The Dissertation Committee for Julie Melissa Blase
certifies that this is the approved version of the following dissertation:

HAS GLOBALIZATION CHANGED U.S. FEDERALISM?
THE INCREASING ROLE OF U.S. STATES IN FOREIGN AFFAIRS:
TEXAS-MEXICO RELATIONS

Committee:

Peter Trubowitz, Supervisor

Rodolfo de la Garza, Co-Supervisor

David Edwards

David Prindle

Elspeth Rostow

HAS GLOBALIZATION CHANGED U.S. FEDERALISM? THE INCREASING ROLE OF U.S. STATES IN FOREIGN AFFAIRS: TEXAS-MEXICO RELATIONS

by

JULIE MELISSA BLASE, B.A.; B.A.

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My thanks and gratitude, always,
to Mom and Dad,
two of my best friends and editors

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HAS GLOBALIZATION CHANGED U.S. FEDERALISM? THE INCREASING ROLE OF U.S. STATES IN FOREIGN AFFAIRS: TEXAS-MEXICO RELATIONS

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According to the U.S. Constitution, the states are prohibited from direct involvement in foreign affairs because the federal government is supreme in this area. This legal restriction forms the basis for the prevailing concept that states have no authority, capability, or even interest in foreign affairs.

But globalization has transformed the nature of domestic policy, and states' interests have changed. Today, state officials meet regularly with their foreign counterparts to discuss matters of mutual concern, ranging from economic development to law enforcement. Domestic policy now has international causes and effects, and states are expanding their domestic governing responsibilities to include foreign relations.

But in 2000, the U.S. Supreme Court overturned a Massachusetts state law infringing on federal supremacy in foreign affairs. This preemption shows there are limits to the states' growing international roles, prompting the question, when can

states develop international roles and when does the federal government restrict them?

By examining one case across a range of policy areas, patterns emerge that have yet to be identified by other scholars. The dissertation examines several venues the state of Texas has created to communicate directly with Mexico on matters of economic development, border relations, criminal justice, and family law.

Generalizing from the Texas case, the dissertation finds that states are most free to develop an international role when they: 1) can exploit the legal ambiguity surrounding domestic responsibilities that have become internationalized; and 2) share common policy goals with the federal government.

Washington is most likely to restrict states when: 1) a politically significant complainant challenges a state's action; and 2) there is a need for a single national policy standard.

It is important to consider the implications of internationally-active states in order to understand how both U.S. domestic and foreign policy are evolving. This dissertation's findings offer important insights into this vital and current topic.

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LIST OF ABBREVIATIONS

AFI – *Agéncia Federal Investigación* (Mexican FBI equivalent)
BGC – Border Governors' Association
BICE – Bureau of Immigration and Customs Enforcement (formerly INS) (2002)
Bpd – Barrels per Day (oil)
BSAGC – Border States Attorneys General Association
CALDOJ – California Department of Justice
CSRA – Child Support Recovery Act

DEA – U.S. Drug Enforcement Agency
DEC – District Export Councils (1973)
FBI – U.S. Federal Bureau of Investigation
FRC – Foreign Reciprocating Country
GATT – General Agreement on Tariffs and Trade
GDP – Gross Domestic Product
GNP – Gross National Product

ICJ – International Court of Justice
INM – *Instituto Nacional Migración* (Mexican National Migration Institute)
INS – U.S. Immigration and Naturalization Service, now BICE
IMF – International Monetary Fund
IPU – International Prosecutions Unit, Texas Office of the Attorney General
ITA – International Trade Administration (1980)
Legat – U.S. DOJ Legal Attaché

MNC – Multinational Corporation
MLAT – Mutual Legal Assistance Treaty in Criminal Matters
M-Tec – Mexico-Texas Exchange Commission
NAFTA – North American Free Trade Agreement
NASDA – National Association of State Development Agencies
NCCUSL – National Conference of Commissioners on Uniform State Laws
NCSEA – National Child Support Enforcement Association
NGA – National Governors' Association

OAG – (Texas) Office of the Attorney General
OIA – Office of International Affairs, U.S. Dept. of Justice (1979)
OPEC – Organization of Petroleum Exporting States

Pemex – *Petroleos Mexicanos*
PGR – *Procuraduría General de la República* (Mexican federal Attorney General)
PUPD – Parallel Unilateral Policy Declaration
PRC – People's Republic of China.
PRWORA – The Personal Responsibility and Work Opportunity Reconciliation Act (1996)

RURESA – Revised Uniform Reciprocal Enforcement of Support Act (1968)
SEDCO – (Texas Governor Bill Clements' oil drilling company)
SPOC – Single Point of Contact
SRE – *Secretaría de Relaciones Exteriores* (Mexican State Department)
SWBRC – Southwest Border Regional Commission

TDA – Texas Department of Agriculture
TDCJ – Texas Department of Criminal Justice
TEA – Trade Expansion Act (1962)
TIC – Texas Industrial Commission

UIFSA – Uniform Interstate Family Support Act (1992)
USA PATRIOT Act – Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (2001)

U.S. DHHS – United States Department of Health and Human Services
U.S. DOC – United States Department of Commerce
U.S. DOJ – U.S. Department of Justice
U.S. DOS – United States Department of State
U.S. DOT – United States Department of Transportation
USMS – U.S. Marshals Service

URESA – Uniform Reciprocal Enforcement of Support Act (1950)
USTR – United States Trade Representative
WTO – World Trade Organization

CHAPTER ONE
INTRODUCTION

Because responsibility for U.S. foreign affairs is the exclusive domain of the federal government, one expects U.S. states to be restricted from any kind of international involvement. The U.S. Constitution prohibits states from signing treaties or forming compacts with foreign nations. These legal restrictions give rise to the prevailing view of states as strictly domestic actors, with no authority, capability, or even interest in foreign affairs.

But today, few domestic policies are still strictly domestic. As the global economy has changed, the nature of domestic policy has transformed. The issues traditionally the domain of the states – such as economic development, criminal justice, and family law, to name a few – are issues that increasingly have foreign causes and effects. Today, states have to forge foreign ties in order to meet their local responsibilities. Thus states send trade missions to foreign nations, open trade offices overseas; and hold international conferences on law enforcement. States routinely bypass Washington, D.C to form their own relations directly with other nations, all in order to meet their domestic governing obligations.

How has Washington responded to these developments? Legally, only the federal government can represent the nation in foreign affairs; the states have no authority to do so. Throughout the nation's history, the Supreme Court has restricted the states from encroaching on federal supremacy in foreign affairs on the grounds that independent action on the part of the states poses a danger to the integrity of the nation. The federal

government has the authority to restrict the states from establishing or continuing foreign contact, and could exercise that power to restrict the states at any time. And yet, states – and even cities – are developing international roles for themselves with surprisingly little objection from the federal government – sometimes even with federal encouragement and financial support.[1]

That the states are developing foreign relations directly with other nations with tacit – much less overt – federal support, runs counter to every presumption there is about states and the conduct of U.S. foreign affairs. But in 2000, in the most recent court case concerning states and foreign affairs, the U.S. Supreme Court preempted a Massachusetts law prohibiting the state from purchasing goods or services from businesses with a presence in Burma (Myanmar). This case of federal restriction substantiates the traditional view that states bold enough to get involved in foreign affairs will be stopped by the federal government.[2]

And yet, the Burma case is the exception. For the past 40 years or so, the states have been expanding into the international arena with no serious federal curtailment. Clearly there are conditions under which the states are free to develop an international role, and conditions under which the federal government will restrict the states. But despite the increasing role of states in international affairs, there is surprisingly little empirical research – and no coherent theory – showing the conditions under which states are free to assert themselves in the international arena, without inciting federal restriction.

Therefore, this dissertation addresses two questions vital to understanding U.S. foreign policy and federalism today: 1) Given the constitutional restrictions on U.S. states in foreign affairs, why have states developed relations directly with foreign nations? and 2) when does the federal government move to restrict the states from international involvement?

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[1] While some municipal-level activities are included in this research, the focus is on the U.S. states as the federal government's essential partners in U.S. federalism.

[2] *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000).

The Significance of This Project: Exploring Federalism and International Relations

It is crucial to consider how today's dynamic policy environment affects the states, not only in order to understand how domestic policy is evolving, but also in order to comprehend global politics.

According to Robert Keohane and Joseph Nye, the new international relations agenda is characterized by an agenda of increasingly complex issues that touch all levels of government. These issues hold no clear hierarchy, and offer no easy solutions. All levels of government are partly responsible – and no level is wholly responsible. Thus any possible solution requires unprecedented levels of intergovernmental cooperation. "Inadequate policy coordination on these (intermestic) issues involves significant costs," Keohane and Nye write. "Different issues generate different coalitions, both within governments and across them, and involve different degrees of conflict. Politics does not stop at the waters' edge."[3] The result is an increasingly narrow distinction between foreign and domestic policy, what Bayless Manning termed "intermestic" issues, when domestic and foreign concerns converge on the same policy area.[4]

Given these dynamic policy demands, it seems states are only being responsible by reaching across borders in order to address local problems. But U.S. states establishing international intergovernmental relations is contrary to traditional presumptions about the operation of U.S. federalism.

