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Globalization and the Border: Trade, Labor, Migration, and Agricultural Production in Mexico

Chantal Thomas*

The debate over immigration policy in the United States has reached a crescendo in recent years, with particular concern over illegal workers and their impact on social well-being in this country. Yet in the prevailing analysis of this issue, the relationship between immigration and contemporary international trade policy is often overlooked. In particular, few commentators recognize or understand that a significant part of the surge in illegal labor from Mexico—the source of the majority of undocumented workers in the United States—stems from reforms that Mexico undertook in cooperation with the United States to liberalize trade flows across the Mexico-United States border.

This Article seeks to elucidate that relationship by focusing on a particular example: agricultural production in Mexico, especially the production of corn, the staple crop of Mexican farmers. Since 1994, the following interrelationship between international trade rules, labor, and migration has unfolded across the Mexico-United States border: first, corn imports have surged into Mexico from the United States under import policy reforms brought about by the North American Free Trade Agreement (NAFTA) and related economic liberalizations in Mexico; and, second, displaced agricultural labor has migrated out of rural Mexico into Mexican cities, maquiladoras, and, not infrequently, the United States.

This Article recounts the particulars of NAFTA-induced corn import surges from the U.S. across the border to Mexico delving into the specifics within the broader context of liberalization. Part I describes the background of macroeconomic reform in Mexico; Part II discusses that reform in the context of labor relations in Mexico; Part III describes the impact of these transformative forces on labor migration; Part IV illustrates the cumulative effect of these events on local maize production; and Part V concludes the Article by summarizing the general and specific dynamics at play in liberalization and production across the Mexico-U.S. border, with associated effects on cross-border migration.

* Chantal Thomas, Professor of Law, Cornell Law School. I am indebted to Dan Badelescu for alerting me to this important case study. Special thanks to Professors Michael Malloy and Ruth Jones, and their colleagues at McGeorge School of Law, for inviting me to take part in their Annual Distinguished Speaker Series. A version of this paper was presented at the conference, “Mapping Social Regionalism,” convened by McGill University Faculty of Law and the Centre de Recherche Interuniversitaire sur le Mondialisation et le Travail (CRIMT); that paper has been published as “Migration and Social Regionalism: Labour Migration as an Unintended Consequence of Globalization in Mexico, 1980-2000,” in SOCIAL REGIONALISM IN THE GLOBAL ECONOMY (Adelle Blackett & Christian Levesque eds., 2009). Finally, this Article could not have been completed without the excellent and tireless assistance of the student editors of the McGeorge Law Review.
I. TRADE LIBERALIZATION SETS THE BACKGROUND: MACROECONOMIC REFORM IN MEXICO

The trade liberalization undertaken in the NAFTA era should be understood against a backdrop of a decade's worth of calls for economic reform in Mexico, away from a statist, inward-looking orientation model and towards a marketized, outward-looking growth model. The policies on trade between Mexico and the United States under NAFTA represented the culmination, rather than the beginning, of an extended set of economic reforms whose genesis lay well over a decade beforehand. In many cases, these reforms were adopted in fits and starts, with periods of backtracking followed by sudden and aggressive measures.

Mexico made several changes to its domestic legal and administrative framework that were not captured formally in NAFTA but that were a central part of a framework for neoclassical economic reform. It changed its constitutional law to allow for the alienation of rural property. It decreased public spending, causing a shrinkage not only of the public sector but also of the formal economy, which led to a rise in both the informal economy and in the incidence of poverty. And it changed its monetary policy, hiking interest rates, which discouraged local firms from investing and contributed to the stagnation of the local economy.

Furthermore, Mexico devalued its currency, leading to a greater desire for hard currency and increasing the attractiveness of migration and the possibility of remittances of hard currency. When coupled with the

2. See infra Part I.B; see also Thomas J. Kelly, Neoliberal Reforms and Rural Poverty, 28 LATIN AM. PERSPECTIVES 84, 84 (2001) (arguing that a "reduction in expenditure of social services" was associated with a "decline in real wage rates" and "increased poverty"); Manuel Pastor & Carol Wise, State Policy, Distribution and Neoliberal Reform in Mexico, 29 J. LATIN AM. STUDIES 419 (1997). While the reduction in social spending was associated with a decline in real wages and an increase in poverty, the direct link between the size of the formal economy and poverty levels is a subject of some dispute in the literature. Neoclassical or neoliberal perspectives would argue that deregulating the economy can create opportunities for private-sector economic growth, while other perspectives hold that a stronger "welfare state" model is necessary to ensure income stability and preserve infrastructural capacity for economic growth. These debates, and the conceptual difficulties associated with them, are set forth in Linking the Formal and Informal Economy: Concepts and Policies (2006). Some studies have found that, when social security benefits are not taken into account, informal sector wages may be higher in Mexico, though not in other Latin American countries. See Douglas Marcouiller, Veronica Ruiz de Castilla & Christopher Woodruff, Formal Measures of the Informal-Sector Wage Gap in Mexico, El Salvador, and Peru, 45 ECON. DEV. & CULTURAL CHANGE, 367, 376-77 (1997).
3. See Rudiger Dornbusch, Jose Vinals & Richard Portes, Mexico: Stabilization, Debt and Growth, 3 ECON. POL’Y 233, 261-262 (1988) (noting that high interest rate policies intended to discourage inflation and thereby "stabilize" the economy can adversely impact economic growth; "stopping inflation[] is the easy part... monetary[] austerity cools down domestic demand and, accordingly, there is little incentive to invest... the high real interest rates favour postponing investment") (emphasis added); see also Marco Del Negro & Francesc Obiols-Horns, Has Monetary Policy Been So Bad That It Is Better to Get Rid of It? The Case of Mexico, 33 J. MONEY, CREDIT & BANKING 404 (2001).
4. See Douglas S. Massey & Kristin E. Espinosa, What’s Driving Mexico-U.S. Migration? A Theoretical, Empirical and Policy Analysis, 102 AM. J. SOC. 939, 948-949 (1997). Though the authors also note that peso devaluation may in some cases decrease the likelihood of taking "an initial undocumented trip" from
accelerated liberalization of corn imports into the United States, the result was a collapse in corn imports, a crowding out of small producers, and a stream of economic migration.

