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Border Crossings: NAFTA, Regulatory Restructuring, and the Politics of Place

RUTH BUCHANAN∗

Professor Buchanan begins her paper by questioning whether recent economic and political shifts towards notions of “globalization” (e.g., the NAFTA) have failed to consider the politics or economics of change in particular places. Her prime example of a “place” where integration is illogically forced against a background of differentiation is the U.S.-Mexico border region. Through the scope of a “regulatory complex” (a complex of legal, institutional, regulatory, and social orderings), she departs from the common view of the NAFTA as a productive tool of North American integration, and instead views the NAFTA as exacerbating “differences between localities, industries, and labor markets.” She argues that the debate over the NAFTA underemphasized its different local, sectoral, and regional impacts. In places such as the U.S.-Mexico border region, the various forces of labor, capital, and regulation interact in complex ways; the complexities (and realities) of these interactions were perhaps overlooked during the NAFTA debates. The author briefly examines this growing region, focusing primarily on the social and economic aspects of the maquiladora industry, including labor migration into the United States and the potential for increased migration because of the NAFTA. She concludes by arguing for a shift in perspective from the outdated, territorial concept of “borders” to the richer, more complex concept of “borderlands.”

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I. INTRODUCTION

The bewildering proliferation of recent literature on globalization, post-Fordism, and the post-national State makes very difficult the attempt to construct a coherent narrative about the role of these forces in North America after the passage of the North American Free Trade Agreement (NAFTA). One might frame the story in terms of an increasingly threatened ability of governments to make policy choices within the territorial boundaries of the nation-state. In this scenario, the move toward liberalized trade in North America can be seen as State capitulation to the inexorable march of the forces of globalization. While the NAFTA’s potential to shift lawmaking and advocacy away from national and local sites into less democratic, supranational arenas needs to be acknowledged,

1. The literature on globalization is vast and found in a wide variety of disciplinary and interdisciplinary environments. Useful recent examinations are Paul Hirst & Grahame Thompson, The Problem of Globalisation: International Economic Relations, National Economic Management and the Formation of Trading Blocs, 21 ECON. & SOC’Y 357 (1992); Peter Dicken, Global Shift: The Internationalization of Economic Activity (1992) (provides a useful overview from the perspective of economic geography of the economic processes usually referred to under the rubric of “globalization”); Roland Robertson, Globalization: Social Theory and Global Culture (1992); Global Culture, 7 THEORY, CULTURE & SOC’Y (Mike Featherstone ed., 1992) (special volume including articles from a range of theoretical perspectives on the significance of culture within the contemporary processes of global change).

2. The emergence of this term can be attributed to the French Regulation School, although it is now much more widely, and perhaps less descriptively, utilized. See Michel Aglietta, A Theory of Capitalist Regulation: The U.S. Experience (1976); R. Boyer, The Regulation School: A Critical Introduction (1990). Fordism was a relatively stable period during which relatively high wages paid to assembly line workers enabled mass production to balance against mass consumption. As prevailing modes of production become more flexible and specialized and threats of capital flight place downward pressure on wages, a new mode of social regulation is emerging which has been described simply as post-Fordism.

3. Daniel Drache, The Post-National State, in CANADIAN POLITICS (James Bickerton & Alain Gagnon eds., 2d ed. 1994) (This term refers to the internationalization of the State, which Robert Cox has defined as “a global process whereby national policies and practices have been adjusted to the exigencies of the world economy of international production.”).


5. Ricardo Grinspun & Robert Kreklewich, Consolidating NeoLiberal Reforms: Free Trade as a Conditioning Framework (May 27-29, 1994) (unpublished paper, presented to the International Conference on Economic Integration and Public Policy: NAFTA, the European Union and Beyond, York University, Toronto, Ontario) (“The new trading arrangements effectively remove many economic and social policy objectives from democratic consideration. These policy changes are directed to inhibit governments from engaging in interventionist policies—in particular in the area of export promotion and import protection.”).
this narrative has its limitations. It sets up a false dichotomy between nation-states and supranational arenas, which obscures the States' role in constituting these arenas, while at the same time imposing a false unity and teleology on the "processes of globalization." By focusing one's attention on suprastate solutions to current dilemmas, this approach risks fetishizing the question of globalization by blaming it for much of what is contradictory and intractable about politics in the "new economy,"\textsuperscript{6} without actually examining the politics or economics of change in any particular place.

In contrast, another available narrative interrogates the apparently paradoxical re-emergence of the significance of place in a world of diminishing spatial barriers to exchange, movement, and communication.\textsuperscript{7} By beginning with a question about the place-specific impacts of the processes of globalization,\textsuperscript{8} this account avoids privileging a territorially bounded and unitary idea of the State, in favor of revealing a heterogeneity of regions, localities, and cultures within and across State boundaries.\textsuperscript{9} The shift from the old Fordist model of standardized mass production to the emerging flexible post-Fordism is linked to changes in the relationship between the economy and its territory.\textsuperscript{10} This change is reflected in the prominence of stories of capital flight and runaway shops in the debates over the NAFTA, as well as in the new emphasis in regional development literature on the "politics of place."\textsuperscript{11}

\textsuperscript{6} This term has been frequently used both in journalistic and scholarly writing to encompass some of the dramatic economic changes that have occurred in most countries in recent decades. As in the case of "globalization," widespread usage has not led to a more precise definition. See ROBERT COX, Global Restructuring: Making Sense of the Changing International Economy, in POLITICAL ECONOMY AND THE CHANGING GLOBAL ORDER 45-59 (Richard Stubbs & Geoffrey R.D. Underhill eds., 1994); see also John Huey, Waking Up to the New Economy, FORTUNE, June 27, 1994, at 36.

