICE News* “Mexican Vigilantes Stand Up against Crime” video at <https://www.youtube.com/watch?v=8XiSnCt9fDc>.

²⁰⁷ See lawsuit filed by PEMEX against Texas oil companies at https://archive.org/stream/PemexCondensateTheftRingLawsuitcomplaint/PEP_djvu.txt.

²⁰⁸ See *Democracy Now!* July 31, 2008 new story at https://www.democracynow.org/2008/7/31/plan_mexico.

weapons (Morales and Watt 2010). Approximately, 90 percent of the 15 million illegal firearms in Mexico come from the United States. The Mérida Initiative appears to be a formalized way for arms and defense companies to cash in on the profits of a drug war. These firms receive over 40 percent of the funding behind the initiative (Carlsen 2008a).

The U.S. involvement in the Mexican drug war was likely profit-driven, with around 85 percent of the drug war proceeds going to the United States, compared to the 13 percent that went to traffickers moving the product to the United States and 1 percent to the drug producers (UNODC 2010). In addition to profiting from the drug trade itself, the U.S. Agency for International Development issued extremely lucrative contracts to U.S. contractors for their part in the drug war, with some involved in the destruction through military services and others in helping with rebuilding through construction contracts (see Paley 2014).

U.S. banks were the largest beneficiaries of the drug war seeing as most of the drug money flowed through their institutions (Murphy 2013; Paley 2014). Since U.S. banks profited mostly from money laundering, their gains are not typically calculated in the drug trafficking estimates. Money laundering became an extremely lucrative business for banks that could profit immensely from the drug trade without direct involvement. Antonio Maria Costa, head of the UN Office on Drugs and Crime, told the press that a majority of drug profits have flowed into banks, arguably saving many of them with no other lifeline during the global economic crisis of 2009 (Syal 2009). The weak punishments meted out to the banks involved raised serious questions about the purpose of the drug trade.²⁰⁹

Wachovia Bank, now owned by Wells Fargo, paid a paltry \$160 million in fines, resolving a criminal investigation into its money laundering practices (Morton 2012). The \$160

²⁰⁹ See *Rolling Stone*, December 13, 2012 at <http://www.rollingstone.com/politics/news/outrageous-hsbc-settlement-proves-the-drug-war-is-a-joke-20121213>.

million was a small price to pay when considering over \$378.3 billion of suspicious activity was unmonitored. Wachovia Bank admitted to only \$100 million of cartel funds moving through exchange houses, while it is likely that more of the \$378.3 billion in similar transactions were involved in money laundering. It would only take a small fraction of that sum to make money laundering exponentially more lucrative than the rest of the drug trafficking industry, and this is only one bank's activity. Peter and Watt (2012) estimated that U.S. banks made on average \$250 billion a year from their indirect involvement in the drug trade starting in the 1990s—over half of Mexico's total GDP throughout the 1990s.²¹⁰ More recently, HSBC bank laundered \$7 billion in drug money at minimum from Mexico via U.S. banks (Morton 2012). They were also fined a much smaller amount of \$27.5 million with potential fines approaching a billion, but still only a fraction of the total seven billion dollars.²¹¹ In another record lawsuit, HSBC was fined \$1.9 billion for its “blatant failure” to implement controls to prevent money-laundering.²¹² Yet, the bank never faced prosecution because it was considered too vital to the U.S. economy (Rushe and Treanor 2012). The fine was also considered paltry because it only accounted for five weeks of income for the bank.²¹³ Among the seemingly countless scandals, Raul Salinas was also found to be involved in money laundering tied to the drug trade, with an estimated \$300 million in offshore accounts, including Citibank New York which was one of the banks he used to launder the money (Watt and Zepeda 2012). Interestingly, Vulliamy (2011) draws attention to the positive correlation between money laundered by banks and people killed in Mexico. Morton (2012:1642) concludes that “the drug war is a horrid success of state violence and capitalist accumulation.”

²¹⁰ See the World Bank's data on Mexico at <http://www.worldbank.org/en/country/mexico>.

²¹¹ See *BBC News*, July 25, 2012 at <http://www.bbc.com/news/world-latin-america-18993476>.

²¹² Assistant attorney general Lanny Breuer quoted in *The Guardian* (Rushe and Treanor 2012).

²¹³ See *supra* note 35.

Other TNCs profit from various aspects of the drug war. Many groups have profited from the extortion of entire industries such as cultivation of avocados and limes (Wilkinson 2012; See Paley 2014). In this case, small- and medium-sized farmers were charged fees by organized crime groups to avoid violence. When these farmers refused to pay the extortion tolls, they were often killed. In one case when they were killed, the government accused the peasants of involvement in drug trafficking.²¹⁴ Rather than defending them, they invaded the town of Buenavista Tomatlán and more blood was shed. Extortion is an added difficulty for small and medium businesses as it undercuts their ability to effectively compete with larger TNCs, since TNCs have the funds to hire security forces (Paley 2014). Extortion, then, is just an added expense for these already struggling farmers and entrepreneurs. Many businesses had to close due to security concerns. Drug cartels have also entered the business of kidnapping. Kidnappings have recently been on the rise, leading some Mexicans to form self-defense militias to protect themselves (Grillo 2014). The United States has also pushed for legal reforms in Mexico because a common legal system allows U.S. law companies to profit from their services in Mexico (Paley 2011). Furthermore, these “positive” legal reforms—some of which would certainly benefit Mexico—have led to a potential U.S. military immunity in Mexico (see Huggins 1991).