A. The Washington Consensus and Economic Governance in Mexico

The initial phase of Mexico's reform was significant not only for the country itself but also for the international economic order. Mexico's economic crisis provoked a series of substantive and institutional changes in the domain of international relations that would shape trade, financial, and development policy for well over a decade: the rise of the Washington Consensus and the move towards "deeper integration" of the developing world into the international economic order through the reconciliation of developing-countries' governments to a model of economic liberalization.5

As many have chronicled, the Mexican debt crisis ushered in a period of close cooperation between the U.S. government (primarily acting through the Treasury), the International Monetary Fund (IMF), and the World Bank—all central arbiters of the waves of refinancing and restructuring of the debt burdens of Mexico and many other developing countries in the 1980s and 1990s. These actors became known not only for their actual role in brokering debt restructuring but for their increasingly cohesive role as advisors for economic policy reform.

For Mexico, the most decisive factor leading to internal economic policy reform was its 1982 debt crisis, when Mexico's short-term quarterly debt, owed primarily to private commercial banks, reached record levels at a rapid incline,6 with overall external debt at forty-nine percent.7 This sudden crisis arose out of a confluence of factors including lower foreign exchange earnings (due to a weakening world commodities market and falling oil prices) and more expensive interest payments (caused by rapid and recent increases in international interest rates and shortening of loan maturities).

The cost increase provoked the Mexican government to declare a moratorium on external debt in late 1982, followed by a rapid response from the international community to reschedule the debt to preserve the stability and viability of the international financial system. These banks had provided large amounts of


funding to the Mexican government throughout the 1970s, primarily as a convenient way of recycling "petrodollar" deposits, and many had heavy exposures in sovereign loans. 8

The IMF played a central role not only in disbursing immediate funds to relieve the crisis but also in brokering the larger debt restructuring process. This broker’s role included both physically shepherding along the negotiations 9 and devising the basics of the collective refinancing scheme followed by the commercial banks. 10 This latter role began in mid-November, 1982, when the IMF Managing Director informed the banks that the IMF would release funds to Mexico only if the banks all promised to provide new “gap financing” as well. 11

As manager of the debt crisis, the IMF was able to persuade commercial banks to act collectively, because it could deliver two essential pieces of the puzzle: multilateral coordination necessary to undertake such a mammoth financial task; and concerted economic reforms directed towards achieving sounder macroeconomic performance and, therefore, greater borrower solvency. 12

The so-called Washington Consensus came to rest on three “pillars”: fiscal austerity, privatization, and market liberalization. 13 Fiscal austerity focused on the reduction of government spending. Market liberalization included the removal of trade barriers, investment barriers, and price controls, while privatization centered on the sale of state-owned companies to private investors.

Much attention in the social sciences and accompanying political discourse has been devoted to the implications of the IMF’s conditionality policies, its

8. William R. Cline, Mexico’s Crisis, the World’s Peril, 49 FOREIGN POL’Y 107, 107 (1982) (“Loans to Mexico accounted for 44 per cent of the nine largest U.S. banks’ capital in 1981. Mexican failure to pay interest on these loans for a year would eliminate more than one-third of their annual net profits.”).
9. See James M. Boughton, From Suez to Tequila: The IMF as Crisis Manager, 110 ECON. J. 273, 285-86 (2000) (describing the process whereby a meeting of Mexican officials with the U.S. government in Washington D.C. was immediately followed by a mission of IMF officials to Mexico City to complete the initial restructuring package).
10. See id. at 286 (describing the IMF’s innovation at this time in persuading banks to act in their “collective interest in maintaining Mexico’s ability to service its debts” rather than insisting on full repayment of individual claims).
11. Id.
12. The IMF pursued these economic reforms through the authority granted to it by Article IV of its Articles of Agreement and through the subsequent, landmark decision of 1979 interpreting Article IV to authorize a policy of conditionality. See Articles of Agreement of the International Monetary Fund, art. IV, Dec. 27, 1945, 60 Stat. 1401, 2 U.N.T.S. 39; Decision No. 6056-(79/38), INTERNATIONAL MONETARY FUND, GUIDELINES ON CONDITIONALITY (Mar. 2, 1979). Note that in 2002, the IMF repealed this 1979 decision in conjunction with an effort to synthesize and restate its lending policies. See INTERNATIONAL MONETARY FUND, GUIDELINES ON CONDITIONALITY 6 (Sept. 25, 2002). Grounded in legal authority, the IMF nevertheless often chose notably informal, non-binding frameworks for agreement on economic reform: Letters of Intent (LOIs), Memoranda of Economic and Financial Policies (MEFPs), and Technical Memoranda of Understanding (TMUs). To begin with, formal infringement of a borrower government’s sovereignty remained a delicate matter, particularly in the early 1980s when the alternative, structuralist, and redistributive economic vision of the New International Economic Order retained some political visibility. Moreover, it could be assumed that whatever influence the IMF could exert would arise through its control over levers of multilateral and commercial funding.
models of structural adjustment, and its means of influence over governmental reform in developing countries. Fewer scholars, however, have documented the internal political change that unfolded within many borrower countries during this time. In Mexico, as with many developing countries, the economic shocks of the debt crisis and related hardships created conditions for popular tolerance of reform, and that, coupled with a transformation of the sociological profile of the administrative and political leadership in Mexico, led to a strong internal push towards liberalization. The Mexican government proceeded through the administrations of Miguel de la Madrid (1982-1988), Carlos Salinas de Gortari (1988-1994), and Ernesto Zedillo (1994-2000), with all of these Administrations following liberalization programs, albeit with varying degrees of fidelity.

In assessing the implications of this dynamic for “global governance” studies, it goes without saying that power—in the forms of economic coercion and political influence—played a central role in determining the structure and outcomes of Mexican reform efforts. The precise contours of this power, however, remain somewhat obscure. While the international financial community exerted clear influence over the Mexican government, power traveled through many circuits with clear dynamics of resistance as well as coercion. The fuller intricacies of the processes and practices whereby the Washington Consensus was adopted, resisted, implemented, and not implemented in the Mexican context, make for an extremely important study but one whose details must remain for another time. Suffice it to say that the broader outline of political and economic change in this period displayed a decisive turn towards a neoclassical, rather than statist, economic policy model and an agenda of reform through economic liberalization.