\textsuperscript{7} See DAVID HARVEY, From Space to Place and Back Again: Reflections on the Condition of Postmodernity, in MAPPING THE FUTURES: LOCAL CULTURES, GLOBAL CHANGE 3, 4 (Jon Bird et al. eds., 1993).

\textsuperscript{8} Saskia Sassen uses the term "telematics" to identify one of the most significant developments underpinning these processes: the telecommunications and computer technologies that allow for the instantaneous transmission of information over long and short distances. SASKIA SASSEN, CITIES IN A WORLD ECONOMY 1, 6-7 (1994).

\textsuperscript{9} Sassen's work, for example, identifies cities as the contested terrain on which the concrete operations of the economy take place. See id. at 121-23.


\textsuperscript{11} MICHAEL STORPER & ALLEN SCOTT, Industrialization and Regional Development, in
Instead of being a narrative about retreat in the face of an inexorable advance, globalization becomes a story of local contestation, resistance, and compromise that has numerous conflicting and contradictory meanings. If "place" is constructed in and through social processes, differentiation between places becomes as much an artifact of uneven capitalist development as the difference between classes. As David Harvey has observed, "difference and otherness is produced in space through the simple logic of uneven capital investment and a proliferating geographical division of labor." Economic globalization can be understood in terms of its role in constituting new geographies of centrality and marginality. Nowhere is the ambiguous process of integration and differentiation better illustrated than in the U.S.-Mexico border region.

The borderlands have become an increasingly visible site of contestation, at the heart of which is a conflict over the meaning of the border itself. There is an important distinction between the notion of a border as the legal and spatial delimitation of the State, as a boundary or defining line, and the border as a geographic and cultural zone or space, the borderlands. Instead of having a stable identity, economy, or geography, the border region is defined and redefined in different contexts. In the context of the NAFTA debates, the border region functioned both as the model for the growth and prosperity that NAFTA-induced crossborder investment and production were to usher in, as well as a symbol of the environmental devastation unleashed by a free trade-induced "race to the bottom" in standards.

The "border crossings" of this article are not confined to the geopolitical. They also serve as a metaphor for the movement between disciplines and discourses that are made throughout the text in an attempt to reveal some of the dynamics and relationships broadly subsumed under the rubric of "globalization." Much of the discourse surrounding

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12. Harvey, supra note 7, at 6 (emphasis added and omitted).
13. Sassen, supra note 8, at 119.
14. For an examination of this boundary as a site for the production of "otherness," see Michael Kearney, Borders and Boundaries of State and Self at the End of Empire, 4 J. Hist. Soc. 52 (1991).
15. Similar distinctions are drawn by Kearney. Id. See also Leslie Sklair, Assembly for Development: The Maquila Industry in Mexico and the United States 24-25 (1993).
globalization is structured around conceptual dichotomies that conceal as much as they reveal: State and non-State, supranational and domestic, local and global. Just as the contradictory nature of the transformations occurring in the border region is revealed in the struggles over its representation, so are the much more complex and ambiguous dynamics of globalization revealed in the discursive conflicts surrounding them. While no commentator can remain separate from these constitutive struggles, it is useful to examine the stakes attached to the various narratives in order to be able to map the terrain over which the battles are occurring.  

II. MAPPING THE TERRAIN: REGULATORY RESTRUCTURING AND THE NAFTA

This essay explores some potential shifts in the regulatory complex in the U.S.-Mexico border region that are linked to the passage of the NAFTA, as a means of illustrating more generally some of the ambiguities and complexities of the processes of globalization. By "regulatory complex" I am not referring to the ordinary meaning of regulation, as in rules of origin or environmental standards, although these are certainly part of the larger set of relations with which I am concerned. In this sense, my approach is similar to that of the French Regulation School. I use "regulatory restructuring" to refer to a broad and interconnected complex of legal, institutional, regulatory, and social orderings. The Regulationists study the role of these complexes, called "modes of regulation," in "maintaining the institutional fabric of growth in a dynamic and contradictory setting


17. DAVID HARVEY, THE CONDITION OF POSTMODERNITY 121 (1989). David Harvey summarizes the approach of the Regulation School as follows:

A regime of accumulation describes the stabilization over a long period of the allocation of the net product between consumption and accumulation; it implies some correspondence between the transformation of both the conditions of production and the conditions of reproduction of wage earners. . . . There must exist a materialization of the regime of accumulation taking the form of norms, habits, laws, regulating networks and so on that ensure the unity of the process, i.e. the appropriate consistency of individual behaviors with the schema of reproduction. This body of interiorized rules and social processes is called the mode of regulation.

Id.
through [S]tate interventions and class compromises."\textsuperscript{18} While their focus leads them to stress the qualities of stability and coherence, and to de-emphasize discontinuity, social conflict, and contradiction,\textsuperscript{19} my view of the regulatory shifts that have been occurring in North America is the converse. While the NAFTA is widely understood as a blueprint for integrating North America into the global logic of production, I do not envision this as a coherent or stabilizing process. Rather, my working assumption is that while the NAFTA will function to further integrate some regions and sectors of North America into the "global economy," it will also further exacerbate differences between localities, industries, and labor markets. I study the implications of the NAFTA in terms of a collection of "sites" of stabilization and fragmentation, continuity as well as contradiction.