Extending the Neoliberal Economic Model

The drug war appears to be an extension of NAFTA and neoliberal policies. Paley (2014) calls it “drug war capitalism” after the title of her book. From her work on Mexico as well as Colombia, Guatemala, and Honduras, Paley (2014) found three commonalities among the

²¹⁴ See *Proceso* May 2, 2013 at <http://www.proceso.com.mx/340789/acusan-a-guardias-comunitarias-de-michoacan-de-obedecer-al-cartel-de-jalisco>.

drug wars in all four countries. First, the victims of the drug war are disproportionately poor, working class, and migrants. These victims also typically have no connection to the drug trade, although they are commonly portrayed as being criminal. Second, the most obvious widespread effect felt by the majority of the population is a restriction of mobility, either around their own city or migrating across borders. Third, violence related to the drug war is commonly paired with decreased freedom of expression via individual, collective, media, or otherwise. Journalists, in particular, have been targeted and silenced. In other words, the antidrug war tactics act as a legitimized form of social control. Although Paley (2014) covers only four countries, these patterns are part of a larger global war on drugs involving upwards of 65 countries with future plans of expanding into Africa.²¹⁵ Physical integrity rights violations increased in all four of the countries alongside the escalation of the respective drug wars, and U.S. military bases have been established throughout Mexico and Central America. The military takeover appears to have been primarily for corporate profit, specifically by extraction and arms companies. TNCs are the one group that has gone largely unaffected by the violence which ultimately is a benefit regardless of other factors. The drug war simply strengthened investor protections in Mexico. Now, violence can be used to protect their financial investments.

Watt and Zepeda (2012) also see an undeniable correlation between neoliberalism and narcotrafficking. Increases in drug trafficking did not catch the United States off guard since both Presidents Bush Sr. and Clinton forbade the DEA and U.S. Custom Services from mentioning drug trafficking as an outcome of NAFTA (Cockburn and St. Clair 1998). Despite Mexico's lower rates of crime and murder compared to other Latina American countries, the United States promoted a narrative of Mexico as a failing state (Carlos 2013). The United States

²¹⁵ See the U.S. National Drug Control Strategy 2012 at https://obamawhitehouse.archives.gov/sites/default/files/ondcp/2012_ndcs.pdf.

legitimized its economic and military expansion in Mexico through a civilizing narrative. In addition, the United States perpetuated Mexico's depiction as a chaotic failed state to further protect its militarized attempts at reinforcing the economic model. Despite such a stance, the United States is tied to both the drug and arms trade.

The evidence presented here suggests that the drug war was a cover for protecting the economic model imposed by NAFTA and other neoliberal policies. With the rising outcry against the drug problem, U.S. funds flowed into Mexico to equip and train Mexican troops which actually correlated with increased repression rather than less drug activity (Watt and Zepeda 2012). Groups posing unique threats to both NAFTA and the neoliberal economic model, such as the Zapatistas, were targets of this repression. Yet, this political opposition presented itself after the Berlin Wall had fallen and the Communist threat was no longer a legitimate reason for repression. Instead, the drug war filled the void to serve as a pretext for violent repression despite the fact that the Zapatistas had no affiliation with the drug trade. If drugs are the real problem, government officials may want to look at NAFTA, which was responsible for creating the infrastructure and labor pool for drug trafficking. NAFTA and the militarization of antidrug measures led to a skyrocketing in the street prices of illicit drugs, thus encouraging their cultivation by peasants. After the shift to neoliberalism, few jobs were created and the majority of Mexicans found work in the informal sector. Drug cartels diversified into new profitable areas of kidnapping and extortion, which became extremely profitable as several vulnerable Mexicans sought to migrate either cross country or into the United States (Semple 2016). The drug industry as a whole was one of, if not the most, profitable business in Mexico. Lastly, the Mérida Initiative and other antidrug programs provided over a billion dollars in U.S. aid that funded the repression (Morton 2012). With U.S. funds, the Mexican military and police

force, along with paramilitary groups, killed, displaced, and intimidated mostly poor and rural Mexicans. The fear and displacement opened up land for investment and privatization and weakened the power of labor and unions. As with the other Latin American case studies from Chapter 3, the violence only subsided when Mexicans accepted the economic model as unavoidable (Hey 1995; Heinz and Fruhling 1999; Gómez 2003).

Analytical Summary

The last two chapters dealt with the context under which NAFTA was negotiated, the actual negotiations, and the details and criminogenic nature of the resulting agreement. Referring to the analytical model in Figure 2.1, this chapter focused on the link between NAFTA (policy) and its subsequent social harms, categorized as those generally found in agriculture, the environment, migration, and the drug trade. The major piece needed at this point in the analysis is establishing this link, most importantly, isolating NAFTA from other potential contributors to these social harms. Most commonly, other researchers have attributed the poor economic performance in Mexico to the peso devaluation and subsequent economic crisis in 1994 and 1995 (Galbraith 2014) and Mexican mismanagement (Wise 1998; Audley et al. 2004), rather than NAFTA. However, both of these potential factors are related to NAFTA and the other neoliberal policies put in place prior to NAFTA by the Mexican government.