B. Budget Consolidation and Trade Liberalization

With the conditionality of the IMF-brokered refinancing resting on deep macroeconomic transformation, Mexico embarked on a program of economic

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reform that continued, at various levels of intensity, throughout the rest of the 1980s and 1990s. Under the IMF Stabilization Program of 1982, Mexico pursued the reforms that would come to form the three pillars of the Washington Consensus: privatization and fiscal austerity, each part of the overall goal of "budget consolidation," and trade liberalization.

As part of its commitment to budget consolidation and inflation control, the Mexican government significantly decreased public spending, such that public sector deficits declined from eighteen percent to eight percent of GDP by the following year. Privatization, with its accompanying dramatic reductions in state investment in the economy, also contributed to budget consolidation. State-owned enterprises declined from 1,100 in 1982 to less than 250 in 1992, with privatizations occurring through a variety and range of sectors and companies. Through fiscal austerity and privatization, the budget moved from a deficit of 16.9 percent in 1982 to a surplus of 0.5 percent a decade later.

Because the primary goal was the "stabilization" of the economy, primarily through the control of inflation, Mexico's eagerness to pursue trade liberalization during this era arose less from an export-led growth development model—although this model certainly was held to be complementary at the time—than from a desire to control inflation by introducing competition from imports into the domestic market.

In terms of market liberalization, Mexico's biggest achievement was the establishment of NAFTA in 1994. NAFTA introduced significant reductions in investment through the elimination of restrictions in investment and in trade. With respect to the latter, tariffs and other customs duties were to be phased out on all cross-border trade in goods between the United States and Mexico in successive stages, with the first category of goods becoming duty-free

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24. Dombusch & Werner, supra note 7, at 260 tbl.4.
25. See Jeffrey D. Sachs, Economic Transition and the Exchange-Rate Regime, 86 AM. ECON. REV. 147, 147 (1996) (describing the basic group of initial market reforms in stabilization programs as "the liberalization of prices, the unification of the official exchange rate and the market exchange rate, and the opening of the economy to international trade"); see also STIGLITZ, supra note 13.
immediately and the final date for achieving duty-free status being fifteen years later.

Even prior to NAFTA, however, the government adopted many ambitious market-liberalizing reforms. As early as 1985, Mexico commenced negotiations with the United States toward a bilateral trade agreement providing for the liberalization of import barriers and export subsidies. Finalized in 1987, this effort coincided with Mexico’s 1986 accession to the General Agreement on Tariffs and Trade (GATT), the elimination of import and export price controls it required, and the remarkable steps de la Madrid’s government took in accelerating tariff liberalization beyond the GATT timetable. In 1987, trade liberalization measures were deepened further through the negotiation of a Framework Agreement with the United States. The onset of NAFTA negotiations, initiated not by the United States but by the Mexican government under Salinas, thus represented the culmination of concerted efforts towards trade liberalization.

C. Exchange-Rate Management, Capital Inflows, and Currency Instability

In addition to fiscal austerity, privatization, and “market liberalization,” exchange rate management was always a central aspect of the stabilization programs of the IMF. Indeed, notwithstanding the three pillars, it might be argued that the overarching goal in the initial phases of the Washington Consensus era was the stabilization of the monetary and currency environment in borrower countries, as the name of the structural adjustment programs (the “Stabilization Program” described in Part I.B. above) adopted by Mexico and other client governments itself indicated. Thus, Mexico pursued a fixed exchange rate regime throughout this era—until it was forced to abandon it.

Exchange-rate and currency stabilization, together with macroeconomic reform, created an environment in the late 1980s and early 1990s of increasing

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28. Id. at annex 302.2(1)(a), 32 I.L.M. 289, 309-10 (providing that duties on “category A” goods be eliminated by January 1, 1994).

29. Id. at annex 302.2(1)(c), 32 I.L.M. at 310 (providing that duties on “category C” goods be eliminated by January 1, 2008).


32. Id. at 471.

33. Id. at 461.

34. Id. at 471.

35. See Sachs, supra note 25.
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investor and business confidence in forecasts for the Mexican economy. Mexico’s capital markets received their initial boost from the U.S. Treasury’s “Brady plan” for further debt restructuring, involving both the reduction and the securitization of Mexico’s sovereign debt commitments. Laying the basis for an “emerging market” in securities, the Brady plan and subsequent capitalizations, for the first time in the history of the post-debt crisis efforts, effected the transformation from net capital outflow to net capital inflow for Mexico. Stock market volume also increased dramatically, further increasing capital inflows.

These capital inflows were, however, “highly liquid.” Even at the time, this sudden increase in liquidity seemed ominous for the less “optimistic” observers, given the simultaneously large trade deficit that was being financed by borrowing abroad. Unfortunately, the pessimists were correct: the groundwork was being laid for a major currency crisis.

The seeds of the currency crisis lay in the fundamental contradiction between Mexico’s fixed exchange rate and its trade deficit. Domestic growth remained low and relative prices remained high. The focus on disinflation, and the required political investment in the pegged exchange rate, most likely blinded the Mexican government and its advisors from perceiving the need for a correction in currency value until it was too late. Increasingly negative investor speculation and domestic political instability forced a currency devaluation in December of 1994 that caused the peso to drop in value by fifty percent in 1995.


38. Dombusch & Werner, supra note 7, at 258 (describing how net capital transfer finally began to turn positive for Mexico following the Brady plan, with inflows going from negative levels in 1988 to positive inflows of $26.5 billion by 1992 and $22 billion in the first three quarters of 1993).