While the fervor of the public debates over the NAFTA in 1993 reflected its contested nature, the rhetoric (both pro and con) that reached the mainstream media tended to overemphasize the NAFTA's role as a "globalizing" force, and to underemphasize its different local, sectoral, and regional impacts.\textsuperscript{20} This paper will argue that it is in the particulars of the regulatory restructuring, in this very broad sense of regulation, that the effects of the NAFTA will be determined. Just as one finds varying degrees of optimism in the post-Fordist literature concerning the potential for flexible production to give rise to more democratic workplaces,\textsuperscript{21} or to encourage the emergence of vibrant regional networks of equitable development,\textsuperscript{22} it is possible to differ over the speculative tint one gives to

\begin{itemize}
  \item 19. See J. Graham, Post-Fordism as Politics: The Political Consequences of Narratives on the Left, in 10 Environment and Planning D: Society and Space 393-410 (1992) (suggesting that narratives of post-Fordism have tended to reinforce homogeneous, holistic, and stable views of contemporary society at the expense of alternative conceptions of political possibilities on the Left).
  \item 20. Scramble in the Capital for Today's Trade Pact Vote: Clinton Succeeds in Luring Some to Switch, N.Y. Times, Nov. 17, 1994, at I (arguing that the sectoral difference became clearer in the final days before the NAFTA vote, when the administration was forced to make promises to a number of sectors and interests threatened by the agreement in order to ensure its passage).
\end{itemize}
the post-NAFTA North American picture. My approach suggests that the degree to which optimistic or pessimistic post-Fordist scenarios will be realized within various localities in North America depends on the particulars of the new regulatory-institutional regimes that are imposed. The NAFTA lays out a framework for this restructuring, but provides nothing more. All of the transformations linked to the economic integration of North America are contested, not in the abstract, but on the ground, where they are affecting the lives of individuals, the profits of companies, and the quality of the air, soil, and water. In order to begin to sketch a picture of the regulatory restructurings that are currently taking place in North America, one needs to study these sites of contestation as well as the forces driving the restructurings themselves.

III. The Significance of Boundaries in the Debate Over Free Trade

One of the major ongoing themes surrounding the NAFTA is the extent to which a government's sovereign right to legislate over policy matters of domestic concern ought to yield to the larger forces of globalization. Both the centrality and the slipperiness of conceptions of sovereignty were illustrated in the course of the NAFTA debates. While there were clear differences over where the line ought to be drawn, the nature of the line itself was not an issue. NAFTA critics argued that the agreement would erode the abilities of governments to implement health and safety, environmental, and labor standards. NAFTA supporters warned of the prevalence of "disguised barriers to trade," trade-restrictive protectionist policies masquerading as social legislation or technical standards. The logic of each of these arguments hinges on the obviousness of the implicit distinction drawn between domestic and international arenas without making an argument for a particular dividing line.

23. The role of different speculative outlooks in producing outcomes cannot be underestimated, particularly since the most recent peso devaluation and fiscal crisis in Mexico.

24. That this issue was not confined to the debates over the content of the NAFTA agreement itself, but was of ongoing concern, may be illustrated by the issue involving the attachment of conditions to a proposed Mexican aid package in the wake of the peso devaluation in January 1995. The proposals containing conditions sparked a resurgence of concerns regarding sovereignty in Mexico. Tim Golden, Mexicans Deny They Would Order Border Crackdown in Return for U.S. Loan Guarantees, N.Y. TIMES, Jan. 27, 1995, at A10, available in LEXIS, News Library, CURNWS File.
The positions taken by the two sides to the debate were neither internally consistent nor coherent. Pro-trade forces supported the strong stance taken by the United States on the necessity for Mexico to implement a comprehensive, domestic intellectual property regime. At the same time these pro-trade forces firmly kept issues concerning the treatment of Mexican nationals and the policing of U.S. borders off the table as a matter of U.S. domestic immigration policy. On the other hand, fair traders both took the position that the matter of human rights abuses of Mexican citizens within Mexico ought to be subject to international scrutiny and claimed that U.S. pesticide and other food safety standards ought not to be subject to the international standardization set out in the Codex Alimentarius. In this way, the distinction between a sovereign, domestic sphere and an increasingly integrated international sphere, while central, became very elusive during the NAFTA debates.

The centrality and the slipperiness of the concept of sovereignty in the public discussions concerning the NAFTA is reflected in its recent reemergence as a focus of academic debates. While the notion of sovereignty within international law has traditionally referred to a State’s right or freedom to do as it wishes within its own territorial boundaries, free of external constraint or interference, the increasingly integrated nature of the global economy has required an extensive rethinking of the nature of this “freedom.” Indeed, international legal scholars have for some time been debating the transformation or even the end of sovereignty. Although there is general concurrence over descriptions of sovereignty as a complex, multilayered, overlapping, and transitional concept, it has not yet been


27. This was the topic of an address at the October 1992 Annual Meeting of the Canadian Council on International Law.

It is time to bring sovereignty down to earth; to examine, analyze, reconceive the concept, cut it down to size, break out its normative content, repackaging it, perhaps even rename it. The quixotic among us might gird for a campaign to extirpate the term and forbid its uses in polite political or intellectual company or in international law.

replaced by any more precisely defined concept.\textsuperscript{28} It is necessary, therefore, to examine sovereignty arguments carefully to understand the claims that are being made. The North American debates present one context in which to think through two interconnected sets of issues. First is the problematic relationship between sovereignty and territory; and second is the extent to which the concept of sovereignty helps us to define a boundary between domestic and international spheres.