The peso crisis had a major effect on Mexico, but it is difficult to disentangle it from NAFTA. Since most NAFTA proponents blame the Mexican economic woes following NAFTA on the economic crisis rather than NAFTA or the larger body of neoliberal reforms of which it is the culmination, the 1994 peso devaluation and subsequent economic crisis must be examined closely (Orme 1996; Wise 1998; Audley et al. 2004; Scott 2011; Galbraith 2014). If NAFTA

played a role in the peso devaluation, then any subsequent economic crisis would, at least to some degree, be attributable to NAFTA. Take Wise's (1998) edited volume, for instance, where most authors argue that NAFTA improved the Mexican economy—supported mainly by focusing on increases in trade and foreign investment—and that the issues with Mexico after NAFTA are due more to Mexican mismanagement than NAFTA. However, these authors tend to neglect the U.S. role in that mismanagement. Specifically, the United States praised Mexican leadership during and after the NAFTA negotiations to keep a positive image of NAFTA and its interests in securing the trade deal. Wise (1998) even notes the importance of intra-industry trade in securing NAFTA, and Maxfield and Shapiro (1998), authors in Wise's edited volume, argue that the United States was the winner in the NAFTA negotiations despite some concessions to Mexico. Given that some of the NAFTA provisions severely limit the ability of governments to pass regulations that cut into corporate profits, how can NAFTA be ignored as a potential or partial cause of the economic crisis?

Wise (1998) seemingly ignores the likely scenario that Mexican mismanagement was not necessarily due to incompetence, rather it was part of a strategy to inflate the peso to gain support for NAFTA. In such a scenario, it would be hard to place the blame solely on mismanagement and not hold NAFTA somewhat accountable. Another author in Wise's edited volume, Pastor (1998:121), outlines a plausible alternative to handling the peso crisis that would have involved "tinkering with the exchange rate," but would have "alienate[d] portfolio investors" and "perhaps jeopardize[d] Mexico's chances at entering NAFTA." One could also argue that NAFTA lacked transitional support for workers facing tough economic times. Instead, Wise (1998) argues that transitional programs helped cushion many U.S. and Mexican groups from the disadvantages of NAFTA, albeit those groups had to push for those concessions

and these programs often served simply as window-dressing. Wise (1998) tends to focus on Mexico's failure to provide transitional aid, rather than NAFTA's failure to include it. Take Mexican agricultural workers for instance. Despite nearly 26 percent of the workforce in agriculture, Pastor and Wise (1998), in their co-authored chapter, argue that the Mexican government did next to nothing to help these workers through an adjustment period that brought several changes to the agricultural sector. Many of those changes, of course, were brought on by NAFTA and neoliberal policies adopted by Mexico in preparation for NAFTA. These authors also ignore U.S. and Mexican TNCs as beneficiaries of the "Mexican mismanagement." The U.S.-Mexican ties during the early NAFTA years demonstrate the instrumental importance of NAFTA to foster increased U.S. influence in Mexico as documented by Dresser (1998), another author in Wise's book, thus suggesting that NAFTA may have been more important in the Mexican outcomes than initially suggested by Wise (1998).

Some scholars discuss the U.S. involvement in the Mexican peso devaluation without placing blame on NAFTA. For example, Weisbrot, Lefebvre, and Sammut (2014) argue that the U.S. Federal Reserve's decision to increase U.S. short-term interest rates led to the 1994 peso crisis. Since NAFTA created a deeper economic integration between the United States and Mexico, Mexico was more at the mercy of Federal Reserve Policy. Weisbrot et al. (2014:18) concluded that several policy decisions that troubled the peso "were not all written into NAFTA," but "were closely related in that they were part of a strategy of guaranteeing foreign investors the kinds of capital mobility that they wanted, in order to attract foreign investment (both portfolio and foreign direct investment)."

Audley et al. (2004) helped put the Federal Reserve's actions in context. NAFTA negotiations boosted investor confidence that investments in Mexico would be protected by the

new agreement and would benefit from a newly available U.S. market economy. When developed countries' economies slowed in the early 1990s, Western banks cut interest rates to help their struggling economies, but this also made investment in countries like Mexico more attractive. Mexico also utilized a fixed exchange rate, pegging the peso to the U.S. dollar, creating predictability in the exchange rate and appeasing investors. The massive inflows of investment were primarily portfolio capital in the form of government bonds and corporate stock, which is much more mobile than direct investment in actual facilities or equipment. When the U.S. Federal Reserve raised their low-interest rates in early 1994, portfolio investment flowing into Mexico slowed. However, Audley et al. (2004) like Wise (1998) points to Mexican mismanagement as the cause of the peso devaluation for two reasons. First, the Mexican government transferred its public debt from pesos to dollar-based securities (*tesobonos*), assuming the exchange rate risk previously borne by investors. Second, it elected to keep the incoming funds out of the public money supply which allowed the Bank of Mexico to intervene, protecting the peso. However, both decisions were major appeasements for investors, holding true to NAFTA's promise. To suggest there were no other forces at play beyond the Mexican government denies much of the evidence laid out in Chapter 6.