Thomas Dye says a system is truly federal when "both national and subnational governments exercise separate and autonomous authority, both elect their own officials, and both tax their own citizens for the provision of public services."[5]

Federalism as a structure is fixed; the Constitution delineates the powers possessed by each level of government. The federal government is responsible for

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[3] Robert O. Keohane and Joseph S. Nye, *Power and Interdependence*, 3rd edition (New York: Longman, 2001): 21.

[4] Bayless Manning, "The Congress, the Executive, and Intermestic Affairs: Three Proposals," *Foreign Affairs* 55 (January 1977).

[5] Other federal systems include Australia, Canada, Germany, India, Mexico, and Switzerland. Thomas R. Dye, *Understanding Public Policy*, 9th Ed (New Jersey: Prentice Hall, 1998): 284 – 290.

national security, foreign affairs, and regulating foreign and domestic commerce. By a strict constitutional interpretation, Congress cannot directly legislate on domestic issues that fall outside of its enumerated powers. The states are constitutionally empowered to regulate the public health, safety, and welfare. Within that domain, the states have considerable freedom to innovate policies and expand governing capacities. Therefore federalism as a practice is dynamic. The balance of power between the federal government and the states is determined by politics – by how the states assert themselves and expand their capacities, and by the federal government's response – to restrict the states or not.

Given their considerable autonomy, the states have always been sources of policy innovation.[6] The open U.S. federal system, with power distributed over 50 state governments and literally thousands of local governments, encourages the development of diverse policies to meet specific local needs. Dye writes that the variety of policies encouraged by the structure of federalism helps to minimize conflict over policymaking: "Federalism permits citizens to decide many things at the state and local levels of government and avoid battling over single national policies to be applied uniformly throughout the land." Successful state programs often become the models from which federal policies are developed. The description of states as "laboratories of democracy" is attributed to the late Supreme Court Justice Louis D. Brandeis, who defended policy experimentation by the states.[7]

States have come to play an important role as implementers of federal policy. As the nation has developed, Congress' influence in domestic politics has gradually increased. Congress has used federal funds as incentives to coerce states into implementing public policy in accord with federal standards, in such areas as education

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[6] See Jack L. Walker, "The Diffusion of Innovation Among the American States," *American Political Science Review* 63 (September 1969): 880-899; Virginia Gray, "Innovation in the States," *American Political Science Review* 67 (December 1973): 1174-1185; John L. Foster, "Regionalism and Innovation in the American States," *The Journal of Politics* 40 (February 1978):179-187.

[7] According to Dye, there are some 85,000 subnational governments – states, counties, cities, towns, boroughs, villages, special districts, school districts, and authorities, all with some type of policy authority. Dye, pp. 285-286. See also David Osborne, *Laboratories of Democracy*. (Boston: Harvard Business School Press, 1990).

and highway safety. The federal agencies rely on states as necessary resources to meet federal policy goals, increasing the incentives for Washington to maintain harmonious relations with the states.

So in practical terms, the states and the federal government are partners in meeting public needs. Decades ago, Daniel Elazar described all levels of U.S. government as being united "in the common task of serving the American people," a characterization that holds true today.[8] Rosenthal and Hoefler speak of "the achievement of common purposes," and claim that federalism can provide a space for setting and achieving common goals.[9] Peterson, Rabe, and Wong hypothesize that federalism is at its best when all levels of government consciously develop programs to meet a range of social needs.[10]

In U.S. domestic policy, the states play important roles as policy innovators, as governing resources, and as partners in meeting shared policy goals. But what happens to the states' role when domestic policy becomes intermingled with foreign affairs? The expectation would be, at the least, increased intergovernmental conflict and, at most, federal restriction. But this is not always the case.

While none of the federalist scholars mentioned above specifically address the role of states in international affairs, their conclusions logically support the idea that each level of government would continue to play a vital role in meeting needs, especially as domestic politics have taken on international aspects. If so, one would expect the federal government not to restrict the states, but give the states free rein to innovate policies in order to meet mutual governing goals. And yet, the research presented here will show there are times the federal government will still restrict an internationally-active state.

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[8] Daniel J. Elazar, *American Federalism: A View From the States*. (New York: Thomas Y. Crowell Company, 1966): 2.

[9] Donald R. Rosenthal and James M. Hoefler, "Competing Approaches to the Study of American Federalism and Intergovernmental Relations." *Publius: The Journal of Federalism* 19 (Vol 1, 1989): 1-23.

[10] Paul E. Peterson, Barry G. Rabe, and Kenneth K. Wong, *When Federalism Works.* (Washington, D.C.: The Brookings Institution, 1986).

The study of federalism has not yet been updated to account for how globalization affects U.S. domestic policy, or to show how the states' roles are affected by changes in the nature of domestic policy, and the subsequent federal response. This dissertation is a first step in that direction.

The Argument

The dissertation argues that since World War II, even when states were supposedly bound by constitutional, conceptual, and political limits, an evolving global economic and social order was pushing states onto the world stage. As globalization transformed the nature of domestic issues, U.S. state governments responded by becoming players in the global economy. As trade barriers fell and investment capital became increasingly and rapidly mobile, subnational governments began to compete for foreign investment dollars and to develop new strategies to adapt to the changing economy.

The term globalization is overused and under-defined. But that term more than any other describes in general the phenomenon explored in more detail in Chapter Three of this document, that of the rapid global economic integration that developed after World War II. The focus here is on economic globalization (as opposed to social or cultural globalization) as a force driving the internationalization of domestic policy and the development of international intergovernmental relations.

In order to address domestic problems that were changed by global developments, states found it in their interests to develop the capacity to interact with foreign nations. As the states struggled to meet domestic challenges that now had international significance, the openness of the U.S. federal system allowed states to develop mechanisms to confer directly with foreign nations.

The dissertation argues that states are continuing to play the same role they have always played in U.S. domestic politics. As sovereign governing entities, states are still innovating policy and striving to meet policy goals, and will continue to do so until restricted by the federal government.

What remains unexplored is how far the states can develop their international roles before the federal government acts to restrict them.

Chapter Two will explain in more detail the means by which the federal government may restrict the states. U.S. Supreme Court case law shows that in the past, the Court has preempted the states for two primary reasons. The first is when state actions are seen as encroaching on federal supremacy. The second is when state actions are seen as posing a danger to the national interest.

Congress and the Executive Branch have preempted state regulations when Washington sees a need to standardize policies across the states. This basis for restricting the states is already evident; under the 1992 Uruguay Round of the General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement (NAFTA), the states were required to yield some areas of regulatory authority to comply with the international standards endorsed by the treaties.

Federal restriction may also result from a challenge to a state's actions by a politically significant complainant. The challenge to the 1997 Massachusetts law restricting the use of state funds to purchase goods from businesses with a presence in Burma was initiated by a well-organized group of multinational corporations, who objected to an anticipated loss of business resulting from the state's action. This case and its implications will be discussed further in Chapter Two.

Thus the federal government has restricted the states when the states were seen as encroaching on federal supremacy; or posing a threat to the national interest; when the federal government sees a need to standardize policy across the states, or following a challenge by a significant complainant.

But what has not been deeply explored in the existing literature is which of these restrictive conditions apply in what conditions. In other words, how far can the states go in developing their international roles before the federal government moves to restrict them?

The best way to consider these questions is by looking closely at one state and how its international role has evolved over time and across a variety of policy areas, and how the federal government responded.

The Project

In order to examine the federal response to the increasing international role of the states, this dissertation will focus on the dynamics of one case: that of Texas-Mexico relations. Looking closely at one case offers the opportunity for a deeper understanding of the conditions under which a state seeks an international role and how federal officials respond.

The opening of the U.S. economy to global economic forces has exposed all the states to the same dynamic pressures; however, each state is affected in unique ways and responds in unique ways, contingent upon each state's internal politics, resources, and culture. But while the states may experience and respond to globalization individually, when it comes to foreign affairs, the states share a legally subordinate position to the federal government. Thus if any of the federal branches curtailed a single state from developing its international role, that restriction would likely apply equally to all the states. Therefore, it is not unreasonable to look at the federal response to Texas' wide-ranging international efforts and draw at least tentative conclusions as to the conditions under which all states might be restricted from international involvement.

Because Texas was a pioneer in developing an international role vis-à-vis Mexico, the case offers a longer span of time in which to observe the federal response to a variety of state-level international initiatives. This is not to say that insights could not be gained by examining other states' foreign mechanisms with Mexico and beyond, indeed, California's criminal justice relationship with Mexico in some areas preceded the development of Texas-Mexico relations in this area. But Texas was the first U.S. state to open a trade office in Mexico, and for eighteen years was the only U.S. state permitted to have a trade office there.[11] A Texas official was the first to argue why states should pursue child support cases in foreign courts; and Texas Governor Bill Clements was the first to aggressively pursue relations with governors in Mexico and create a

[11] California opened the second U.S. office in Mexico in 1989. Email communication with Douglas Smurr, Managing Director of the Americas, California Office of Trade and Investment, 4 November 2003.

regional policy-coordination mechanism bringing together governors from the United States and Mexico.[12] When considering the extent to which the federal government will allow states to develop international roles, the fact that Texas was the first to develop its international capacities across a range of issues means this case offers the best opportunity to observe how the federal government has responded to Texas' growing international role, and by logical extension, the types of state-level activities the federal government would seek to curtail across the board.