40. Id. at 259.

41. See id.


43. Ramirez, supra note 21, at 129.

What made this recent debacle so shocking and dismaying to the average Mexican was that, only one short year before, news headlines had been touting Mexico’s economic boom and confidently predicting that, with passage of the recently concluded North American Free Trade Agreement (NAFTA), the country was well on its way to joining the ranks of economies in the First World.
D. Full Circle: Further Austerity and Trade Liberalization

In response, the Mexican government had to adopt another IMF Stabilization Program in 1995. The features of this stabilization program repeated many of the tenets of its predecessor, introducing the following measures: an immediate across-the-board cut in government spending of almost ten percent; immediate increases of thirty-five percent in petroleum prices and twenty percent in electricity prices; increases in the value-added tax; and a dramatic decrease in the money supply, leading to short-term interest rates of more than forty percent.44 At the same time, trade liberalization, now accelerated by NAFTA, continued to transform the Mexican economy. With liberalizations under NAFTA, Mexico’s current account underwent rapid changes. In the five years after NAFTA was implemented, Mexico’s trade surplus fell from ten percent of GDP to two percent.45

II. LABOR RELATIONS, “MARKET LIBERALIZATION” AND “INCOMES POLICY”

“Market liberalization,” in the Mexican context, proved to be a peculiar concept. While liberalization was evident in the rapid removal of barriers to cross-border trade, when it came to the domestic market, the government adopted corporatist measures that reduced the ability of labor unions to resist the larger goal of controlling inflation. Central to the disinflation strategy was the government’s “incomes” policy, which called for the implementation of wage controls. Incomes policy was practiced through pactos, whose parties were “government-friendly unions,” “the business community,” and “the government.”46 The first pacto, the Economic Solidarity Pact (PSE), was created in December 1987, later renamed the Pact for Stability and Economic Growth in 1988, and periodically renewed thereafter.47

These pacts may have partially exemplified some sort of enlightened self-interest on the part of labor unions, or, more prosaically, their acceptance of the growing ideological consensus on free trade policy.48 The pacts were undoubtedly made possible by the “institutional clout” of the reigning political party, the Institutional Revolutionary Party (PRI). Corporatism in Mexico featured not only an autocratic and presidentialist government but a labor movement strongly allied

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44. Id. at 140.
45. World Bank, supra note 20.
46. Dornbusch & Werner, supra note 7, at 271.
48. Pastor & Wise, supra note 31, at 469 (noting the unprecedented ideological free trade consensus).
with its two partners in the tripartite corporatist framework, government and business.

The labor context in Mexico is a complex one. The Mexican Constitution recognizes the right of association and the right to strike, as well as a variety of other protections pertaining to maximum hours and minimum pay. In addition to these substantive protections, labor unionism occupies an institutionally privileged position through the Labor Congress (Congreso del Trabajo or CT) and its largest member, the Confederation of Mexican Workers (La Confederación de Trabajadores de México or CTM). The most important example of the “official” union, the CTM, was established in 1936 by and as a part of the ruling party during the administration of Lázaro Cárdenas, who in turn supported the CTM’s pursuit and achievement of “pro-[labor] wage policies.”

Some studies have suggested that Mexican labor features a level of union democracy greater than that in the United States or the United Kingdom. Certainly, at the height of the corporatist labor regime, the official unions effectively pressed the interests of their members. If access came at the expense of organizational pluralism, that seemed an acceptable trade-off through the 1970s. At the same time, critics have long asserted that, during this period, the labor movement in Mexico became a “passive instrument[] of the state.”

49. Constitución Política de los Estados Unidos Mexicanos [Constitution], Artículo 123 (XVI) (“Tanto los obreros como los empresarios tendrán derecho para coaligarse en defensa de sus respectivos intereses, formando sindicatos, asociaciones profesionales, etc.”); Id., as amended Diario Oficial de la Federación [D.O.], 6 de Octubre de 1986, Artículo 123 (XVII) (“Las leyes reconocerán como un derecho de los obreros y de los patronos, las huelgas y los paros.”).

50. Id. at Artículo 123 (I), as amended Diario Oficial de la Federación [D.O.], 6 de Octubre de 1986 (“La duración de la jornada máxima será de ocho horas.”); Id. at Artículo 123 (II), as amended Diario Oficial de la Federación [D.O.], 31 de Diciembre de 1974 (“La jornada máxima de trabajo nocturno será de 7 horas.”); id. at Artículo 123 (VI), as amended Diario Oficial de la Federación [D.O.], 23 de Diciembre de 1986 (“Los salarios mínimos se fijarán por una comisión nacional integrada por representantes de los trabajadores, de los patronos y del gobierno.”).


53. Irma Campuzano Montoya, El Impacto de la Crisis en la CTM, 52 REVISTA MEXICANA DE SOCIOLOGÍA 161, 161-62 (1990) (“Para mantener su fuerza, la CTM ha estorbado el registro de nuevas agrupaciones sindicales y ha bloqueado el desarrollo de la democracia sindical . . . .”).

54. Maria Lorena Cook, Mexican State-Labor Relations and the Political Implications of Free Trade, 22 LATIN AM. PERSP. 77, 78-79 (1995) (noting that “[t]he fact that official labor organizations enjoyed a privileged status did not mean that tensions between the government and labor were absent” and explaining that unions were able to “influence the direction of national development policy” through their ability to deliver votes through the mass organizations that they headed). Cook also notes that the 1970s were “a period of relative innovation and activism” in union politics, with several independent and “breakaway” unions established in this time frame. Id. at 80.

passivity arose primarily out of the "official" union leadership's reliance on state patronage and the manipulation of "closed shop" agreements.\(^5\)

Mexican corporatism manifested itself in state control of unions from the point of their establishment, determining their range of action and collective bargaining agreements.\(^5\) In particular, this "centralized, unresponsive . . . system of internal union governance" was maintained through minimal and superficial labor democracy.\(^5\) The smaller and more independent National Union of Workers (Unión Nacional de Trabajadores, or UNT) has decried this "silence and immobility through the corporatism exercised by the state."\(^5\) The practical hurdles faced by independent union organizers arise from the extensive control exerted by both the official unions and the state over the union certification and election processes. Another criticized practice is that of newly formed companies establishing the terms of collective employment, in the contrato de protección, prior to the actual hiring of workers. The collective bargaining agreement thus operates like an adhesion contract.