Although less common, other researchers hold NAFTA more accountable for the peso crisis. Lee (1995) argues that the campaign to sell NAFTA created a major enthusiasm among investors that led to unsustainable speculative capital flowing into the Mexican stock exchange, creating a bubble of inflated Mexican assets and the peso.²¹⁶ The subsequent mismanagement of the Mexican government to correct the overvaluation was a deliberate strategy to keep NAFTA attractive and reestablish PRI credibility, both of which were in the interest of the TCC. A high

²¹⁶ Blecker (1997) makes a similar argument.

peso protected NAFTA from many of its critics since it made Mexican labor more expensive, and increased Mexicans' purchasing power. The former provided evidence against U.S. business relocations, and the latter was appealing to Mexican workers. Thacker (1999) emphasizes the government-business coalition (or TCC), which he claims destabilized the economy by increasing dependence on portfolio investment capital. He described NAFTA as a policy designed to attract greater levels of investment by bolstering investor confidence and cementing Mexico's reforms, providing preferential access to the U.S. consumer market for exploitation and building trust with the business community by giving voice to the large firms during negotiations. In turn, he attributes the peso crisis to the TCC which was also responsible for NAFTA as documented in Chapter 6.

Although several negative outcomes have been documented as happening after NAFTA was implemented throughout this chapter, it is reasonable to question if NAFTA actually influenced them. It is often quite difficult to parse out the effects of NAFTA specifically from the other neoliberal policies implemented around the same time. For the most part, this chapter lumped the economic policies together while looking at trends pre- and post-NAFTA. However, in a recent unique analysis of NAFTA, Weisbrot, Lefebvre, and Sammut (2014) attempted to isolate the effects of NAFTA on Mexico by comparing Mexico's socio-economic outcomes after NAFTA with other Latin American countries. Ultimately, they found that, regardless of how you measure economic success in Mexico, the story almost invariably describes NAFTA's effect on Mexico as an economic failure. Even when using popular macro-level economic indicators, those most often used by the World Bank and IMF, they still find negative economic outcomes.

Compared to Latin America, Mexico's growth rate ranks 18th out of 20 total countries, and Mexico's total growth is half that of the average Latin American country's growth rate over

the same time period (Weisbrot et al. 2014). While Mexico's poverty remained at similar levels after NAFTA, the rest of Latin America's poverty levels fell 150 percent more than Mexico's. Real wages barely moved from 1994–2012 increasing only 2.3 percent, and the minimum wage adjusted for inflation plummeted 26.3 percent over the same time period despite it being one of the few protections for labor actually written into NAFTA. Although there are observable spikes in the unemployment rate, the long-term trend from 1994 to 2013 was slowly upward with a similar trend for underemployment as well. About 20 percent of all agricultural jobs were lost from 1991 to 2007, while a large number of jobs transitioned from full-time family employment to seasonal (lasting less than six months). In fact, over that same time frame, seasonal employment increased by 151 percent while more than half of the family employment jobs were lost. Many of the jobs lost in corn production were replaced by vegetable and fruit production, but this industry was largely seasonal resulting in widespread underemployment in the agricultural sector. Considering the miserable performance of the Mexican economy in comparison to most of the rest of Latin America, Weisbrot et al. (2014) conclude that NAFTA had a significant impact on driving these negative economic outcomes.

Additional evidence that NAFTA contributed to poor economic conditions in Mexico shows low domestic investment (Zepeda et al. 2009), slow economic growth (Laurell 2015), few jobs (Cypher and Wise 2010), stagnant wages (CONEVAL 2013), high under- and unemployment (Laurell 2015), wide inequality (Galbraith 2014), poverty (Laurell 2015), rural poverty (Gonzalez 2011), abysmal working conditions (Simon 2014), and weak unions (Bacon 2004). NAFTA also contributed to the four major categories of social harms discussed in this chapter. NAFTA and the neoliberal policies altered the agricultural model in North America resulting in Mexico's reliance on U.S. food imports, ultimately destroying Mexico's food

sovereignty (Suárez 2008). In addition, the newly imported foods were high in sugar and fats transitioning many Mexicans to an unhealthy diet, resulting in a major health and obesity epidemic (Otero et al. 2015). The neoliberal policies also favored TNCs producing agricultural goods on a massive scale, while forcing most small-scale farmers out of business and/or off their land (Public Citizen 2014). Revisions of intellectual property rights under NAFTA created a structure for TNCs to keep a stranglehold on patents and further unemployment among farmers (Shiva 2000). Most of the new jobs that replaced those lost were often seasonal and/or had poorer working conditions (Weisbrot et al. 2014). Little help was offered to these struggling farmers, and no transitional support was built into NAFTA (Keleman 2010; Fernández et al. 2012).