While Texas' geographical position means that it arguably has a greater degree of interest in developing international intergovernmental relations with Mexico, so-called globalizing forces have so penetrated the United States as a whole that other states are no longer insulated from the same concerns that led Texas to become a global actor. If Texas and Mexico have not found it necessary or worthwhile to develop international intergovernmental relations on a given issue, then other U.S. states likely have not either. And if Texas *has* developed ties with Mexico over a certain issue, it is likely that other U.S. states will need to develop their own such mechanisms in the future. Texas is at the crest of a wave of accelerating international concerns involving the United States and Mexico, but other state governments will eventually be swept along by the same waters, involving other nations as well. Other states are learning a lot from the Texas experience.

In the past, state officials managed sporadic cooperative interactions with counterparts in Mexico, but such relations depended on personal friendships between Texans and Mexicans and had little continuity. While personal relationships still matter today, the acceleration of contact in recent years has led to the development of more reliable means of communication. These institutionalized venues, albeit on shaky constitutional ground, are likely to endure despite future changes in personnel.

The implications for state-federal relations and U.S. foreign policy need to be explored. Theory-building is not the immediate goal of this dissertation. Tracing the historical development of internationally-active states and how they function in this

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[12] Chapter Five will examine regional policy-coordination mechanisms, and Chapter Seven will explain how states became involved in international child support cases.

capacity is, and this project should provide a sounder empirical basis for future theory construction than currently exists in the literature.

The Method

The dissertation takes an historical case study approach. Research for this project was done through archival research and through interviews with federal, state, and local officials from the United States as well as Mexican federal officials.[13]

The Texas-Mexico case comprises several "miniature case studies" studied in detail here – several of the venues Texas has created to communicate directly with Mexico in selected policy areas, including two venues created along with other Southwestern states to promote good relations with Mexican state officials. The emphasis here is on trade, criminal justice, and family law because these are the issue-areas most affected by global integration and therefore most likely to be of concern to other U.S. states. The border relations mechanisms are also studied, although this area is less generalizable to the other forty-six.[14]

Studying the creation of each venue affords an opportunity to see the international, national, and local conditions that inspired Texas to create the international venue – and to see if there are discernible patterns to the federal response.

Understanding what happens to the traditional state and federal roles when domestic policy becomes internationalized is of utmost importance in a world where there is an increasingly narrow functional separation between domestic and international policy. These issues have implications for domestic governance as well as the practice of foreign policy.

[13] While some officials are identified by name, most interviews – particularly with law enforcement personnel – were conducted with the assurance of anonymity. However, most quoted sources are identified by their nationality, the level of government at which they work, the agency or issue-area they represent, and the date and location of the interview.

[14] Though even this area would likely be of interest to the U.S. states forming the Northern border with Canada.

The dissertation examines the state-generated venues to communicate with Mexico in four issue-areas, to see why each was created and the subsequent federal response.

Trade: The project looks at the specific ways the state of Texas responded to global economic pressures by establishing a place for itself in the global political economy, including the opening of the Texas Trade Office in Mexico City in 1971, the Mexico-Texas- Agricultural Exchange Commission, started in 1984, and a variety of other initiatives to increase economic ties with Mexico.

Relations: Two venues are examined that involve not only Texas but also the nine other U.S. and Mexican states along the border: the Border Governors' Conference was created in 1979-80 and the Border States Attorneys' General Conference in 1986. In each of these venues, U.S. state actors confer with Mexican state actors on issues of common concern such as economic development and public safety but also issues under federal jurisdiction such as immigration and illegal drug traffic.

Criminal Justice: The criminal justice venues studied are the informal and formal methods of fugitive apprehension and recovery between Texas and Mexico.

Child Support: Texas opened an international child support office in 1992 to negotiate with Mexico as well as other nations on how child support payments ordered by a U.S. court can be enforced in another nation and vice versa. Since then, the U.S. federal government has recognized the value of such an endeavor and has adopted the Texas model for its own international negotiations that will eventually preempt state-level efforts.

Means of Analysis

For each venue studied, a triangle of three "relationship axes" can be conceived of as existing between Texas, Mexico, and the United States. The relationship axes serve as a tool to ask questions about why Texas reached out to Mexico. The three axes address the international, national, and state-level forces driving the changes in the Texas-Mexico relationship. These conditions are: the changing world economy

(international causes), the openness of the U.S. federal system (national causes), and the need for state actors to govern effectively (state causes).

1) *The U.S.–Mexico axis (international causes):* what were the international political and economic conditions that contributed to or prevented the state's effort to reach across the Rio Grande?
2) *The Texas-U.S. axis (national causes):* was the problem Texas sought to address under state or federal jurisdiction? What was the corresponding federal response: did the federal government support the mechanism, ignore it, or move to restrict the mechanism?
3) *The Texas-Mexico axis (state causes):* How was the venue created? Did Texas' interest in and method of contact with Mexico differ from the U.S. government's relations with Mexico?

The three relationship axes help to put the development of international intergovernmental relations between Texas and Mexico in the historical context necessary to understand why a U.S. state would seek a relationship with a foreign government, and to explain the federal government response. Then any pattern to the federal response can be determined.

The Understudied Role of States

The indispensable role U.S. states play in the implementation of federal policy has been well documented on the domestic front. But the developing role of U.S. states in foreign affairs is understudied.

This disregard of the developing role of states in international affairs has three causes, all of which have kept the analytical focus of foreign relations at the federal level only.

The first is the constitutional order and the subsequent case law limiting states from involvement in foreign affairs on the grounds that states pursuing their own interests overseas would be dangerous to the nation as a whole. This tradition is discussed in the next chapter.

The second is the muting effect of the Cold War. During these years, foreign affairs and domestic policy were conceived as separate spheres. Following that reasoning, states were seen as appropriately active in the domestic sphere and had no business interfering in the foreign sphere, where national security concerns predominated, despite the fact that states were developing their international roles during this period.

The third is the practice of International Relations theory to portray nation-states as unitary actors. The conceptual model of International Relations theory distills all the politics and processes internal to a nation-state into a shorthand depiction of the nation-state as a unitary actor in an anarchic international system. For example, international relations are characterized as taking place between "the United States" and "Mexico," rather than "the presidential administration of the United States, acting under pressure from Congress, the electorate, and multiple interest groups" as it interacts with "the executive branch of the Mexican government, acting within the constraints of its federal system and constitutional order."

In depicting international politics, simplification is obviously a necessity. But the tradeoff has been a tendency to disregard the complexity of forces and pressures influencing a nation's internal politics. Arguably, the cost of simplification has been to overlook significant amounts of activity occurring at both the national and subnational levels of politics, particularly "low politics" activity, such as trade, in which subnational actors are active. The focus on governments rather than governance has imposed a narrow analytical focus that overlooked changes in the nature of problems and the wide variety of responses by different levels of government and interests.

After the Cold War, the presence of subnational actors in international affairs was acknowledged in academic literature, but treated as new, post-Cold War phenomena, disregarding the degree to which state and local governments were developing international relations during the Cold War. The role of national governments

worldwide has been under reconsideration, as subnational, transgovernmental and nonstate actors everywhere challenge nation-states on all sides.[15]

From the federal and academic viewpoint, states have not been previously involved in foreign affairs. But from the subnational perspective, states have been willing for decades to commit significant resources towards cultivating relationships with foreign actors in order to govern more effectively. Subnational governments have long been aware, perhaps more than federal actors, how international politics affects domestic governance.

In 1984, John Kline wrote, "the federal nature of the American political system gives a twist to this adaptation (to global change) process, however, which requires a sorting-out of overlapping authorities where foreign economic factors intersect state and local government prerogatives."[16] This adaptation process has not yet been empirically studied in detail. This dissertation offers a detailed examination of Texas-Mexico relations in order to shed light on why states began forming their own foreign relations, and to explore the conditions under which the federal government will act to restrict the states.

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[15] See Michael Clough, "Grass-roots Policymaking: Say Goodbye to the 'Wise Men.'" *Foreign Affairs* 73 (January-February 1994): 2; Anne-Marie Slaughter, "The Real New World Order," *Foreign Affairs* 76 (September/October 1997): 183-197. Samuel P. Huntington, "The Erosion of National Interests," *Foreign Affairs* 76 (September/October 1997): 40. See also James Rosenau, *Turbulence in World Politics: A Theory of Change and Continuity* (Princeton, N.J.: Princeton University Press, 1990); and James N. Rosenau, *Along the Domestic-Foreign Frontier: Exploring Governance in a Turbulent World* (Cambridge: Cambridge University Press, 1997).

[16] John M. Kline, "The International Economic Interests of U.S. States," *Publius: The Journal of Federalism* 14 (Fall 1984): 94.