In any case, through the 1980s, the corporatist situation forced unions to accede to reforms. In this new era, however, the old trade-off of independence for access did not pan out as well. The reforms themselves produced destabilizations from which the official unions, whether they had access or not, were ill-prepared to protect workers.\(^6\) Moreover, the climate of "neoliberalism" surrounding these reforms further undermined the legitimacy of the official unions' position.\(^6\)

Whether or not the pactos resulted from meaningful consent on the part of labor unions to wage reforms, they ultimately failed to jumpstart internal competitiveness in the Mexican economy.\(^6\) Relatively low wages did not succeed in sufficiently stimulating domestic investment to generate significant new employment. GDP growth remained negligible through the 1980s and mid-1990s, and, although the economy began to grow after 1995, the results have remained "disappointing."\(^6\)

56. Befort & Cornett, supra note 52, at 304.
57. Unión Nacional de Trabajadores, La UNT rechaza la contrareforma laboral, in REFORMA LABORAL ¿QUE NECESITAMOS? 219 (Nestor & Carlos de Buen eds., 2006) [hereinafter Unión Nacional de Trabajadores] (criticizing "el control estatal de los sindicatos desde su registro, la determinación de su radio de acción y la firma y la titularidad de los contratos colectivos").
58. Befort & Cornett, supra note 52, at 304.
59. "Silencio [e] . . . inmovilismo por el corporativismo ejercido por el Estado." Unión Nacional de Trabajadores, supra note 57, 221 (criticizing "el control estatal de los sindicatos desde su registro, la determinación de su radio de acción y la firma y la titularidad de los contratos colectivos").
60. See Cook, supra note 54, at 79 (noting that the official unions' "inability to halt the precipitous decline in workers' living standards further eroded workers' support for their union leaders").
61. See id.
62. See Dornbusch & Werner, supra note 7, at 281-82. Dornbusch & Werner have argued that the Mexican government at this time overemphasized inflation control through its exchange rate management and incomes policies, and that it should have instead allowed for some inflation, up to 15-18 percent, as the price of the private sector gaining competitiveness. Id. at 282. (citing RUDIGER DORNBUSCH, STABILIZATION, DEBT AND REFORM: POLICY ANALYSIS FOR DEVELOPING COUNTRIES (1993)).
63. Nora Lustig, Life is not Easy: Mexico's Quest for Stability and Growth, 15 J. ECON. PERSP. 85, 86
Although the traditional closeness of the "official" unions with the government traditionally did give labor some independent influence on government policy and did not crowd out the possibility of debate, the era of economic reform and liberalization appears to have weakened the labor movement further. This weakness stemmed in part from labor unions' inability to soften some of the hardest-hitting blows of the structural adjustment program, including the reduction of consumer subsidies and the associated effect of peso devaluations.\textsuperscript{6} The disillusionment of workers with the labor unions softened their political influence still further, as evidenced by the failure of labor unions to deliver votes in the election won by Salinas.\textsuperscript{65} The relative weakness of traditional labor unions, particularly in the wake of the other socioeconomic changes underway, culminated not only in the negotiation and renewal of the pactos but also in a government crackdown on corruption within traditional labor.\textsuperscript{66}

The anticorruption investigations might have paved the way for renewed vitality and democracy in the labor movement, particularly after the long-ruling PRI fell to the election of Vicente Fox in 2000.\textsuperscript{67} The surrounding forces of globalization at work in the Mexican economy, however, have made this difficult. The Salinas era ended with the establishment of NAFTA. Although there was some diversity of views within the Mexican labor movement, the official unions supported the negotiation of NAFTA, on the theory that the increased trade and investment it would bring to Mexico would increase and improve jobs for Mexican workers.\textsuperscript{68} (The same argument was made to trade unions in the United States and Canada regarding employment in their respective

(2001). From 1982 to 2005, Mexico's GDP showed a negative rate of growth two-thirds of the time, i.e. sixteen out of twenty-four years. World Bank, World Development Indicators Online Database (2006).

\textsuperscript{64} Montoya, \textit{supra} note 53, at 165.

\textsuperscript{65} Maria Lorena Cook, \textit{Mexican State-Labor Relations and the Political Implications of Free Trade}, 22 \textit{LATIN AM. PERSP.} 77, 80 (1995).

\textsuperscript{66} \textit{See id.} at 81.

\textsuperscript{67} Such has been the hopeful pronouncement of an ever-shifting coalition of progressive Mexican legislators and independent union members. \textit{See, e.g.}, Grupo Parlamentario del Partido de la Revolución Democrática, Cámara de Diputados del Congreso de la Unión, LVIII Legislatura, \textit{Una reforma democrática para el Mundo del Trabajo: Propuesta Laboral, PRD-UNT, 58, 71 (2003), available at http://www.cnd.org.mx/Memorias/ponencias/407.pdf (on file with the McGeorge Law Review) ("el fin de la hegemonía del PRI, la alternancia en el gobierno federal y el nuevo reparto de poder que refleja con mayor fidelidad la pluralidad de la sociedad mexicana, generan una atmósfera propicia para la transformación democrática de nuestro país.").

\textsuperscript{68} For a description of the debates within Mexican labor unions and an account of the factors leading to their ultimate endorsement of NAFTA, see Katrina Burgess, \textit{Mexican Labor at a Crossroads, in MEXICO'S POLITICS AND SOCIETY IN TRANSITION} 73, 90 (Joseph S. Tulchin & Andrew D. Selee eds., 2003).
The latter unions rejected this argument, largely for the reasons that underscored the Mexican official unions’ endorsement of NAFTA as a driver of Mexican employment.\(^{70}\)

The relative decline of both the influence of organized labor and the level of formal labor protections can be traced to several factors, each of which will be briefly explained here: the ongoing political debate on the possibility of “flexibilization”\(^{71}\) of labor regulations; the informalization of employment; and the related increase in employment in maquiladoras. First, an ongoing debate over the necessity of flexibilization of labor regulations likely has undercut the bargaining power of official unions.\(^{72}\) In any case, official unions became even less assertive than in prior eras and were increasingly associated with a posture of complicity towards the non-enforcement of basic labor protections embodied in the Mexican Constitution and the 1970 labor regulation. Second, any effect of the flexibilization reforms in undermining the position of official unions was underscored by their helplessness to protect from the impact of macroeconomic destabilizations.