The agricultural model embedded in NAFTA, and the neoliberal policies preceding it, also contributed to the degradation of the environment. The rapid increase in the use of GM crops threatened biodiversity, specifically corn landraces (Mendieta 2006). A new focus on monocropping and concentrated mass agricultural production on irrigated land led to soil erosion, depletion of external inputs, air, water, and soil contamination, and major illnesses (Alieri and Nicholls 2004; Gliessman 2007). Under the guise of environmental conservatism, TNCs removed the indigenous from their land (Barreda 2003) and exploited the environment for profit through environmental services, bioprospecting, and ecotourism (Carlsen 2004). The new neoliberal production model which provided TNCs with lax environmental enforcement (Carrillo and Schatan 2006) also added to the air and water pollution in Mexico (Gallagher 2004; Lipford and Yandle 2010), and toxic waste often collected in poor *maquiladora* communities (Simon 2014). Deforestation was a result of poor farmers attempting to cultivate more land to compensate for their losses (Soto 2012), and others engaged in the trade of endangered animals

in the black market (Rosenberg 2004). NAFTA even provided TNCs with the ability to sue sovereign governments when the people stood up for themselves.²¹⁷

Faced with the poor economic and environmental outcomes of NAFTA and other neoliberal policies, average Mexican citizens often chose to immigrate to the United States (Bacon 2013) or joined the drug trade (Dube et al. 2014). Both choices were quite dangerous, often resulting in death. After NAFTA, the United States heavily militarized its southern border (Nevins 2002), and death among Mexican immigrants traversing the border tripled (Massey et al. 2002). In the United States, ICE agents executed immigration raids which effectively suppressed both immigrants and unions (Bacon 2008). While immigrants were exploited, TNCs prospered from guest worker programs (Gonzalez 2008). For those who elected to enter the drug trade, commonly to make ends meet (Dube et al. 2014), many died after Calderón militarized the government's efforts against the drug trade (Cave 2012). While Mexico's government put on a pretense of combatting drugs, they frequently profited from their partnership with drug cartels (Paley 2012) and offered near immunity to its military to quell any opposition, tying them to drugs without trial (Gibler 2011b). The later policies of the SSP and the Mérida Initiative appeared to be ways of protecting the neoliberal economic model solidified by NAFTA (Watt and Zepeda 2012). The increased military power brought by these policies provided Mexico the ability to violently repress any threat to the economic model using the guise of drug trafficking.

This chapter has now established the link between NAFTA and its subsequent social harms to which it played a varying degree of importance. Most of the social harms documented in this chapter can be classified as human rights violations (HRVs) by simply using the UN Universal Declaration of Human Rights as a guideline. Conservatively, an argument can be made

²¹⁷ See the case of Metaclad discussed earlier.

that Articles 11, 13, 17, 23, 25, and 27 were violated.²¹⁸ Thus, these HRVs are considered criminal outcomes resulting from the specific nature of NAFTA described in Chapter 6 that being undemocratic, heavily influenced by a TCC, and incorporating repression of any opposition. Given that NAFTA contributed to these outcomes, it is concluded that NAFTA is a criminogenic policy not just for its formation which made criminal outcomes likely, but also due to the realized adverse outcomes that actually came to fruition documented in this chapter. The next chapter will conclude this dissertation by summarizing the main argument, discussing its limitations, and suggesting directions for future research.

²¹⁸ See the UN Universal Declaration of Human Rights at http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

CHAPTER 8

CONCLUSION

General Summary of Findings and Contributions

This dissertation began with the 1982 Mexican economic crisis, and then traced the events before, during, and after the NAFTA negotiations, focusing on Mexico's perspective. The results of this study suggest that members of a transnational capitalist class (TCC), operating internationally in all three North American countries, including political leaders, business elites, prominent intellectuals, and members of international financial institutions, constructed a criminogenic NAFTA. Operating during a crisis of accumulation in the early 1980s, a new social structure of accumulation (SSA) was necessary to continue a capitalist economic system capable of capital accumulation (see Kotz 2015). This new SSA was based on neoliberal ideology embraced by those within the TCC. A neoliberal SSA, defined by an emphasis on deregulation, privatization, and inflation control, crystallized in a collection of free trade policies of which NAFTA was a part.

NAFTA was of particular interest because it involved a non-core nation.²¹⁹ Mexico's economic woes and position in the semi-periphery, according to world-systems analysis, provided the opportunity for the United States to extract several concessions from a Mexico desperate for foreign investment. Specifically, Mexico made several concessions that removed aid and protections for its rural peasants who were primarily poor subsistence farmers largely

²¹⁹ See Wallerstein (1974; 2004) for a discussion of core, peripheral, and semi-peripheral nations.

located in southern Mexico. During NAFTA negotiations, members of the TCC from Canada, Mexico, and the United States worked in concert to craft a policy conducive to their interests, which largely consisted of advancing and protecting investors' rights, often to the detriment of the average worker (see Table 6.1). Facing opposition from its onset, the TCC made efforts to conceal much of the negotiations from the public by holding private meetings, classifying information, and withholding drafts of the negotiated text from the public. In addition, they launched a widespread media campaign that focused primarily on promulgating information favorable to NAFTA, while eschewing any criticism of NAFTA, regardless of its veracity. These media efforts helped to, not only change public opinion, but also offered political protection for politicians to vote in favor of NAFTA without threatening a loss of their constituencies. In the end, NAFTA was passed despite citizen opposition present in all three countries.