THEORETICAL FOUNDATIONS

The phenomena of internationally-active states exists at the intersection of several different theoretical traditions, none of which fully describes or explains how U.S. states have become international actors across a spectrum of issues. Although the phenomenon is now a fact of domestic and global politics, surprisingly little theory has been developed to account specifically for it, although there is at least a recognition of a need to move in that direction.

This section briefly examines two areas of Political Science literature, International Relations and Federalism, and finds that neither offers a satisfying theory for explaining why states have become global actors.

International Relations

While International Relations theory has much to offer in analyzing relations between central governments, the field in general does not recognize activity at the subnational government level.

Two articles, published soon after the Cold War's end, took notice of the increasing role of subnational governments in U.S. foreign affairs, one article by Michael Clough, and the other by Samuel Huntington. Both attribute the increasing role of U.S. states in foreign relations to the end of the Cold War, arguing that after 1989, the U.S. foreign policy agenda broadened from its Cold War focus on anticommunism, thereby allowing more actors into the foreign policy process. Clough celebrated this change as a much-needed democratization of foreign policy while Huntington, keeping alive the concept that states should be only domestic actors, claimed it would decimate the national interest and work only ill for the country.[17]

While each author reaches different conclusions about the effect of active states, each assumes that during the Cold War subnational actors were restricted in their international involvement. However, research shows that the states' presence on the world scene predated the end of the Cold War by decades.

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[17] Clough, p. 2-8; Samuel P. Huntington, "The Erosion of National Interests," *Foreign Affairs* 76 (September/October 1997): 28-50.

James Rosenau writes:

> It is tempting to treat (the Cold War's end) as an epochal turning-point. Such an interpretation, however, is misleading…and does not allow for the possibility that the end of the Cold War was the culmination of underlying and long-standing processes of change which…ushered in a common sense of dynamics and structures that amounted to a new epoch.[18]

Huntington's and Clough's assumptions that states were active only domestically during the Cold War show the limitations of the state-centric viewpoint offered by International Relations theory.

The existing literature in International Political Economy (IPE) suffers from the same shortcomings as does the International Relations literature, in that it is state-centered, system-centered, or society-centered, but typically not concerned with the role of substates. To the extent that states are considered, they are assumed to be subordinate to the federal government. The possibility that subnational governments could play an independent or innovative role is not addressed.

The IPE literature draws from the field of international economics. The classic theories of Smith and Ricardo that form the basis of this field do not consider the state in its complexity. At the time these theories were developed, subnational governments *were* subordinate to central governments, which were then the predominant actors in world trade. Today, many subnational governments the world over are taking a more active role in trade, but economic theories have yet to develop models to explain the many developing dimensions of international commerce.[19]

There is some literature that addresses subnational governments and their international roles, and builds off the work of International Relations theorists Robert Keohane and Joseph Nye. The Complex Interdependence Approach confronts the topic most directly, as evidenced by the work of Ivo Duchacek, John M. Kline, John Kincaid,

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[18] Rosenau (1997): p. 7.

[19] Michelle Sager, *Cooperation Without Borders: Federalism and International Trade* (Ph.D. dissertation, George Mason University, Fall 1998). Sager's research concerns state-federal relations on international trade issues.

Earl Fry, and Soldatos Panayotis. Most of these authors were represented in a special issue of the journal *Publius* in 1984, published long before the end of the Cold War.[20]

Taken in toto, this literature has had little influence in the field of International Relations or International Political Economy. As Darel Paul observes, the literature's "goals of describing a previously uncharted terrain and of explaining the causes of subnational state foreign policy wholly failed to capture the imagination of scholars in these disciplines."[21]

Taken individually, these scholars do offer perspective on some of the concerns of the phenomena, and their work appears in a supporting role throughout the dissertation. But the Complex Interdependence approach is not sufficient to explain why the U.S. states have developed their international roles without federal interference.

The Study of Federalist Systems

The dynamics of U.S. federalism are at the crux of this project, examining when states are free to reach across borders and when such action might be deemed as an encroachment on federal supremacy.

But there is no model of federalism that addresses how the different levels of government interact when domestic policy takes on international aspects. One explanation for this is offered by Joseph Pattison, "…public policy and management concepts have remained static, rooted in a world that no longer exists."[22]

The three models of federalism are: dual federalism, cooperative federalism, and coercive federalism.

Dual federalism depicts two governments that operate in the same territory, yet each has distinct responsibilities within its separate sphere of authority. Cooperative federalism describes instances when the federal government encourages subnational

[20] *Publius: The Journal of Federalism* 14 (Fall 1984).
[21] Darel Paul, *Rescaling IPE: Subnational States and the Regulation of the Global Political Economy* (Ph.D. dissertation, University of Minnesota, July 2001): 7. Paul's research concerns how best to analyze state roles in international trade relations.
[22] Joseph E. Pattison, *Breaking Boundaries: Public Policy vs. American Business in the World Economy*. (Princeton, N.J.: Petersons'/Pacesetter Books, 1996): vi.

actors to help achieve national goals and provides funding towards that purpose. Coercive federalism occurs when the federal government mandates the states implement certain policies.

John Kincaid explains that these three phases of federalism have followed the growing role of the federal government in domestic politics. The conception of dual federalism was the accepted model of distribution of governmental power from 1789 to 1932. Each level of government was conceived of as having its own sphere of responsibilities. During this time, the federal government's involvement in domestic politics was much less then its role today. But dual federalism as a practice proved an inadequate distribution of power after the Great Depression of 1929. Kincaid writes, "The industrial economy generated numerous negative externalities that were increasingly seen as beyond the reach of state regulation and amelioration. Reformers urged the federal government to behave more like a central government in order to manage the new national economy."[23]

Dual federalism as a descriptive concept was discredited by Morton Grodzins, who wrote: "it is difficult to find any level of governmental activity which does not involve all three of the so-called 'levels' of the federal system."[24] Grodzins developed the concept of "marble-cake" federalism, which depicts the functions of government not as restricted to separate layers or spheres but intermingled. This is an accurate image for the overlapping authority relations of U.S. government today, including foreign affairs, although Grodzins was addressing domestic politics and not intentionally including the international relations of subnational actors.

Cooperative federalism, usually given the dates 1932 to 1968, was distinguished by mechanisms such as grants-in-aid, used to encourage the states to pursue federal

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[23] John Kincaid, "From Dual to Coercive Federalism in American Intergovernmental Relations," in *Globalization & Decentralization: Institutional Contexts, Policy Issues, and Intergovernmental Relations in Japan and the United States*, Jong S. Jun and Deil S. Wright, eds. (Washington, D.C.: Georgetown University Press, 1996): 34.

[24] Morton Grodzins, "The Federal System," in *Goals for Americans: The Report of the President's Commission on National Goals and Chapters Submitted for the Consideration of the Commission* (Englewood Cliffs, N.J.: Prentice-Hall, 1960.) Quoted in Deil S. Wright, *Understanding Intergovernmental Relations* (Pacific Grove, CA: Brooks/Cole Publishing, 1988): 72.

goals and implement federal policy. But during the social unrest of the 1960s, many pushed again for reform of the federal government to ensure the rights of all citizens were honored by all levels of government. The federal government increased its regulation of state politics, in what is termed coercive federalism.

During the period of coercive federalism, the federal presence in domestic politics has enlarged. The mechanisms of coercive federalism increased during the 1970s and 1980s, as the economic effects of globalization began to be evident within U.S. borders. Coercive federalism is characterized by reduced federal aid to state and local governments, the attachment of conditions to certain types of federal aid, and federally-mandated policy goals the states must meet. Coercive federalism implies increased levels of intergovernmental conflict.

While dual federalism as a model of the distribution of government power has been discredited, today's intergovernmental relations evidences elements of both coercive and cooperative models. As Deil S. Wright writes, "The presence of conflict does not indicate the absence of cooperation."[25] In fact, Wright says, state and federal agencies may be simultaneously in conflict over one policy area even while cooperating in another. The fact that both coexist makes it irrelevant to ask which overshadows the other, he says – but he fails to address the realm of intergovernmental relations in foreign policy, where the expectation is that subnational involvement leads to conflict and a virtually automatic federal response to restrict the offending state action.

However, neither the coercive nor the cooperative model has been updated to explain how states are establishing an international role for themselves and how this affects intergovernmental relations. The presumption is that internationally-active states necessarily produce conflict, as will be shown in Chapter Two. But this dissertation will show that conflict is not necessarily the result of direct links between states and foreign nations. Because globalization has changed the nature of domestic policy, the existing models of authority relations must be reexamined. There are no current models of federalism that include international activity on the part of states. Legally, the states'

[25] Deil S. Wright, *Understanding Intergovernmental Relations.* (Pacific Grove, CA: Brooks/Cole Publishing Company. 1988): 458.

roles are still evolving and in flux. This fact makes developing a suitable model more difficult, given that if attitudes of a particular presidential administration changed, the result could be changes throughout the entire system.