As the U.S.-Mexico border region so vividly illustrates, the boundaries between nation-states are increasingly porous. As authorized flows of goods and capital, as well as unauthorized flows of labor, across borders have increased, and transborder communities have developed, the geopolitical significance of the frontier has been transformed. The growth of permanent populations and autonomous economies along borders has been encouraged by the increasing amounts of mobile capital in search of cheap land, low labor costs, and relaxed regulatory constraints.\textsuperscript{29} On increasingly interdependent borders, as between the United States and Mexico, rapid economic development, increased populations, and extensive cross-border traffic have replaced older conflicts over territory. These new issues are no less significant than the old, yet their nature has changed. In particular, the populations that live on both sides of the border may find they have more in common with their counterparts “across the line” than with their national governments. This is a familiar theme in the U.S.-Mexico border region.\textsuperscript{30} The changing nature of borders in the global economy has posed a direct challenge to the old concept of sovereignty, the emergence of which corresponded to the earlier period of a territorially defined world order.

The usefulness of the concept of “sovereignty” in defining the boundary between “domestic” and “international” in law, politics, commercial, and social matters is under assault in the North American context as elsewhere. Whereas regimes of international trade formerly concerned themselves solely


\textsuperscript{30} Oscar J. Martinez observes that borderlanders in this region have been constantly at odds with federal officials over policy matters. However, they are working together to “minimize the local impact of international controversies, adjust to bothersome federal regulations and solve local problems through ‘border-style’ diplomacy.” \textit{Oscar J. Martinez, Border People: Life and Society in the U.S./Mexico Borderlands} 15 (1994).
with the liberalization of barriers to trade at international borders, the new generation of trade agreements, of which the NAFTA is one, shifts the focus onto the trade-restrictive implications of regulations behind borders. This is captured by the distinction in trade law between tariff and nontariff barriers (NTBs). NTBs include a range of domestic policies, from import quotas and licensing requirements, labeling or packaging regulations, health and safety requirements, and customs procedures to local content and government procurement restrictions. The new emphasis on NTBs has led to increasing pressures toward harmonization of a wide range of national policies within the context of liberalized trade and investment regimes like the NAFTA, described as "deep integration." The logic of liberal trade theory, which underpins this push, aims solely to minimize the amount of interference of governments in trade flows that cross national borders. In this context, any domestic law that carries demonstrably trade-restrictive effects is subject to scrutiny, while the desirability of trade-liberalizing measures, both within and between States, is seen as beyond debate. In this way, liberal trade theory erases the distinction between domestic and international by subsuming all to its own dictates.

While one may legitimately entertain concerns about the implications of this process, the attempt to reassert a discrete domain of "sovereign" domestic activity in this context is no less problematic. Fair trade advocates who wish to defend high U.S. environmental and food safety standards against assault from outside forces of harmonization contradict themselves when they later seek to rely on international regimes for the protection of human rights, labor, or environmental standards in Mexico. The notion of sovereignty neither assists our attempt to redefine the boundaries between domestic and international nor captures the new significance of border regions in the global economy.

32. Carlos Primo Braga, Regional Trade Organization: Strengthening or Weakening U.S. Trade, Comments at the American Society of International Law Meetings (April 6-8, 1994) (I have borrowed the term "deep integration" from Carlos Primo Braga, an economist with the International Development Department of the World Bank, who used it in his comments on the aforementioned panel).
IV. THE LIMITS OF GLOBALIZATION DISCOURSE

Many have turned from the difficulties presented by trying to capture the current transformations in "sovereignty" language to the rapidly expanding literature on "globalization." Much of this literature is organized around a relatively uncontested description of a core set of economic processes that are understood as the driving forces behind current global transformations. These processes include changing patterns of production in terms of geographic dispersion (the new international division of labor or NIDL) and flexible specialization, the growth of transnational corporations, the intensification and acceleration of international capital flows, increases in international trade, the expansion of supranational regimes for the protection of human rights, the environment, and so on. The processes have been made possible by innovations in transportation, communications, and information technology, leading some to identify the changes in terms of an emerging techno-economic paradigm.

A factor that distinguishes the recent period of global integration is the dramatic acceleration and intensification of virtually all of these internationalizing processes. Whether this "speeding up" of globalization actually amounts to a qualitative shift in the nature of the world order at this point in history is a matter of debate. That dramatic transformations are occurring on a global scale is not in dispute.

Throughout this paper I have referred to these "processes" or "forces" of globalization as if they were a stable, identifiable, quantifiable, and unified set of social forces exerting pressures on States and actors within States from somewhere "outside" or "beyond" the State. In doing so, I have engaged in a common way of talking about a very complex set of transformations:

Almost everyone seems also to take for granted that globalization connotes a complex of powerful, extra-ideological social forces, answering to their own logic, that is causing the restructuring of business practices, political institutions and legal cultures . . . . There is an implicit tendency to treat globalization as an implacable

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34. See Trubek et al., supra note 16; see also DICKEN, supra note 31.
35. Wolfe, supra note 10, at 3.
social force that will inevitably extrude its own logic upon all domestic social and institutional fields.\textsuperscript{36}

While it is clear that a number of very significant transformations are occurring in the world that are linking geographically dispersed localities to one another in new ways, it does not follow that they are necessarily connected or even that all of these transformations can be described as moving in the same general direction, that is, to somewhere beyond or above States. In this way, the discourse of globalization tends to obscure the fact that these changes are brought about by various actors and institutions pursuing different and often conflicting interests; these actors include multinational corporations, national governments, transnational issue networks like the human rights community,\textsuperscript{37} and international non-governmental organizations (NGOs) like Greenpeace, to name a few.\textsuperscript{38}