Within the first year of NAFTA's implementation, a serious peso crisis ensued. Mexican leaders had continually increased the value of the peso during the NAFTA negotiations to keep NAFTA attractive for investors. However, at the end of 1994, the peso had to be devalued, giving rise to a major economic recession in the following year. The economic crisis led to high poverty, inequality, and unemployment. Such a crisis, paired with the removal of aid and protection for Mexican farmers, led to the devastation of the countryside, especially when corn tariffs were removed ahead of schedule. Since most rural Mexican peasants were subsistence farmers heavily reliant on corn production, many were forced to relocate to survive in the new economy when corn prices plummeted. Their situation was compounded by the Mexican government's recommendation for replacement crops. In place of corn, these farmers were expected to grow other horticultural crops such as fruits and vegetables. Without governmental

guidance or aid, many expanded their land area, continuing the cultivation of corn. The changes in agricultural methods led to environmental concerns such as lack of water, soil erosion, and deforestation. Many of the farmers elected to either leave their land behind, or grow much more profitable illicit crops such as marijuana. Both of these choices only complicated the dire situation of farmers, and Mexican citizens overall. For those who migrated, many faced serious danger if they attempted to cross the northern border into the United States. Due to these dangers, most had to pay a coyote their life savings to arrive safely. Those who grew illicit crops also faced perilous interactions with drug cartel members who often extorted money from these growers, and, at times, killed those who were recalcitrant. Instead of offering aid and protections to these vulnerable people, the U.S. and Mexican governments responded by militarizing both the border, and the efforts against the drug trade, ultimately increasing the violence.

Overall, these various social harms that took place in the years following NAFTA's implementation have been connected to the policy itself. Members of the TCC actively pursued a NAFTA that would meet their interests, while largely ignoring the evidence that suggested these harms as possible outcomes. Partially blinded by a neoliberal groupthink, the TCC never relented in promoting a neoliberal global capitalism as a panacea for major economic crises. The TCC's zealous, undemocratic pursuit and negotiation of NAFTA led to NAFTA being a criminogenic policy.

This dissertation developed a unique analytical model for studying criminogenic policies that incorporates a diverse theoretical literature including state-corporate crime research, world-systems analysis, SSA theory, and neo-Gramscian work on the TCC (see Figure 2.1). Applying this framework to NAFTA, the current dissertation concluded that NAFTA was criminal and/or criminogenic on at least three counts as it violated the UN International Bill of Human Rights.

First, the NAFTA negotiation process was both *criminal* and *criminogenic* due to three interrelated reasons: (1) the heavy influence of the TCC that often pumped large sums of money and resources into influencing its provisions; (2) the undemocratic structure that disallowed various groups from participation, and (3) NAFTA opposition commonly faced repression, either physically in Mexico, or informationally in the United States. Second, the written text of NAFTA was *criminal* and *criminogenic* for its failure to include human rights protections for average citizens, while offering several investor rights that were directly contradictory to the rights of citizens.

Third, NAFTA was *criminogenic* for several of the social harms affecting much of the Mexican population, at least partially related to the implementation of NAFTA. Chapter 7 is dedicated to detailing many of these harms such as poverty, inequality, un- and underemployment, harsh working conditions, lax workers' rights and protections, displacement, product-dumping, improper removal of toxic wastes, deforestation, water shortages, soil erosion, air and water pollution, exploitation of guest workers, and drug-, border-, and immigration-related violence. All of these social harms are common targets of study for criminologists operating within a state-corporate crime framework. Yet, this dissertation, instead of focusing on one or two of these social harms individually, argues that NAFTA as a policy played an important role in creating these conditions, and thus is a criminogenic policy outcome. In other words, the concept of a criminogenic policy can help criminologists place these harms within a larger context to analyze the people and forces behind these social harms.

In addition, the concept of criminogenic policy allows the study of multiple states committing crime collectively. This dissertation expanded the traditional state-corporate crime frameworks (Kramer and Michalowski 2006; Rothe and Mullins 2009) to better address crimes

of globalization where not just one state should be held criminally liable. Instead, more commonly, multiple states interact and commit crimes in collusion. Studying criminogenic policies is one avenue for analyzing large-scale crimes in which multiple states, corporations, and/or other institutions and the key players from these organizations (e.g., members of the TCC) act together to commit crime. Although this dissertation focused on a criminogenic policy, it also shed light on the importance of studying crimes that are committed by multiple states in collusion. This may happen when collusive action by states results in social harm where no policy is involved. In either case, examining multiple states in the production of social harm should be important for criminologists interested in crimes of the powerful.

Lastly, more than simply looking at multiple states colluding to commit crime, this dissertation offers a way to investigate the widespread intersection of powerful individuals and organizational members of the TCC. For instance, when investigating an international state-corporate crime, multiple states may be liable, but likely there are also multiple corporations liable along with other influential figures such as intellectuals, religious leaders, and media pundits who are not necessarily members of the state or a corporation. In this dissertation, for example, key players shaping NAFTA were not limited to political officials in all three countries, rather business leaders, members of international financial institutions, intellectuals, and media experts all played a crucial role in NAFTA's formation. The TCC literature offers a way to understand the overlapping interests among powerful members of multiple nations and bridges a gap in the state-corporate crime literature by providing a vehicle to analyze and explain how multiple states, corporations, and other powerful entities collude in crime commission. Tracing the connections of the TCC should provide important insights into the motivations of crimes committed by the powerful.