Another important point to consider is whether or not significant shifts in the distribution of governmental power follow periods of economic upheaval. If the industrialization of the 1930s led to a period of increasing nationalization and greater cooperation between levels of government, and the beginning of globalization in the 1970s led to an even larger role for the federal government and the imposition of coercive measures and an increase in intergovernmental conflict, then it might be logical to assume that globalization will lead to an even larger federal role and a new configuration of the governmental power distribution. The question becomes, do periods of economic growth and policy change result in a change in federalism? Answering this question is beyond the scope of this dissertation, but the first step in determining the relationship between globalization and federalism is to look closely at how states are forming their international roles and the federal response, as this dissertation does.

OTHER LITERATURE

While there is no coherent body of literature that fully addresses why U.S. states have become global actors, there are valuable scholarly works that consider aspects of the question at hand. In order to show the state of current research, the following section synthesizes these disparate contributions into an overview to show both how others have approached the role of U.S. states in foreign affairs, as well as the gaps in current research where this dissertation can make a valuable contribution.

How Do U.S. States Influence Federal Foreign Policymaking?

Most federal systems allow their subnational units a voice in the development of federal foreign policy. In the United States, the constitutional pathway for states to

express their preferences on foreign policy issues is through their Congressional representatives.

How states influence the development of federal foreign policy is at the center of sectionalism research, such as that of Richard Bensel and Peter Trubowitz. Bensel illustrates how U.S. national interests have been shaped by regional competition over foreign economic policy in his book *Sectionalism and American Political Development: 1880-1980*.[26] Trubowitz examines how the different geographical regions influence U.S. defense policy via the voting patterns of state representatives in Congress. Trubowitz further develops the link between sectional economic interests and foreign policy in his book *Defining the National Interest*.[27]

The sectionalism literature argues that states and regions can have interests that differ from the federal government's, indeed, that the national interest itself is the sum of the interests of the states, as derived from their resources and combined with their political clout in Washington.

Sectionalism illustrates what could be termed the "advocacy" approach, whereby states express their particular foreign policy interests by exerting pressure at the federal level. But the idea that states might act independently and engage directly in negotiations with foreign nations is not usually part of the sectionalism analysis. While states still exert influence on foreign policy at the federal level, states have moved beyond advocacy to engaging foreign actors directly.

John Kline has also examined how U.S. states have increased their influence in U.S. economic policy. The roles Kline examines include state economic-development agencies, interstate organizations such as the National Governors' Association, and the ways states seek foreign direct investment and promote exports. He also writes about how state governors have developed international agendas. Kline's astute observations provide support for many aspects of this dissertation, although his work is primarily

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[26] Richard Franklin Bensel, *Sectionalism and American Political Development: 1880-1980* (Madison: University of Wisconsin Press, 1984).

[27] See Peter Trubowitz, "Sectionalism and American Foreign Policy: The Political Geography of Consensus and Conflict," *International Studies Quarterly* 36, (1992): 173-190, and Peter Trubowitz, Defining the National Interest: Conflict and Change in American Foreign Policy, (Chicago: The University of Chicago Press, 1998).

concerned with economics, and this dissertation endeavors to show that states are internationally active in policy realms beyond economics, such as criminal justice and family law.

Kline acknowledges the conceptual limits of his own research and that of others who look at states as just one of many transnational actors active in U.S. foreign affairs, such as multinational corporations and international organization. A transnational focus is on the state's activity and its overseas effects. But states are crucial components in federalism, and because they are a source of authority, their involvement in international affairs is of more significance than other economic actors because states are policymaking actors. Therefore states need to be researched separately from other non-federal or transnational actors who now play a part in the policy process. Kline writes:

> Such a transnational actor approach to the international interests of the American states may have inadvertently caused many observers to overlook what may, in fact, be more immediate and substantial effects from these new state actions within the country's borders…small notice has been given to the political policy aspects of many new state actions.[28]

This dissertation looks exclusively at how one state has developed its international mechanisms, and the resulting effect on intergovernmental relations, thus filling a gap identified by Kline.

How Has Globalization Affected U.S. Politics?

The field of International Relations postulates the preservation of autonomy and the pursuit of power as the primary goals of the nation-state. Keohane and Nye were among the first to question the unitary-actor model of international politics, acknowledging that world politics develops in a more complex world of formal and informal interdependent relationships that develop not only between nation-states but private corporations and international organizations.

The Complex Interdependence articles pay homage to *Power and Interdependence* by Keohane and Nye as the "conceptual basis for analyzing the impact

[28] Kline (1984): 88.

of interdependence" between nation-states.[29] But several of the authors are quick to point out that Keohane and Nye "did not specifically address the application of such considerations to subnational entities, such as the states and localities in the U.S. federal system."[30]

Even in the third edition of *Power and Interdependence*, published in 2001, the authors take on the concept of globalization, but there is no mention of the significance of subnational actors. Even works that look at how domestic politics has been affected by changes in the international system have yet to recognize the significant activity occurring at the lower levels. In other works that examine how national politics have been affected by global economic change, such as Keohane and Milner's *Internationalization and Domestic Politics*, "states" still are nation-states and "domestic institutions" are found at the federal level only.[31]

Changes in the international economy have raised questions about the future shape of governing structures. A burgeoning number of questions have been raised about the future of the nation-state in a globalized era, particularly the capacity of the nation-state to retain its sovereignty in the face of empowered actors, including subnational governments in addition to nongovernmental actors, political interest groups, and citizens with access to virtually unlimited information.

James Rosenau developed turbulence theory to explain the recent rapid changes in world politics. Technology plays a central role in Roseau's theory, as it allows individuals to "locate their own interests more clearly in the flow of events…the analytic skills of individuals have increased to a point where they now play a different and significant role in world politics." Rosenau argues that the greater number of actors in the process means federal governments across the globe are "more decentralized, less coherent and effective" and that their authority is "more diffuse," and "hierarchy (is)

[29] Keohane and Nye. The term "interdependence" has largely yielded to the terms globalization or globalism.
[30] Kline (1984): 82-3.
[31] Keohane, Robert O., and Helen V. Milner, *Internationalization and Domestic Politics* (Cambridge: Cambridge University Press, 1996).

weakened." This opens his focus to include an array of subnational actors, what he calls "subgroups."[32]

Decentralization occurs when non-federal actors are empowered to act without assistance from the federal government. Darel Paul writes about how a shift in focus from the national level to the subnational level can reveal how globalization has changed the sources and location of authority.[33] When state and local governments can work directly with the business sector, the federal government is less relevant. When information is accessible through the Internet, the federal government is less relevant. When technology is reliable enough that intergovernmental relations can develop between actors in different nations, the federal government is less relevant and arguably loses a part of its traditional role as intermediary between subnational governments, business, and foreign governments.

"Globalization affects sovereignty by redefining the nature of various policy realms," writes Keith Boeckelman.[34] In much of the International Relations theory, power is treated as a "zero-sum" game in which one nation's gain in power is another nation's loss. In the literature that explores the effect of globalization on domestic politics, the power of the nation-state is assumed to be zero-sum, and that non-federal actors gain strength and influence at the expense of the nation-state.

But there is no way to measure the supposed decline of central governments. If subnational governments are conferring directly with foreign governments for the purpose of meeting policy goals that are common to both the subnational and federal levels of government, the federal government may in fact not suffer a loss of power, but an increase in legitimacy as policy goals are achieved and the quality of governance improves. More empirical research on why state level foreign mechanisms develop and whether or not their goals are comparable to those of the federal government's is needed; one contribution this dissertation will make is a close examination of one state's foreign mechanisms, how they developed, and the federal response.

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[32] Rosenau (1990):15, 119, 13.
[33] Paul.
[34] Keith Boeckelman, "Federal Systems in the Global Economy: Research Issues," *Publius: The Journal of Federalism* 26 (Winter 1996): 1-10.

In 1976, Peter Katzenstein argued that decentralized states such as the United States were more responsive to domestic political concerns.[35] If so, then the further decentralization that globalization brings could increase U.S. democracy and the efficiency of governance. This has yet to be addressed fully.

From a constitutional law perspective, Mark C. Gordon considers extensively how globalization affects the states in a 2001 report.[36] He finds that states can act as "laboratories" on responding to and shaping globalization, as states do in domestic politics. "Globalization is a reality that is susceptible to being shaped," Gordon concludes. The states have opportunities to influence the course of globalization by acting to increase citizen participation, shaping the national discourse, and pioneering new forms of governance such as multistate policy or regulatory agreements. But he cautions that states will also be challenged by the federal government's entry into international trade agreements that seek a harmonization of standards and erode areas of traditional state regulatory authority.

Apart from concerns about how globalization affects national sovereignty, others are also concerned that the United States' entry into international agreements such as NAFTA and the WTO will compromise state authority. "The national role in enforcing various economic agreements protects national viability and sovereignty. National officials, such as the president or the U.S. Trade Representative, are able to overrule state laws that conflict with these agreements," writes Boeckelman.[37]

Barry Friedman explores the implications of international trade agreements on state regulatory power in an issue of the *Vanderbilt Law Review*, and finds that globalization will undoubtedly limit the traditional regulatory authority of the states. A more significant question, though, is how democratic processes may be weakened.

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[35] Peter Katzenstein, "International Relations and Domestic Structures: Foreign Economic Policies of Advanced Industrial States," *International Organization* 30 (Winter 1976).
[36] Mark C. Gordon, *Democracy's New Challenge: Globalization, Governance, and the Future of American Federalism.* (New York: *Demos*: A Network for Ideas and Action, 2001).
[37] Boeckelman, pp. 1-10.