The relationships among these various actors, as between the various pieces of the “globalization package,” are tremendously complex and diverse. If one adds the level of interaction between transnational and local actors and forces, we can see that the concepts coming under the umbrella of “globalization” are not going to carry much descriptive power in any particular location independent of an examination of the circumstances peculiar to that site. It is important to problematize the unifying and homogenizing tendencies of discourse about globalization. This can be done by undertaking research that examines forces of internationalization and localization—that is, integration and fragmentation—at the same time. Consequently, this alternative approach will be one that also rethinks the troubled boundary between the domestic and international realms discussed in the earlier section. The international must be reconceived “not as a departure, but as a continuation of the terrain upon which law participates

\textsuperscript{36} Nathaniel Berman et al., Concept Paper 4 (July 26-28, 1994) (prepared for CONGLASS, Onati, Spain).

\textsuperscript{37} Margaret Keck & Kathryn Sikkink, Transnational Issue Networks in International Politics (Apr. 1994) (unpublished manuscript, on file with the author).

\textsuperscript{38} Trubek et al., supra note 16.

"International forces" are not some mystical emanation, but are the concrete practices of multiple agents, including lawyers, in a multitude of national "systems": There is no bright line between the international and the national in law and other fields. Moreover, the forces and processes that are contributing to global economic restructuring and political change have their origins in national systems, including the practices of lawyers. Thus the "global" and the "national" are interpenetrated and interrelated, and must be studied as a whole.

\textit{Id.} at 408.
in ongoing social, cultural, and economic conflicts and negotiations."

The U.S.-Mexico border region, as I have indicated, is one site where these processes of contestation and negotiation are easily observable. While the scope of this essay precludes the elaboration of an extensive and detailed case study, some major trends may be noted.

V. CONFLICT AND CONTRADICTION IN THE U.S.-MEXICO BORDERLANDS

The U.S.-Mexico borderland has been described as a region of "hope and heartbreak" and "boom and despair." It is dominated by the maquiladora industry, which originated in the Mexican Border Industrialization Program of 1965 (BIP). Although Mexico, like many other countries in Latin America at the time, was deeply committed to import substitution policies, the BIP permitted U.S.-made parts to enter a twenty kilometer strip along the border on a duty-free basis provided that the assembled goods were then exported. The program was a response to the end of the U.S. Bracero Program and provided both employment for the Mexican men no longer able to travel into the United States for seasonal agricultural employment and a means to earn much-needed foreign currency. What was unexpected about the BIP was its unprecedented growth: from seventy-two plants employing 4,000 workers in 1967 to 1,954 plants employing about 489,000 workers in January 1992. The benefits that the maquila program has brought to the Mexican economy should not be underestimated: it created most of the country's new jobs in the 1980s, it resulted in eighty percent of the country's manufactured exports, and it is the second largest (after oil) national provider of foreign exchange, essential for reducing the foreign debt.

40. There is an extensive and growing specialized literature on the borderlands (including a Journal of Borderlands Studies), which is only sampled in this brief overview. See Tom Barry et al., The Great Divide: The Challenge of U.S./Mexico Relations in the 1990s (1994); Augusta Dwyer, On the Line: Life on the U.S.-Mexican Border (1994); Lawrence A. Herzog, Where North Meets South: Cities, Space and Politics on the United States-Mexico Border (1990); Martinez, supra note 30; and Oscar J. Martinez, Troublesome Border (1988).
42. Lawrence Norwicki, Mexican EPZ's as an Indicator of the Future Outlines of a NAFTA: The Case of Sonora, in North American Free Trade Agreement: Opportunities and Challenges
Yet, a number of troubling trends became apparent early in the program. It was women—young, unmarried, and childless—rather than the former braceros who were getting the jobs in these new plants. The early maquila factories were most likely to be engaged in garment manufacturing and basic electronics assembly. The factories deployed highly segmented skill categories, with a majority of personnel in unskilled, low-wage, nonunion jobs. The jobs generally entailed repetitious tasks, resulting in a high rate of employee injury, sickness, and turnover. The factories had few backward linkages to Mexican suppliers, and engaged in a minimal amount of worker training and minimal research and development in Mexico. More recently, the post-1982 devaluations of the peso have led to the development of a number of more technologically sophisticated maquilas in automotive-related manufacturers and advanced electronics, including the well-publicized Ford plant in Hermosillo. The gender imbalance of the workforce has shifted somewhat as more skilled jobs in these "new" maquilas are being filled by men.

While the wages of maquila workers are generally higher than the averages in the rest of the country, living and working conditions in the border communities are extremely poor. The large influx of people to the border region, both to work and to migrate into the United States, has put an enormous strain on the infrastructure of the border sites. Thousands live in makeshift settlements, or colonias, where there are no support services, and where water supplies are likely to be contaminated by sewage or hazardous waste. In 1991, the Mexican government acknowledged that fifty percent of the maquiladora plants near the U.S. border were producing toxic waste, and that the government had not enforced its regulations requiring that such wastes be returned to the United States. Reports of leaking barrels of PCBs dumped in colonias, or of settlers using empty PCB barrels for water containers are all too common.