Limitations

A few limitations exist in this dissertation due to the case study method employed. First, an overwhelming amount of data makes theorizing difficult. However, this is not really a problem of case study method, rather it is reflective of the complex reality of the phenomenon studied. Since theory should accurately explain and predict reality, intricate phenomena such as members of a TCC colluding to influence multinational policy necessitates a more complex theory. Second, related to this issue of specificity, case study research lacks generalizability. This dissertation focused on NAFTA, and its conclusions cannot be generalized to other potentially criminogenic policies. However, case study research, and this study in particular, commonly traces particular conditions to specific outcomes. In this case, the current study demonstrated how social, political, and economic conditions influence the policy negotiation process, and how those negotiations create a unique policy that is potentially criminogenic. Although the results are not generalizable, other policies can be explored using the analytical framework laid out in this study to analyze similarities and differences between policies and their effects.

Third, there is an inherent selection bias in case study research. One major problem is the lack of cases and variability of conditions and/or outcomes. For this dissertation, there was only one of each, but future research can rectify this limitation by studying other criminogenic policies. Another related problem is confirmation bias. In many respects, NAFTA was chosen as a case to demonstrate the concept of criminogenic policies. In other words, NAFTA was chosen to confirm the proposed analytical model of criminogenic policies (see Figure 2.1).

However, as mentioned in Chapter 4, since there was a high likelihood of NAFTA being criminogenic, it was treated as a “most likely” case testing the proposed analytical model.²²⁰

Fourth, the most problematic shortcoming of using case study research in this study was its inability to uncover the magnitude of the effect for each condition. Although this study has demonstrated several of the conditions that can influence a policy to be criminogenic, it struggles at deciphering which conditions play the largest role in producing a criminogenic policy outcome. Again, future research could help to weigh the various conditions and their level of impact, as will be discussed below. However, more research is needed to clarify the conditions that lead to a criminogenic policy outcome before moving on to uncovering their magnitude.

Beyond these methodological limitations, there are at least two additional limitations in the current research. First, since the NAFTA negotiation process was secretive, there is a heightened concern about the validity of the materials that are available. When documenting the negotiations, there was, at times, a reliance on limited and secondary sources to fill in the gaps. The Chapter 6 appendix discusses these sources in detail to ensure transparency. Despite the obvious limitations of limited and secondary sources, several other sources such as newspaper accounts, meeting memoranda, and presidential speeches and phone conversations were used to triangulate the events that occurred during the NAFTA negotiations. Nevertheless, as with any secretive or classified subject matter, the depiction of events should be taken with caution.

Second, one of the goals of this dissertation was to demonstrate NAFTA’s effects on Mexican indigenous people and farmers. Although Chapter 7 attempted to disentangle, to some degree, NAFTA from other variables, such as other neoliberal policies, the 1994 peso devaluation, the 1995 economic crisis, Mexican mismanagement, and China becoming a

²²⁰ See Eckstein (1975) for a discussion on “most likely” cases.

competitor in the global marketplace, the complexity of Mexico's social history make it nearly, if not entirely, impossible to completely isolate NAFTA from other contributing factors to the subsequent social harms. Thus, the strongest possible conclusion is that NAFTA played an important role in contributing to the negative outcomes in Mexico, as documented in Chapter 7. Time is another related issue. It is unclear as to the amount of time one should wait to evaluate a policy. For instance, did the effects of NAFTA occur immediately, or after 20 to 30 years? The other variables listed above further complicate this question. One must also be concerned with the parameters of a study. Since any given historical event is likely influenced by other events that come before it, one must reason how far to go back in history. Chapter 4 described why the beginning of the neoliberal era seemed most appropriate.

Future Research

One of the most promising avenues for future research is further exploring criminogenic policies. Although this study traced the formation and effects of one criminogenic policy, it did little to assess what conditions and combinations of conditions lead to a criminogenic policy outcome or a non-criminogenic policy outcome. Future researchers could borrow from Table 6.1, which documents some of the motivations, opportunities, controls, and constraints at various levels of analysis influencing the formation of a criminogenic policy, to create a study that further attempts to pinpoint which of these conditions may be necessary and/or sufficient, making progress towards theory building. Quantitative analyses could help determine the strongest predictors of criminogenic policy outcome. They may be able to decipher the importance of motivations, opportunities, controls, and constraints more generally. Historical comparative analyses could be designed to examine the differences between policies that

produce social harms and those that do not in an attempt to search for these necessary and sufficient causes of a criminogenic policy outcome.

Specifically, qualitative comparative analysis (QCA) would help in such an effort to assess the multiple pathways to a criminogenic policy outcome and the multiple pathways to a non-criminogenic policy outcome.²²¹ QCA is more promising for studying criminogenic policies than quantitative analyses because it allows exploration of causation that is complex by searching for pathways of combinations of conditions to a particular outcome rather than the net effects of particular variables on a dependent variable. A future QCA could analyze multiple economic policies, some that include a social charter with human rights protections such as in the European Union, and some where there is no inclusion of human rights protections such as NAFTA. Taking the lessons of this dissertation, several suspected conditions influencing a criminogenic policy outcome could be used including the presence or absence of the policy's transparency, popular involvement in its formation, repression of opposition to the policy, corporate involvement in negotiations, independent oversight of the negotiation, and furtive political deals. A QCA would then look for the possible combinations of these conditions that lead to a social charter, and those that do not lead to a social charter.