Third, informalization of employment contributed to the relative softness in the bargaining position of organized labor. Rapid urbanization resulting from economic dislocations created an equally rapid expansion in the urban labor force that was most easily absorbed into informal-sector employment. In addition, the shift to the maquiladora sector created a dampening effect on labor organization. This was partly due to the concomitant rise of subcontractor suppliers to maquiladoras and partly because the maquiladoras themselves appear to have resisted labor organization. Some feminist and human rights scholars have speculated that the relatively low levels of labor organization in the maquiladora sector may stem from the fact that the majority of its workers are women, who are subject to a variety of socioeconomic and cultural factors that appear to inhibit union organizing.\(^{73}\)

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71. Katherine V.W. Stone, Flexibilization, Globalization, and Privatization: Three Challenges to Labour Rights in Our Time, 44 Osgoode Hall L.J. 77, 79 (2006) (defining flexibilization as “changing work practices by which firms no longer use internal labour markets or implicitly promise employees lifetime job security, but rather seek flexible employment relations that permit them to increase or diminish their workforce, and realign and redeploy employees with ease.”).


In this sense, NAFTA may have contributed indirectly to the relative weakness in labor organization by unleashing social dynamics that constrained the ability of workers to organize. In terms of its facial requirements, NAFTA appears to have very little effect either way. The NAFTA “side agreement on labor,” the North American Agreement on Labor Cooperation (NAALC), while calling on governments to “promote” a wide range of labor principles, establishes a process for examining complaints only with respect to a signatory’s non-enforcement of its own laws. Effectively, the NAALC does not establish positive obligations but rather addresses signatories’ existing labor laws.

Even the obligation to enforce existing labor laws, together with the longstanding and ever-increasing tolerance by the official unions of non-compliant labor practices, harbored the potential to be transformative in the Mexican context. The ability of NAALC to gain momentum in this respect was somewhat stymied as support declined with the transition from the Clinton to Bush Administrations, but some NAALC experts have remained optimistic about its potential for assisting the formation of transnational networks in labor and human rights movements.

From the beginning, it has been clear that the primary value of NAALC lay in its potential for monitoring and building opportunities for exchange and dialogue among labor unions. The key mechanism was an investigation conducted by a NAALC National Administrative Office (NAO) at its own initiative or at the petition of a labor union in a signatory state other than the one in which the alleged violation occurred. Ministerial Consultations occupied the next level of review. Finally, if such consultations failed, an Evaluation Committee of Experts (ECE) could examine the matter and issue a report.

For a core of labor issues, defined by the NAALC as “occupational safety and health, child labor or minimum wage technical labor standards,” the ECE may recommend further action upon finding a “persistent pattern of failure.” From there, if the matter cannot be resolved through consultations, a panel may be convened and sanctions recommended.
Notwithstanding the relative lack of emphasis on formal enforcement power, one might have hoped that labor unions would use the NAALC’s information gathering capabilities more than they actually have. Regarding labor practices in Mexico, the first year of the NAALC saw a promising start, with petitions by several U.S. unions (among them the AFL-CIO and the United Electrical, Radio and Machine Workers of America) to the U.S. NAO to investigate labor practices in the Mexican subsidiaries of Honeywell, General Electric, and Sony corporations.83

The last of these investigations resulted in the NAO’s recommendation of Ministerial Consultations. The Ministerial Consultations themselves produced a series of information-gathering activities: three public seminars on union registration and certification; the establishment by the Mexican Secretariat of Labor and Social Welfare of a task force to study labor law and practice related to the registration of unions; and a meeting between the Mexican Secretariat and the company’s management and labor representatives.84

Tellingly, most of the NAO reports center precisely around the ability of workers to organize independent unions. The petitions mentioned above, filed against the subsidiaries of Honeywell, General Electric, and Sony, all focused on the right to freedom of association and the right to organize. The Honeywell and General Electric cases alleged that managers had fired workers for attempting to join independent factory unions, as well as questionable labor practices regarding the influence of the state in the national labor Arbitration and Conciliation Boards.85 The Sony case also involved attempts by workers to form an independent union. The petitioners alleged, and the NAO found, that management had committed several harmful practices, including threatening organizers with dismissal and demotion and using police to violently suppress


85. Nicole L. Grimm, The North American Agreement on Labor Cooperation and Its Effects on Women Working in the Maquiladoras, 48 AM. U.L. REV. 179, 212-13 (1998). In these cases the NAO did not recommend further action because workers had accepted severance pay packages, which in the view of the NAO Report precluded further action under NAALC. Id.
employee demonstrations. In this case, the NAO recommended consultations and issued a follow-up report pursuant to then-U.S. Secretary of Labor's directive "to continue to observe union registration activities."  

In the ensuing years, a total of thirty-four submissions have been filed, twenty-one were filed with the U.S. NAO (nineteen involving allegations against Mexico and two against Canada); eight with the Mexican NAO (all against the United States); and five in Canada (three against Mexico and two against the United States). Ministerial Consultations resulted from fewer than half of those twelve reports. The next stage of review, formation of an Evaluative Committee of Experts, never occurred. The possible reasons for the relative lack of use of the NAALC mechanism—perhaps including a troubled history between U.S. and Mexican unions and the perceived unlikeliness of momentum since the process was unlikely to escalate—would be the basis for a very interesting research project. This is beyond the scope of the current Article, however. Whatever the reasons, the NAALC mechanism is relatively disused.

III. ECONOMIC DESTABILIZATION AND LABOR MIGRATION

While public sector employment was declining due to fiscal austerity measures, the private sector failed to grow enough to absorb the difference. The sluggishness of domestic private sector growth stemmed at least in part from two other disinflation strategies adopted alongside "incomes policy." First, an overvalued currency and associated highs in relative prices, together with high interest rates, contributed to the high real cost of credit, impeding the ability of domestic firms to expand. Second, the rapid introduction of imports effectuated a shift of consumer spending from domestic to imported items, particularly since the overvalued currency meant that the prices of Mexican goods were at all-time highs relative to imported and international goods. Although exports grew throughout this period they were dwarfed by imports.