Connections between the maquiladora program and the North American Free Trade Agreement are not hard to draw. Over the last decade, the

43. MEXICO: A COUNTRY GUIDE 144 (Tom Barry ed., 1992). "Until the 1980's more than 80 percent of the maquiladora employees were women, usually between the ages of 17 and 24. The reputed manual dexterity and passivity of females were cited as the reasons for the discriminatory hiring." Id.
44. Kopinak, supra note 41, at 154-55.
Mexican government has pursued maquiladora-style investment (low salaries, segmented skills, nonunion orientation) as "the principle [sic] means of inserting the Mexican economy into the global world economy". A government decree of 1989 encouraged informal "maquiladorization" by blurring the legal distinction between maquilas and nonmaquilas, and allowing official maquilas the right to sell their products within Mexico as well as to export. Reflecting conflicting perspectives within Mexico and the United States, the NAFTA was both praised and criticized for implementing a framework that represented a "wholesale extension of the maquiladora concept." The real implications of the NAFTA for the border region are contradictory and uncertain. The following is a brief discussion of several faultlines along which these contradictory tendencies are beginning to reveal themselves.

A. Migration

On Southern California highways, around Tijuana close to the Mexican border, are road signs usually associated with the encounter of nature and culture: symbols of leaping deer or prowling bears that warn us to look out for them crossing the road. This time the icon is diverse, it refers to cross cultural traffic. The graphic indicates people on foot. Desperate to escape the destiny of poverty, they cut or crawl through the border wire and, dodging the speeding automobiles, scamper across the concrete in a dash to flee from the past and in-state themselves in the promise of the North.

Labor migration from South to North is an increasingly unavoidable fact of life in the contemporary global order, as the above quote from Iain Chambers eloquently illustrates. Yet, migration is not a new phenomenon in the borderlands, but a fact of life since the mid-1800s. As a result of this ongoing process, the U.S. and Mexican labor markets have become very

closely linked. Implicitly (or explicitly during the Bracero program) authorized migration has filled U.S. requirements for low-wage labor, particularly during periods of domestic labor shortages. Yet, insecurity and job loss due to industrial restructuring in recent decades has been accompanied by burgeoning public debate over the extent to which illegal migration causes drains on social security programs and the loss of low-skilled employment opportunities in border states like California.

This debate has led to increasing political pressures to further seal the border. In early 1994, U.S. Attorney General Janet Reno announced a new border plan, developed in conjunction with the Immigration and Naturalization Service (INS), which will add 1,010 new agents to the borders around San Diego and El Paso, double the number of INS officers who handle claims, and attempt to reduce the marketability of fraudulent documents. New technologies specifically designed to help combat illegal immigration, like an Enforcement Tracking System to automate the processing of illegal aliens and link enforcement and deportation functions, and automated fingerprinting identification systems for aliens, have been put into place along the border. There is also increased use of high-tech equipment borrowed from the military, including infrared body sensors, mobile X-ray vans, and magnetic footfall detectors. Major campaigns were mounted in the El Paso-Ciudad Juarez (Operation Hold the Line) and the San Diego areas (Operation Gatekeeper). The relative success of these initiatives has led to greater pressures on other parts of the border, most notably the Nogales area on the Arizona-Sonora boundary.

Migration issues were specifically excluded from the NAFTA negotiations, despite Mexican attempts to have them included in the agenda. In marked contrast to the well publicized cooperation between the two


54. Beefed-Up Patrol Sets Arrest Record in Arizona, WASH. POST, Feb. 10, 1995, at A2 (reporting on record numbers of arrests of illegal immigrants (19,426 for one month) in January for the Nogales area, an increase of over 45% from the preceding year).
governments on other issues, border environmental clean-up in particular, the U.S. government failed to consult with Mexico before announcing the recent border plan. The Mexican government took the position that "police actions are not appropriate for stopping a socio-economic phenomenon such as the flow of immigration between Mexico and the United States." It was argued that the NAFTA would stem the flow of migration by contributing to rising living standards in Mexico, yet in the short term it is possible that it may have precisely the opposite effect. One effect that the NAFTA will have is to increase migration within Mexico from rural to urban areas, including the major urban centers along the border. Migration to the border and migration across it are closely linked phenomena. The increase of maquiladora jobs on the border may provide more people with both the resources and the incentive to go even farther north in search of better employment. While the impact of the NAFTA on patterns of migration in the border region is still uncertain, it is clear that migration is an integral aspect of the restructuring process that has been occurring in North America. The militarization of the border, driven by political considerations in Washington, contradicts both the historical facts of life in the border region as well as the emerging facts of life in a globalized economic order.

55. In addition to the North American Agreement on Environmental Co-operation of September 1993 (also known as the Environmental Sidebar Agreement), three other agreements formed part of the NAFTA package on environmental cooperations. The agreements include a joint EPA/SEDUE integrated environmental plan for the Mexico-U.S. border area, an agreement to strike a border environment cooperation commission, and an agreement forming the North American Development Bank. The Bank will make available approximately $2 billion in largely private financing for infrastructure development in the border area. See OFFICE OF THE U.S. TRADE REPRESENTATIVE, THE NAFTA: REPORT ON ENVIRONMENTAL ISSUES (1993).

58. While the impact of the recent peso devaluation on illegal immigration is as yet unclear, the specter of increased migration did play an important role in the U.S. debates over the Mexican "bailout" in early 1995. President Clinton said, during his original attempt to sell a proposed $40 billion aid package, that "passing this program will help preserve a critical export market, support thousands of our workers, stop more illegal immigration and give countries all over the world confidence that open markets and democracy are the best guarantees for peace and prosperity." Clinton Calls Mexico Aid Plan Vital to U.S., Reuters, Jan. 20, 1995, available in LEXIS, News Library, CURNWS File (emphasis added); see also Scenes From A Border, THE ECONOMIST, Feb. 4, 1995, at 24.
B. From Fordism to Post-Fordism?