Of particular importance for future research is the inclusion of core nations other than the United States. Studies that include policies where China, Russia, Japan, or some Western European nations are the most powerful countries in the agreement would be useful for comparison with those where the United States is the core-state negotiator. These policies could also be included in a QCA. The findings of this study and such future studies should help to

²²¹ See Rihoux and Ragin (2009) for an explanation of QCA.

inform international lawmakers in drafting protections for global citizens from the potentially harmful effects of transnational policies, particularly those that restructure the economy.

Since NAFTA, there have been several proposed free trade policies, most of which have been implemented. None may be more important than the recent controversial Trans-Pacific Partnership (TPP). U.S. President Donald Trump was elected partly running on a campaign promise to withdraw the United States from the TPP which he fulfilled by signing an executive order in his first week of presidency.²²² The TPP should be of particular interest to future researchers because it has been characterized as “NAFTA on steroids,” and, based on the current study, likely to be criminogenic.²²³ The TPP is a NAFTA-like trade deal that includes 12 nations covering around 40 percent of the world’s economy with strong support from business and former U.S. President, Barack Obama.²²⁴ The TPP is an interesting case to apply the analytical framework from Chapter 2, since an incoming president signed an executive order to withdraw the United States from the agreement despite strong support from several members of the TCC. What conditions lead to a reversal of a criminogenic policy? Although an executive order does not mark the end of the U.S. role in major trade deals, future researchers should explore how Donald Trump fits into the TCC and the likelihood of rivalry factions in the TCC.

Although there is ample ground for studying other criminogenic policies, the study of NAFTA as a criminogenic policy should not end with this dissertation. As with the TPP, President Trump campaigned on a promise to withdraw the United States from NAFTA, but later

²²² See BBC News story at <http://www.bbc.com/news/world-us-canada-38721056>.

²²³ See Public Citizen’s TPP webpage for several sources critiquing the policy at <https://www.citizen.org/our-work/globalization-and-trade/nafta-wto-other-trade-pacts/trans-pacific-partnership> and *Democracy Now!*, October 6, 2015 new story that classifies the TPP as “NAFTA on steroids.”

²²⁴ See *Washington Times*, January 23, 2017 news story at <http://www.washingtontimes.com/news/2017/jan/23/trump-pull-out-trans-pacific-partnership/>.

reneged on that promise and agreed to renegotiate NAFTA instead.²²⁵ Yet, the details of such a renegotiation are unknown and a future date for renegotiation is not set. A comparison of NAFTA and the TPP should be of interest to future researchers. Why did Trump withdraw from the TPP, but only agree to renegotiate NAFTA? What are some of the conditions leading to these differing outcomes? However, it is still early in the NAFTA renegotiation story. Future researchers should continue following NAFTA to see if and how this renegotiation takes shape.

Another line of research related to the current dissertation involves domestic policy. Although policy is operationalized in this study as, at least, bilateral, the concept of a criminogenic policy should be useful to researchers studying domestic policy. For instance, with news pages filling with debates over Trumpcare and Obamacare brands of healthcare, and differing political alliances deeming each harmful to particular groups of people, future researchers should study domestic policy as potentially criminogenic, and, in the same manner used in this study, look for conditions leading to criminogenic domestic policies. Close attention should also be paid to the interaction between domestic and global policy. For instance, in this study, Mexican domestic policy was found to be influenced by Mexican elites' relationships with U.S. elites, and the NAFTA policy in particular.

Lastly, future researchers, especially criminologists, should focus more attention on the “lesser” human rights violations (HRVs) such as economic inequality, lack of political involvement in policy formation, poor working conditions, and unclear water and air. The current dissertation demonstrated, not only the harmful nature of these violations, but the compounding effect of these violations that gave way to more serious HRVs such as the torture, disappearances, and extrajudicial killings seen in the Mexican drug war and the militarized

²²⁵ See *New York Times*, April 26, 2017 news story at <https://www.nytimes.com/2017/04/26/us/politics/nafta-executive-order-trump.html>.

southern U.S. border. Human rights organizations should track these “lesser” HRVs while also searching for connections between them and the more serious HRVs.

There is certainly no global criminal justice organization dedicated to curbing such elaborate crimes as creating a criminogenic policy through legal mechanisms. Even for illegal crimes committed by powerful states or corporate actors, there is little, weak, or no infrastructure to control those crimes. With the recognition that such crimes may be committed without justice, the onus falls on the citizens of the world to restore justice, most promisingly through transnational grassroots movements. Academia can play a vital role in this pursuit. Using Bennet’s (2004) description of a case study researcher as a detective, academics, particularly criminologists, should act as investigators documenting the transgressions of powerful actors, like this dissertation has done. It is often not as simple as noting the crimes of particular individuals, but rather highlighting criminal forces and institutions. Nonetheless, the role of academics is essentially the same as a police detective who must piece the evidence together to determine who or what committed a crime. On the other end of this envisioned global criminal justice system are the citizens who shall play the role of prosecution, judge, and jury. Using the evidence provided by academic researchers, the public should move to prosecute state-corporate criminals, and push for social change to restore justice to the victims of criminogenic policies.

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