The result of these trends was that formal employment declined, accompanied by increases in the informal sector and also in labor migration. The picture that emerges from this period is the combination of relative compliance of official labor unions with liberalizing reforms, declines in formal employment, and increases in labor migration.
Migrant labor streams flowed into the growing maquiladora industry. Maquiladora employment quadrupled from approximately 127,000 to approximately 541,000.91 Dislocations caused by instability in international capital flows and exchange rate policy appear to have been directly linked to surges in maquiladoras, with sharp increases in maquiladora operations tracking peso devaluations.92

Beyond the maquiladoras, migrant labor also flowed into the United States. Recorded immigration into the United States has reached an all-time high: 38.4 million in 2005, with the United States share at 20.2 percent of total worldwide immigration.93 Mexican immigration accounts for fully one-quarter of immigration into the United States.94 Mexico accounts for approximately one third of the “foreign-born population” in the United States.95 The Department of Homeland Security recently estimated there are six million unauthorized migrants from Mexico,96 and other estimates including all Latin American migrants place the number at twelve million.97

This relationship between trade and immigration belies the standard “Hecksher-Ohlin Theory of Factor Complementarity,” which holds that trade and immigration are substitutes for each other.98 Instead, in this situation, trade and immigration actually served as complements to each other.99

Under traditional Heckscher-Ohlin theory, which views trade and migration as substitutes, the following would be true: if a labor-rich nation and a capital-
rich nation open their borders to each other, the labor-rich nation will export labor-intensive goods to the capital-rich country. As the capital-rich country imports labor-intensive goods from the labor-rich country, trade liberalization will shift additional production of labor-intensive goods to the labor-rich country (and capital-intensive goods to the capital-rich country). These production shifts, in turn, create upward pressure on wages in the labor-rich country, discouraging emigration.

In contrast with this standard trade story, however, when technology differs between countries, trade and migration can be complements, not substitutes. The cheaper workers from the labor-rich country may migrate to the capital-rich country to increase productivity even further, and exports from the capital-rich country will displace workers in the labor-rich country.

This alternative comes close to a thesis put forward by the sociologist Saskia Sassen in a book entitled *The Mobility of Labor and Capital: A Study in International Investment and Labor Flow.* Sassen's thesis was simple: migration flows track investment flows. Where Northern capital—from the United States and Europe primarily—invests in Southern countries, this flow sets up a chain reaction that leads to Southern migration to Northern countries.

When a U.S. business invests in Mexico, old labor markets are displaced and new labor markets are created, and simultaneously new transnational networks in communication and transportation are forged, creating a hydraulic that draws migrant workers into the stream of the transnational labor market. Supplementing Sassen's thesis, one could conclude that it is not just the flow of investment—or the flow of trade—but also the adjustments that a country must make to prepare itself for this shift to a liberalized policy regime.

Alternatively, illegal migrants may follow a pattern of internal-then-external migration: pursuing new work in domestic border-area export processing zones, from which cross-border migration—increasingly facilitated by human-smuggling operations—is a short step. This internal-then-external migration, strikingly, often reverses but otherwise mirrors transnational capital flows.

Movement across these markets occurs more easily against a background of lowered transaction costs. These efficiencies of the global economy arise both from technological gains in transportation and communication and from reduced tariff barriers arising out of trade liberalization agreements. Increased legal trade

101. See id. at 16-21.
102. Id. at 18.
103. Id; see also Michael W. Collier, *Colombian Migration to South Florida: A Most Unwelcome Reception* 5 (Fla. Int'l Univ., Latin Am. and Caribbean Ctr., Working Paper No. 9, 2004), http://digitalcommons.fiu.edu/cgi/viewcontent.cgi?article=1001&context=laccwps (citing SASSEN, supra note 79) (on file with the McGeorge Law Review) ("[P]ersons who migrate due to dislocation will follow similar paths to those of international capital flows, including to global cities that become the hubs for international financial matters.").
flows across borders leads to increased illegal trade flows by creating opportunities to use otherwise legal commercial carriers for smuggling. In addition, an increased volume of cross-border traffic translates into decreased effectiveness of border inspection.  

Philip Martin has written on how this twist occurred in the context of NAFTA:

Studies on NAFTA's prospective impact agreed that the bulk of the additional jobs due to NAFTA would be created in Mexico. One hoped-for side effect of NAFTA was a reduction in unauthorized migration. This did not happen. Instead, the number of unauthorized Mexicans living in the United States rose from an estimated 2.5 million in 1995 to 4.5 million in 2000, representing an annual increase of 400,000 a year.  

IV. BACKGROUND ECONOMIC CONDITIONS, DISLOCATION, AND LOCAL MAIZE PRODUCTION

In the general atmosphere of economic liberalization described above, Mexico undertook a variety of internal reforms to liberalize the economy that affected corn production. For example, in 1992, an amendment to the Mexican Constitution was adopted to allow alienation of rural property (ejidos). Price supports for corn production were removed contemporaneously. Reductions in public spending, including government-financed farmer credit, were also important reforms.  

Historically, corn in Mexico has been highly protected: a guaranteed price of corn twice the world price has served as the social safety net in rural areas. Mexico had about three million corn farmers in the mid-1990s, but during the...
same period, the 75,000 corn farmers in Iowa produced twice as much corn as Mexico, at half the price.

Even in the context of trade liberalization and the negotiation of NAFTA, the Mexican government recognized the “delicate” political nature of import competition with domestic corn production. It initially negotiated the placement of corn in the most protected category under NAFTA’s trade liberalization framework, providing for a fifteen year phase-out of tariffs.\(^\text{109}\) After NAFTA was adopted, however, the Mexican government refrained from levying the negotiated tariffs, so that corn products from the United States encountered no barriers to import after the first thirty months. Over the next half-decade, U.S. corn imports increased in market share from 8.9 percent to 21.3 percent.\(^\text{110}\) At the same time, domestic corn producer prices fell by as much as forty-seven percent.\(^\text{111}\)

The drop in producer prices created an incentive to shift away from corn production. Although this had been one of the intended effects of liberalization, the rapidity with which tariffs were removed led to an equally sudden impact on domestic farmers and farm workers. The share of agriculture in total employment decreased from thirty-six percent in 1980 to twenty-two percent in 1999.\(^\text{112}\) Unfortunately, the import surge did not succeed in keeping the consumer prices down. In the corn sector specifically, a coincident consolidation of the domestic tortilla industry meant instead that the prices of this basic staple increased in the same time period.\(^\text{113}\) When the peso devalued for reasons explained in Part I above, the increased relative cost imports also contributed to increases in the cost of living and decline in the real wage.\(^\text{114}\) These changes appeared to affect the Mexican countryside particularly. Rural poverty increased, with eighty percent of the rural population living in poverty.\(^\text{115}\) As rural poverty increased, incentives to