One of the arguments that is often made in defense of the maquiladoras is that they will serve as a stepping stone to more advanced (high-tech) forms of industrialized development. According to Kopinak, "the social costs and disadvantages of the traditional maquiladoras are legitimated in Mexico government policy as temporary evils in what is considered an inevitable course of development towards a modern future."59 This vision depends on a model of development that is teleological; that is, it assumes that countries move along a continuum from undeveloped to modern. A fancier, but just as linear, version of this idea is captured by those who predict a shift in maquila production from Fordist to post-Fordist models, with corresponding increases in technology transfer, job training, productivity, and wages. In conjunction with this view, commentators have drawn a distinction between two types of maquilas: those that specialized in labor intensive assembly, and those, usually built since 1982, that have invested more in new technology. While it is generally understood that the old maquilas contributed little to national development within Mexico, the new wave of more diverse maquilas is said to have more linkages to Mexican industry, pay better wages, and provide more training for workers. It is hoped, or claimed, that Mexico will follow the example of the east Asian newly industrialized countries by allowing the old maquilas to migrate to still lower wage enclaves, while being replaced by new, high-tech operations.

This view is made up of more wishful thinking than useful analysis. The evidence suggests that both models are present and likely to continue in Mexico in the foreseeable future. One study of seventy-one maquiladoras found that twenty-one percent of the plants surveyed exhibited a number of features of post-Fordist production, including flexible production through the use of computerized technology and multiskilling, job rotation, and quality circles in the labor force. However, none of the apparently “post-Fordist” plants participated extensively in networks of subcontracting relationships, and many maintained traditional assembly line organization. The resulting mixture of low-wage, feminized, not fully integrated flexible manufacturing practices was described by the researcher as a “caricature of the post-
Fordism being experienced in the advanced countries.” The same study identifies Fordist manufacturers as the most rapidly growing segment of the maquila industry.

Critics have described the “maquiladorization” approach to development as “fragmentary export industrialization,” or even as a process of de-industrialization. The absence of backwards supply linkages between maquilas and domestic Mexican industry is a significant obstacle to the development of autonomous post-Fordist regions, like Third Italy or even the Silicon Valley region in the United States, within Mexico. To the extent that such networks of suppliers are being developed in the border region, it is small businesses on the U.S. side that are benefitting from them rather than Mexican suppliers. The infrastructure problem in the Mexican interior, which is one reason why the border is a more desirable location to invest, also makes it difficult for Mexican suppliers (mostly from the interior) to compete with local suppliers on the other side of the border. According to Leslie Sklair, “without substantial financial and material supports from the Mexican government, augmenting those that are already being introduced, it is difficult to see how Mexican manufacturers could substantially improve their prospects of supplying the maquila industry.” The NAFTA, through its national treatment provisions, requires that the parties treat goods, services, and investments of the other parties no less favorably than their own goods, services, and investments in like circumstances. These provisions preclude the imposition of policies that


63. This may be one area where the lower value of the peso may impact positively, as it has become much cheaper to purchase from local suppliers than from suppliers across the border. Kenneth Brown, Chairman and C.E.O. of GE in Mexico, has said that the peso devaluation “opens up possibilities of sourcing materials like steel from Mexican producers.” Troubled Peso Has Silver Lining For Exporters, ROCKY MOUNTAIN NEWS, Jan. 20, 1995, at 50A, available in LEXIS, News Library, CURNWS File.

64. SKLAIR, supra note 15, at 244.

65. NORTH AMERICAN FREE TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA, THE GOVERNMENT OF CANADA, AND THE GOVERNMENT OF THE UNITED MEXICAN STATES, arts. 300, 1003, 1102, 1703 (Executive Office of the President, 1993). These are the national treatment provisions in the sections in trade in goods, government procurement, investment and services,
might have encouraged the development of Mexican supply linkages. Specifically, parties may not impose performance requirements relating to foreign investments including specified levels of exports, domestic content requirements, local sourcing, or technology transfer. Policies that are permitted under the agreement are requirements for worker training, siting of production facilities, and locating a certain amount of research and development within a country's territory.\textsuperscript{66}

While the post-industrial regional development literature evokes optimistic scenarios that include the equitable and profitable convergence of networks of local suppliers, multinationals, educational institutions, infrastructure, and skilled labor in particular regions, it is not likely to be describing the U.S.-Mexico border region in the foreseeable future.\textsuperscript{67} While the region continues to attract a great deal of investment from multinationals, a number of factors appear to preclude its development along the optimistic post-Fordist scenarios. The current low level of Mexican domestic industry, the lack of infrastructure, and the NAFTA constraints on performance requirements make it unlikely that networks of local suppliers will emerge, at least on the Mexican side of the border, to take advantage of the opportunities presented by the growing maquila industry. In addition, an important investment attraction for the region is its low wages, and Fordist-Taylorist assembly-line models remain the organizing feature of a significant proportion of the new factories that are built.\textsuperscript{68} For these reasons, the ongoing maquiladorization of Mexico, as well as future developments at the border, are likely to remain heterogeneous, contradictory, and difficult to categorize.