"Concerns about democratic accountability are heightened when domestic regulation is structured according to international standards," Friedman writes.[38]

The concern is that other nations could challenge state subsidies to local businesses, procurement processes, and other economic development practices as unfair trade practices. Thus international agreements will increasingly force states to yield sovereignty in areas of traditional state regulatory power. Or that multinational corporations and other private interests will use their considerable influence to craft trade agreements in ways that favor them, particularly when democratic pathways do not yield to their interests. "In effect, the various international negotiations are becoming an alternate forum for investors to limit law-making or law enforcement power in ways that Congress and state or local governments have rejected," writes Robert Stumberg.[39] Thus even while states and the federal government may share policy goals in the short term, in the long term, globalization could cause shared goals to diverge.

Why Have States Developed International Roles?

Most scholars acknowledge that globalization has turned domestic issues into international ones, and therefore domestic actors such as states must become internationally savvy. Globalization has also affected the capacity of central governments worldwide to be effective in handling a widening array of policy problems with increasingly non-specific causes.

Earl Fry writes that the "foreign affairs landscape" is evolving, so that "many issues that today affect the American people on Main Street or in the suburbs are simply beyond the capacity of Washington to solve single-handedly." Environmental issues in particular, "cannot be solved unilaterally within the borders of the United States," and neither can other challenges such as resource supply and use, organized crime, and

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[38] Barry Friedman, "Federalism's Future in the Global Village," *Vanderbilt Law Review* 47 (October 1994): 1477. See also Jack L. Goldsmith, "Federal Courts, Foreign Affairs, and Federalism," *Virginia Law Review* 83 (November 1997).

[39] Robert Stumberg, *Local Meets Global in International Practices*, (Updated May 1999, Retrieved 16 October 2003.) Available from: http://www.cfed.org/main/econDev/Localglobal_stumberg.htm

illegal immigration. Fry argues that as citizens see the link between their own lives and foreign developments, "citizens demand that their interests be protected and enhanced not only by their national governments but also increasingly by the subnational governments closest to where they live."[40]

John Kline argues that globalization has eroded the distinction between foreign and domestic issues, changing the interests of state and local governments. "Political decision makers at the state level must view foreign economic policy as increasingly relevant and important to their public responsibility for the economic growth and well-being of their own states."[41]

While Fry and Kline write about the United States, Federalist scholar Ivo Duchacek, editor of the special *Publius* issue, strives to explain why the subnational governments in all federal systems are establishing an international presence. He writes that "awareness of universal interdependence is the major cause of global micro-diplomacy," his term for subnational actors' involvement in international relations. In order to maintain living standards and employment opportunities, "not only nations but also subnational territorial communities have 'to go it with others' across national boundaries so as to be able to 'go it alone' more successfully within their own borders," Duchacek writes.[42]

To explain the states' activities, Duchacek acknowledges that domestic features of federalist systems play a part, such as an independent culture among subnational units, what he calls "opposition to bigness and distance (of the federal government)." Federal systems also promote competition between subnational units for economic advantage, what he calls "me-too-ism."

Duchacek develops a complicated model of direct relationship-building between subnational units in federated systems and foreign nations, what he calls "paradiplomacy." One look at the paradiplomacy model explains why the Complex

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[40] Earl Fry, *The Expanding Role of U.S. State and Local Governments in U.S. Foreign Affairs.* (New York: Council on Foreign Relations Press, 1998): 3, 15.
[41] Kline (1983): 35.
[42] Ivo Duchacek, "The International Dimension of Subnational Self-Government," *Publius: The Journal of Federalism* 14 (Fall 1984): 15-16.

Interdependence literature has not had much influence in the field.[43] Suffice it to say that the increasingly significant international role of unit governments worldwide is still in need of an elegant theory. The goal of this dissertation is not theory development, but the research presented here should provide an empirical building-block towards the goal of theory-building.

Do the States' Actions Really Qualify as "Foreign Policy"?

While few domestic policies are still exclusively domestic, the federal government is still supreme in certain areas of federal policy. States may innovate ways of working within the limits of U.S. trade policy, but still cannot sign treaties or change the terms of trade. Trade policy, immigration policy, and security policy are still the province of the federal government, although subnational governments have a much larger stake in those policies than before.

There are legal limits to how states are capable of acting in foreign relations. States cannot form treaties; any state-level relationship is informal. So technically, a purist could argue that the states are not in the business of making legally-binding foreign *policy*. But dismissing the activity of the states as less than foreign policy does nothing to address the reality that states are increasingly active in relating directly to other nations. Daniel Halberstam writes,

> Any project of defining a particular subcategory of this vast range of activity as being the stuff of 'real' foreign relations is likely to be highly elusive. In one way or another, all these actions, from the promotion of trade and investment opportunities to the more explicitly 'political' initiatives, may implicate the foreign relations interests of the Nation as a whole.[44]

[43] Ivo D. Duchacek, "Perforated Sovereignties: Towards a Typology of New Actors in International Relations," in *Federalism and International Relations: The Role of Subnational Units.* Hans J. Michelmann and Panayotis Soldatos, eds. (Oxford: Clarendon Press, 1990) 19.
[44] Halberstam, Daniel, "The Foreign Affairs of Federal Systems: A National Perspective on the Benefits of State Participation (Symposium: New Voices on the New Federalism)." *Villanova Law Review* 46, no. 5 (2001): 1015-68.

Although what the states and cities are doing may not rise to the level of federal law, many of these policy initiatives are in harmony with domestic policy goals. Collectively, it can be argued, they serve to shape the foreign relations of the nation as a whole.

Ivo Duchacek sees no difference in relations conducted by federal actors and by subnational actors. "If by diplomatic negotiation we mean processes by which governments relate their conflicting interest to the common ones, there is, conceptually, no real difference between the goals of paradiplomacy and traditional diplomacy: the aim is to negotiate and implement an agreement based on conditional mutuality."[45]

Brian Hocking objects to treating the foreign relations of subnational governments as if they were something distinct from the federal level. Hocking studies what happens in federal systems when foreign policy issues become local concerns. He sets his approach apart from the complex interdependence crowd, such as Duchacek, saying that ideas such as "paradiplomacy" places subnational activities outside of traditional diplomatic patterns. Hocking sees non-central governments as integrated into a dense web of diplomatic interactions, in which they serve more as "allies and agents" in pursuit of national objectives rather than as flies in the ointment. "The nature of contemporary public policy with its dual domestic-international features, creates a mutual dependency between the levels of government and an interest in devising cooperative mechanisms and strategies to promote the interests of each level."[46] Rather than separating the activities of non-central governments from those of central governments, Hocking's goal is to "locate" subnational governments in the traditional diplomatic and foreign policy processes initiated and carried through by the federal government.

But what Hocking does not look at as closely are the ways in which subnational governments initiate relations directly with foreign governments. Looking at why states initiate their own foreign relations is the way to determine to what degree the states, in pursuit of their own goals, can be "allies and agents" of the federal government. This

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[45] Duchacek (1990): 16.
[46] Brian Hocking, *Localizing Foreign Policy: Non-Central Governments and Multilayered Diplomacy*. (New York: St. Martin's Press, 1993): 4.

dissertation addresses state-initiated relations with foreign governments to see whether the states are acting as de facto agents of the federal government, in pursuit of shared goals or distinct state interests.

But one point to consider is that the development of state roles is not a matter of devolution. Many of the developments at the subnational level are state and local responsibilities to begin with. While the federal government is responsible for trade policy, states have the primary role in economic development, and criminal justice is a state and local concern, albeit state and local governments share responsibility with the federal government for public safety. But the states are active in the policy areas examined here not so much because the federal government has mandated they be so, but because globalization has changed the nature of governing at the subnational level. These developments signify not a transfer of power from the federal level to the states but an expansion of traditional state-level powers.

What are the Constitutional Implications of International States?

Because of the constitutional ban on state involvement on foreign policy, legal scholars are quite interested in how globalization will affect relations between the states and the federal government. While there is no real theoretical framework in law-review literature sufficient to explain the causes and effects of state foreign relations, there are important questions raised which should guide further research on the topic.

The Constitution, the history of case law, and conventional wisdom suggest that if states become involved in foreign affairs, the federal branches will take steps to cause the state to cease the action in question.

The research summarized here would indicate that states have successfully pursued economic development strategies involving foreign relationships with no federal action.