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109. Under NAFTA, the government was to replace its previous import quota system with a tariff-rate quota system: that is, rather than imposing an absolute ban on imports above a certain number, the imports above that number would instead be allowed but subject to a tariff. NAFTA, supra note 27, annex 302.2(1)(d), 32 I.L.M. at 310.
111. Id. at 26.
114. Pesos lost half of their value against the dollar between 1994 and 1996: from 3.4 pesos/dollar to 7.6 pesos/dollar. WORLD BANK, WORLD DEVELOPMENT INDICATORS (2009).
migrate to urban areas also increased, in some cases creating a causal chain resulting in internal and then cross-border migration.\textsuperscript{116}

V. CONCLUSION: A SUMMARY OF GENERAL AND SPECIFIC DYNAMICS OF “GLOBALIZATION” AFFECTING IMMIGRATION ACROSS THE MEXICO-U.S. BORDER

In sum, Mexico made several changes to its domestic legal and administrative framework that were not captured formally in NAFTA but were a central part of its structural economic reform, including changing its constitutional law to allow for the alienation of rural property; decreasing public spending causing a shrinkage not only of the public sector but also of the formal economy, leading to a rise in both the informal economy and the incidence of poverty; changing monetary policy, leading to high interest rates that discouraged local firms from investing, contributing to the stagnation of the local economy; and devaluing the currency, leading to a greater desire for hard currency, greater increasing the attractiveness of migration and the possibility of remittances of hard currency. When coupled with the accelerated liberalization of corn imports into the United States, the result was a collapse in corn imports, a crowding-out of small producers, and a stream of economic migration.

The case study of corn production against the broader context of national and international macroeconomic policy reform provides an excellent opportunity to explore the connections between trade and labor that remain understudied in the literature but that hold demonstrated and important implications for policy and the political economy of liberalizing states.

The foregoing has demonstrated that increased labour migration from Mexico to the United States between 1980 and 2000, stemmed in large part from macroeconomic policy reforms, implemented at the domestic and international levels that we now associate with economic “globalization.” These reforms were ushered in by the era of “deep economic integration” – the period beginning in the early 1980s in which domestic economic crises in many developing countries, including Mexico, set the stage for market liberalization supported by the advice and counsel of the Bretton Woods institutions.

For Mexico, the adoption of the NAFTA played a central role in effecting market liberalization and setting the stage for labour migration. Far from being the sole factor, however, the NAFTA interacted with a host of other important reforms in Mexico’s investment, fiscal, and exchange rate regimes. And while conventional economic theory might have predicted that market liberalization would substitute migration, events as they actually unfolded proved migration and liberalization to be complements rather than substitutes.

\textsuperscript{116} See generally Fernando Lozano, Bryan Roberts & Frank Bean, \textit{The Interconnectedness of Internal and International Migration: The Case of the United States and Mexico} (Texas Population Research Center Papers, Num. 96-97-02, 1997).
This dynamic has been demonstrated in three parts. First, this Article offered a detailed account of macroeconomic policy reform in Mexico between 1980 and 2000, beginning with a discussion of the Washington Consensus as it related to economic governance in Mexico, and addressing the effect of that relationship on fiscal austerity, trade liberalization, and currency flows.

Second, this Article highlighted the role of labour relations, and organized labour in particular, during this era. In general, liberalizing economic reforms both resulted from, and further exacerbated, the weakening of labour as a political force in Mexico. That trend appeared not to be affected by formal and informal channels of transnational labour organizing, despite their potential to offset or reverse it.

Finally, the Article delineated the causal chain of events from economic liberalization to economic dislocation to labour migration. In brief, economic liberalization displaced workers in Mexico and caused flows of surplus labour into Mexican cities, maquiladoras, and ultimately the United States.

By demonstrating the link between migration and economic liberalization across the Mexico–U.S. border, this Article emphasizes the importance of understanding the connections between trade and labor in both scholarship and practice, and as such seeks to support emerging, interdisciplinary labor law and policy discourse. Too often, these fields have remained separated despite their overlapping analytical and empirical parameters.

Beyond specialized scholarship and practice, however, the Article seeks to comment on broader political debates over the sensitive topic of immigration. These debates too often portray migration influxes as exogenous phenomena, as opposed to effects of law and policy choices made by government actors in trade, investment, and related areas.

In conclusion, this analysis emphatically does not oppose economic globalization, but rather seeks to delineate and make explicit the full range of its social effects. Doing so hopefully draws attention to the importance of incorporating those effects into any framework of analysis for economic globalization. NAFTA displaced agricultural workers in Mexico and caused flows of surplus labor into Mexican cities, maquiladoras, and ultimately the United States. This sudden increase in labor supply generated practical implications for labor practices in both Mexico and the United States, creating additional supply and vulnerability on the part of workers. Moreover, the relative weakness in both national and international labor protections, in terms of the enforcement of labor standards and the provision for labor “adjustment,” exacerbated the vulnerability of this excess labor supply.

The delineation of this dynamic also demonstrates the futility of many of the immigration reforms currently under consideration in the United States debate. Simply “tightening the border” cannot be expected to stem the flow of dislocated workers and families from Mexico when that flow arises out of the deeply-rooted dynamics of globalization described above.
Moreover, it is important for policy makers, commentators, and other participants in the immigration debate to understand the interconnectedness of immigration issues and international economic policies that the United States has actually pursued. Both NAFTA and the macroeconomic liberalization preceding it were reforms that were actively supported by leadership in the U.S. government, as well as in international economic institutions, such as the IMF, in which the United States played a leading role. In other words, illegal immigration may represent a problem of "unintended consequences" insofar as U.S. international economic policy is concerned.

The role of international economic liberalization, and of the United States in supporting it, generates both empirical and ethical reasons for caution in considering the viability of a "crackdown" on undocumented labor in this country. Ethically, in my view, such measures may also be questionable when the dynamics that created the problem have been generated by a broader international policy context that the United States has actively supported—that of economic liberalization.