\footnote{66. \textit{Id.} art. 1106 (regarding "Performance Requirements").}
\footnote{67. Gertler, supra note 22; Wolfe, supra note 10; see generally Michael J. Piore & Charles F. Sabel, \textit{THE SECOND INDUSTRIAL DIVIDE: PROSPECTS FOR PROSPERITY} (1984).}
\footnote{68. That low wages continue to be the key attraction for the relocation of plants to Mexico was reinforced in the wake of the peso devaluation. While workers along the border (and retailers on both sides) felt the pinch of the peso's lower purchasing power, exporters were benefiting from lower relative wage rates, while continuing to sell on world markets in dollars, yen, or deutschmarks. Companies (like Nike) that had moved operations to even lower wage countries in east Asia, for example, were reportedly reconsidering Mexico for the combined opportunity to take advantage of low production costs as well as lower tariffs under the NAFTA. \textit{Troubled Peso Has Silver Lining for Exporters}, supra note 63; see also \textit{Ford Says Peso Devaluation to Hurt Future Net}, Reuters, Feb. 1, 1995, available in LEXIS, News Library, CURNWS File.}
C. The Spatial Division of Labor

One final set of observations can be made about the contradictory implications of the NAFTA for the border region. It has been argued that the agreement will contribute to easing the pressure along the border region by liberalizing investment in the rest of Mexico. It has even been suggested that the NAFTA might lead to the obsolescence of the maquilas. Yet, several of the most significant reasons why the maquiladora program has thrived in the border region derive from its proximity to the United States. Corporate executives and managers can live in the United States and commute across the border to oversee border-region maquilas, which are more directly accessible to U.S.-based supply chains as well as to export links. As I have observed, the poor infrastructure in Mexico contributes to increased costs in turnaround time, lost productivity, and increased transportation for companies choosing to invest in the interior.

Industries are more likely to choose investment sites away from the border to avoid the problems of overcrowding, overtaxed infrastructure, ecological devastation, and labor shortages that have become increasingly prevalent in recent years. Because the border region has high levels of unemployment, low per capita income, and low levels of education, turnover rates of employees in maquila factories can range to 200% annually and higher. Labor shortages along the border are a key problem in the maquiladora industry, and have led some companies to make greater efforts to retain employees by providing on-the-job training, housing, transportation, medical clinics, and other benefits. The extent to which these efforts will become a permanent feature of maquila employment along the border is not clear, although they do present the possibility for improvements in the traditionally poor working conditions in the region.

VI. CONCLUSION: THE NAFTA, BORDERS, AND BORDERLANDS

At the periphery of nations, borderlands are subject to frontier forces and international influences that mold the unique way of life of borderlanders, prompting them to confront myriad challenges stemming from the paradoxical nature of the setting within which

69. ELLWYN R. STODDARD, MAQUILA ASSEMBLY PLANTS IN NORTHERN MEXICO 46 (1987).
they live. Borders simultaneously divide and unite, repel and attract, separate and integrate.\textsuperscript{70}

For Mexico City and Washington, D.C. there is one border, the line that marks the extent of national sovereignty, but it is a line that is closely guarded only on one side. For the border communities, the border exists for some practical purposes, but the borderlands within which they live out their daily lives facilitate and constrain what they do and how they do it. For nation-states, borderland communities are secondary to national borders, in fact and in symbol, while for borderland communities, the borders may be secondary to their borderlands, the economy, polity and culture, the total social formation of that part of their borderland that happens to lie on both sides of the national frontier.\textsuperscript{71}

The above quotations illustrate two themes that recur throughout the literature on the borderlands: the uniqueness of their perspective and the paradoxical nature of their narratives. As this paper has attempted to illustrate, these borrowed insights are of significance for students of globalization more generally, as they command us to attend to the uniqueness of local experience and the paradoxes of borders in the global economy. From the outset, I framed this article as a movement between two competing narratives in order to reveal the particular complexities and contradictions of the processes of economic restructuring that both set the stage for and have accompanied the implementation of the NAFTA. In particular, I wanted to reinsert the local narrative, the narrative from the margin, into what I argued was a somewhat misleading, or at the least, incomplete, debate at the center. I argued that the NAFTA itself was a process and a document that encompassed contradictory interests and embraced conflicting aims and I used the contradictory conceptions of borders and borderlands, as well as a preliminary look at some features of the U.S.-Mexico border region, to illustrate the tensions inherent in the NAFTA model. The NAFTA sets up a regime which, unlike the Single European Act, maintains the sovereignty of the signatory States by building on the enforcement and harmonization of national rather than supranational laws and institutions. Yet, I demonstrated the slipperiness of the notion of sovereignty in the context of the NAFTA debates to illustrate the problems

\textsuperscript{70} Martinez, supra note 30, at 25.
\textsuperscript{71} Sklair, supra note 15, at 24-25.
with a perspective that is built on an outdated territorially-based conception of the borders between States. On the other hand, I attempted to show how the discourse of global economic restructuring pulled us too far in the opposite direction. I showed how the integrationist and homogenizing logic of international trade, for example, subjected all domestic legislation to the overarching principle of encouraging free flows of goods, services, and investment across borders. My preliminary discussion of some issues in the U.S.-Mexico borderlands was an attempt to construct a new approach to thinking about the effects of increasing integration between States that neither "fetishizes" the borders between States nor ignores them.

The distinction between "borders" and "borderlands" captures the shift that I make in my own analysis. The linear, centrist notion of a border is shared by discourses of both sovereignty and globalization (although the implications they draw from it are very different). I have argued that the NAFTA is a document that buys into the top-down view without reconciling the contradictory implications of those two perspectives. On the other hand, the borderlands perspective was largely absent from the NAFTA debates. Yet, the borderlands are where many of the most significant risks and possibilities for this process of economic integration are experienced. The prevalence of the discourse of "borders" rather than "borderlands" in the NAFTA lessens its usefulness as a tool for equitable restructuring. A shift in perspective from borders to borderlands may help us to find ways to influence these developments that will create benefits, rather than hazards, for the people who live there.