Few scholars have considered that direct foreign relations between the states and other nations might benefit the nation as a whole. Michael Clough argues decentralization will make the foreign policy process more democratic, thereby

maintaining American values in the development of foreign policy.[47] Daniel Halberstam considers the benefits of state participation that would challenge "the previously dominant view that States have no place in foreign affairs." The inspiration for Halberstam's consideration of the states' roles was the U.S. Supreme Court decision striking down the state of Massachusetts' purchasing restrictions.[48] In 1996, the state of Massachusetts passed a law prohibiting the state from purchasing goods or services from businesses with a presence in the nation of Burma, also called Myanmar. A private business group sued; and in 2000, the law was unanimously struck down by the U.S. Supreme Court because of the federal government's preeminence in foreign affairs.[49]

The Massachusetts Burma case resonates with all the popular notions of why states should be restricted from involvement in foreign affairs: that states, by pursuing their own selfish interests, will act contrary to the national interest and erode national influence or embarrass the nation. [50] But Halberstam argues that the Court, in striking down the state's law, failed to consider what the proper role of states in foreign affairs should be, and therefore "avoided confronting a consistent theme that emerges from the doctrinal thicket of its prior decisions on federalism in foreign affairs, i.e., that state participation in foreign affairs can be only harmful to the Nation."[51]

Halberstam then considers that direct state involvement may have national benefits, particularly in promoting economic development, raising national awareness of certain issues, and spurring the federal government to action. Halberstam also argues that states will devote resources to issues when the federal government will not. He concludes that state involvement is beneficial up to the point that the federal government "has spoken to the issues raised and has chosen to exclude the States" as the Court did in the Massachusetts case.

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[47] Clough.
[48] Halberstam, 1015-68.
[49] *Crosby* 530 U.S. 363 (2000).
[50] David Schmahmann and James Finch, "The Unconstitutionality of State and Local Enactments in the United States Restricting Business Ties with Burma (Myanmar)," *Vanderbilt Journal of Transnational Law* 30 (March 1997): 184-202.
[51] Halberstam, 1021.

But this dissertation will show that the Massachusetts case is the exception rather than the rule. While subnational governments are increasingly vocal when they disagree with federal policies, the overwhelming majority of state-foreign activity involves direct contact with foreign governments for the purposes of governance, of handling domestic challenges. This is the activity that has not been fully explored, aside from previously-mentioned works that focus on states' international economic relations.

Overall, there is a lack of attention in the literature to the possible benefits of active states. The lack of conflict with the federal government indicates there may be benefits to these developments. And yet, there may be other reasons the federal government has not moved to restrict states from forming direct foreign relations, such as ignorance of subnational developments, a lack of concern or organization on the part of affected groups, inertia among the federal agencies, and a lack of clarity on who is responsible for domestic policy when it takes on international aspects.

In order to know why the federal government has not acted to restrict the formation of links directly between U.S. states and foreign nations, much more detailed empirical research is needed. While the literature surveyed here has value for its exploration of the topic, as a whole the empirical basis on which the observations rest is not substantial enough to fully explain how the direct relations have formed and what the federal response has been.

This dissertation will fill a gap in the literature by looking closely at one state, Texas, and how it developed its international ties with Mexico over a range of policy areas, not only trade relations, and why the federal government has not acted to restrict Texas from developing its own foreign relations with Mexico.

OUTLINE OF THE BOOK

Chapter Two explains the constitutional role U.S. states play in the federal system, and how the notion that states are strictly domestic actors has evolved through decades of Supreme Court decisions. Then the chapter details the ways states can become internationally active, and the subsequent debate over the states' developing

international roles. The last section looks at the ways the three federal branches – the Executive, Congress, and the Supreme Court – are empowered to rein in the states, but only if certain interests are offended.

Chapter Three explains how changes in the global economy so affected the domestic economy that the states, acting within their authority to foster economic development, began to pursue interests on the world stage. The states' roles expand not only due to domestic electoral pressures, but also through intense interstate competition, which leads to the innovation of new international strategies such as economic development agencies, competition for foreign direct investment, and overseas trade offices.

Chapter Four traces the same general timeline as Chapter Three, but this time tracing how Texas responded to globalizing forces and interstate competition by cultivating a place for itself in the world economy, particularly through increased trade relations with Mexico. The specific venues Texas created that are analyzed here are the Texas Trade Office, which opened in Mexico City in 1971, and the Texas-Mexico Agricultural Exchange, created in 1984.

Chapter Five tells how Texas and the three other U.S. states along the border reached out to their government counterparts in the six neighboring Mexican states via the Border Governors Conference, created in 1979, and the Border States Attorneys General Conference, which began in 1986. In this case, the state officials took advantage of constitutional ambiguity over responsibility for border issues to cultivate mechanisms to advance the coordination of policy between the ten states in two countries that form an international border.

Chapter Six elaborates the developing criminal justice cooperation that exists between Texas, the United States, and Mexico in general and in the specific area of fugitive apprehension. All levels of government share the policy goals of preserving the public safety. Local criminal justice is an area of traditional state authority that has been changed by increased international immigration to the United States. But international criminal justice procedures are regulated by binding international treaties negotiated at the federal level. Subnational law enforcement officials often do violate treaties;

therefore, one would expect the federal government to restrict state and local law enforcement from any international contact. But so far, this has not happened, because the federal government simply does not have the resources to monitor all subnational activity in this area, indicating that even as domestic policy has become internationalized, states continue to fulfill a role as governing resources for the federal government, in pursuit of common policy goals.

Chapter Seven tells the story of how Texas officials developed a legally sound means of communicating with Mexico and other nations for purposes of collecting child support. Family law is traditionally the responsibility of the states. But as the need for uniform standards for effective child support enforcement has grown, the federal government has increased its regulation of this area. When the states began working international child support cases, the federal government authorized the states to do so, even while it put strategies in place to eventually preempt the states. This case indicates that the federal government will preempt the states when it can be argued there is a need for standardized procedures across the states.

Chapter Eight concludes the project, and considers what each of the policy areas reveals about the conditions under which states are free to pursue direct foreign relations and the conditions under which the federal government will act to restrict, and what this information indicates will happen in the future, as the nature of domestic policy continues to be transformed by globalization.

CHAPTER TWO
THE U.S. STATES AND FOREIGN AFFAIRS: CONSIDERATIONS, DEBATES, AND RESTRICTIONS

INTRODUCTION

The law governing states and foreign relations is still developing, as is the concept of what role states should play in U.S. foreign affairs.

Since the U.S. Constitution was ratified in 1788, the operation of foreign relations in the United States has been conceived of as the exclusive domain of the federal government. For the most part, U.S. state and local governments have been thought to have no legal authority, capability, or even interest in foreign affairs. Yet this dissertation will show how states have realized their interests in the world economy and developed what appear to be acceptable, vital roles for themselves as actors in the international arena, with a surprising lack of intergovernmental conflict.

This chapter looks first at the role states play in the U.S. federal system, and the structural and political reasons that states are seen as limited in foreign affairs. The next section discusses the ways states can involve themselves in U.S. foreign affairs, either as foreign policy activists or in the course of meeting governing goals. Following this section is a summary of the debate surrounding the role of U.S. states in foreign affairs. The final section discusses how the federal government – the U.S. Supreme Court, the Executive Branch, or Congress – has or could limit the involvement of states in the international arena.[1]

[1] While this chapter provides an overview of constitutional issues and the history of case law concerning foreign affairs, this is by no means an exhaustive look, as this dissertation is more concerned with the conceptual development and policy implications of states and international affairs rather than with the nuances of constitutional law.

THE ROLE OF STATES IN U.S. FEDERALISM

The structure of U.S. federalism is fixed; the U.S. Constitution divides power between the federal government and the states. But federalism as a practice is dynamic. The line dividing power between the state and federal governments constantly shifts according to how the actors within the constitutional order exercise their powers.

The structure and culture of U.S. federalism intentionally grants states many areas of autonomy. Structurally, the open federal system allows states the freedom to act until stopped – stopped through political pressure, legal action, or congressional preemption. In practice, the federal government is often slow to act, giving states ample practical room in which to maneuver without challenge. Within their sovereign areas, states are free to be policy innovators.

The U.S. Constitution grants the federal government exclusive control over foreign affairs. Article I, section 8 gives Congress the power to regulate foreign and domestic commerce and declare war. Article I, Section 10 prohibits states from making treaties with other nations or making compacts with other states without congressional consent.

But the states are constitutionally authorized to regulate citizens in such a way as to protect their health, welfare, and morals. Such authority is reserved to the States by the 10th Amendment and is referred to as the police power.[2]

Regulating the welfare of citizens has come to mean that state and local officials are responsible for promoting economic growth. While the federal government sets trade and tariff policy, state and local governments are free to pursue their own economic development goals. States as well as local governments have a vested interest in promoting business in order to maintain a stable base from which to collect tax revenues and to keep voting citizens gainfully employed. Thus state governments

[2] The 10th Amendment states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Constitution, amend. 10.

are under a political mandate to promote growth as a part of maintaining the public welfare.

States are also responsible for maintaining the public safety. State legislatures pass laws defining crime and empower law enforcement and the courts to enforce those laws.

In the past, states were largely able to fulfill their responsibilities for economic development and maintaining public safety while acting within U.S. borders. But as rapid international developments have changed domestic economies and social conditions, states have found themselves developing interests in other nations even while still within the bounds of their constitutional responsibilities. The international arena is supposed to be the jurisdiction of the federal government only. But today, states need to export to maintain a healthy economy; state and local law enforcement want to know how to legally pursue a fugitive across international lines. As the nature of domestic problems has changed to include international components, the open U.S. federal system has allowed U.S. states to push that conceptual dividing line and claim authority in the new intermestic policy environment.

Even so, there is no clear constitutional pathway for states to take in order to act on domestic interests that now have international components. The full implications of internationally-active subnational governments for U.S. foreign policy and constitutional law remain to be seen and will no doubt be further developed by other scholars.[3] The following chapters of this dissertation consider the conditions under which states develop their international roles and the conditions under which the federal government will restrict them.

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[3] See Jack L. Goldsmith, "Federal Courts, Foreign Affairs, and Federalism," *Virginia Law Review* 83 (November 1997); Barry Friedman, "Federalism's Future in the Global Village," *Vanderbilt Law Review* 47 (October 1994); and Earl H. Fry, *The Expanding Role of State and Local Governments in U.S. Foreign Affairs* (New York: Council on Foreign Relations, 1998); Louis Henkin, *Foreign Affairs and the U.S. Constitution*, 2nd ed. (Oxford: Clarendon Press, 1996): Chapter VI; William Schweke and Robert K. Stumberg, *Could Economic Development Become Illegal in the New Global Policy Environment?* (Corporation for Enterprise Development, July 1999); and *Balancing Democracy and Trade: Roles for State and Local Government in the Global Trade Debate* (Washington, D.C.: Harrison Institute for Public Law, Georgetown University Law Center, September 2000).

The States, the Constitution and Foreign Affairs Powers

Before the current U.S. Constitution was passed, the original U.S. states ratified the Articles of Confederation in 1781. Article II allowed each state to "retain its sovereignty, freedom and independence." Article III bound the states to assist one another against attacks on their sovereignty because of trade disputes, among other possible causes.[4]

But the confederate structure did not achieve its goal of "creating a perpetual union of sovereign states."[5] Rather than offering assistance, states were often hostile to one another and competed aggressively against one another for trade advantages. States raised their own troops and entered into foreign treaties, all contrary to the Articles.

Soon momentum built in favor of a new government structure, a federal structure with a stronger central government and limited responsibilities designated to the states. The new U.S. Constitution, ratified in 1788, gave the central government more power, and reserved foreign affairs powers for the federal government, balancing duties between the Executive Branch and the Congress. The president was made the commander-in-chief of the armed forces, with the power to negotiate treaties and to appoint and receive ambassadors, with the advice and consent of the Senate. Congress was given the power to approve treaties, to declare war, and to regulate commerce with foreign nations as well as between the states.

The formation of the Union required that states cease representing themselves directly overseas in favor of the Union representing itself as one entity. But the

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[4] Article II states: "Each state retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled."
Article III reads: "The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their Liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever." Articles of Confederation, sec. II and III. Text available at http://odur.let.rug.nl/usanew/D/1776-1800/constitution/confart.htm.

[5] Earl Fry, *The Expanding Role of State and Local Governments in U.S. Foreign Affairs* (New York: Council on Foreign Relations Press, 1998): 56.

constitutional order does not cut the states out of the foreign policy process entirely. The Constitution does provide a means for the interests of state governments to be represented at the federal level, "an activity that must occur in *some* form if our system of government is to merit the label 'federal,'" writes John Nugent.[6] Simply put, the Framers of the U.S. Constitution saw a state's congressional delegation as the means by which a state's interests would be represented at the federal level.

Thus the House of Representatives and, more particularly, the Senate, is intended to be the venue for states to express their preferences on foreign affairs through votes on specific international policies such as approving treaties and ambassadors and waging war. And with the House's power of the purse, the House can deny funding to any foreign affairs initiative of which the Representatives do not approve, and can show support for U.S. foreign policy by approving appropriations for military programs and foreign aid.[7]

Although foreign affairs powers are given to both the Executive and legislative branches, the idea took hold early in the nation's development that the new nation should, in matters of foreign affairs, be represented by "one voice" — that of the U.S. President. Laurence Tribe writes: "In an era that could quite sharply distinguish action abroad from action at home, the unique posture of the President with regard to foreign affairs was proclaimed by then-Representative John Marshall, on 7 March 1800: 'The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations.'"[8]

This concept of presidential supremacy has been upheld in multiple Supreme Court cases. In 1936, the Court restated Marshall's words in *U.S. v. Curtiss-Wright Corporation* when it asserted that the President is the "sole organ of the federal government in the field of international relations."[9]

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[6] John Nugent, *Federalism Attained: Gubernatorial Lobbying in Washington as a Constitutional Function* (Ph.D. dissertation, University of Texas at Austin, May 1998).
[7] Peter Trubowitz and Brian E. Roberts, "Regional Interests and the Reagan Military Buildup," *Regional Studies* 26 (October 1992).
[8] Quoted in Laurence H. Tribe, *American Constitutional Law*, 2nd edition, (New York: The Foundation Press, 1988): 219.
[9] *United States v. Curtiss-Wright Export Corp*. 299 U.S. 304 (1936).

Curtiss-Wright and other Supreme Court decisions substantiate the concept of national leadership on the world stage as unitary, rather than composite, in nature. However, Tribe explains: "while it may be symbolically correct to say that the President is the sole national 'actor' in foreign affairs, it is not accurate to label the President the sole national policy maker."[10] Indeed, while the President is granted the power to initiate diplomatic moves and military action, the Congress acts as a check on the President through ratification of international treaties and declaration of war against other nations. This structural tension between the President and the Congress has been dubbed an "invitation to struggle" over the formation of foreign policy.[11]

Arguably, the Congress' broad and exclusive powers, derived from Article I, mean that the people's representatives have more influence on foreign policy than does the president. Writes David Gray Adler: "The president's constitutional authority pales in comparison to that of Congress."[12] According to the U.S. Constitution, the U.S. president must consult Congress on treaties, ambassadorial appointments, and warmaking.

But the idea of presidential superiority has in recent years caused the line dividing foreign affairs powers between the Congress and the President to shift. Although Congress is given the authority to regulate foreign commerce, as the U.S. role in the world economy has increased, Congress has yielded much of its regulatory authority to the Executive Branch to negotiate international trade treaties. So-called "fast-track" authority gives Congress the opportunity to either approve or disapprove, but not to alter, trade agreements negotiated by the Executive Branch.[13]

Whether or not there is a link between the increase in presidential power in trade negotiations and the rise of states forging their own international trade relations has yet to be thoroughly examined, but arguably, a stronger presidential role in trade

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[10] Tribe, p. 219.
[11] See Cecil V. Crabb, Jr. and Pat M. Holt, *Invitation to Struggle: Congress, the President, and Foreign Policy*, 4th edition (Washington, D.C.: Congressional Quarterly, Inc, 1992).
[12] David Gray Adler, "Court, Constitution, and Foreign Affairs," in *The Constitution and the Conduct of American Foreign Policy*, David Gray Alder and Larry N. George, eds (Lawrence, Kansas: University Press of Kansas, 1996).
[13] Philip A. Mundo, *National Politics in a Global Economy: The Domestic Sources of U.S. Trade Policy*. (Washington, D.C.:Georgetown University Press, 1999).

relations reduces the influence of states by reducing the input of their congressional representatives. This is a topic for future research.

This dynamic tension between the Executive and legislative branches over foreign policy formation have led to several foreign affairs cases before the Supreme Court. Yet most of these cases concern how foreign affairs powers should be divided between the two federal branches, not between the federal government and any subnational level of government. Tribe writes that the constitutional restriction prohibiting a state's entrance into "any Treaty, Alliance, or Confederation" (Article I, section 10) rests on the constitutional principle that "whatever the division of foreign policy responsibility *within* the national government, *all* such responsibility is reposed at the national level rather than dispersed among the states and localities."[14] (Emphasis original.)

But there are cases where the Court found the action of the states encroaching; some of these cases will be reviewed in an upcoming section of this chapter.

TYPES OF INTERNATIONAL INVOLVEMENT: GOVERNANCE AND ACTIVISM

There are two extra-constitutional ways that subnational governments can involve themselves in international affairs. One is a form of political protest, where states and city governments express opposition to federal policy, in what might best be called foreign policy activism, which will be explored in a moment.

The other way in which states are active in foreign affairs occurs when the state's normal governing concerns expand to include a foreign component. In attempts to govern effectively, states initiate policies that reach out directly to foreign actors and these contacts become regular and institutionalized. It is this type of activity that will be examined in this project, through the Texas-Mexico case study. When states are reaching out in order to meet domestic tasks, states seem to be most free to act without inciting protest.

[14] Tribe, p. 230.

Yet even in the course of international outreach for purposes of daily governance, states' actions can still cause problems for the nation as a whole. U.S. relations with other nations have been troubled when a U.S. state has executed a foreign national, pressed for the extradition of a fugitive, or levied taxes which foreign corporations found objectionable.

Municipal governments have for some time cultivated "sister-city" relationships with foreign jurisdictions.[15] U.S. states have "Sister States" with states and provinces in other nations, even China.[16] These "citizen diplomacy networks" emphasize cultural and social exchange more than they affect governance, but it may well be that sister-city and "good neighbor"-type organizations have laid a foundation for communication strategies developing at the subnational government level. The U.S. state of Arizona and the Mexican state of Sonora have institutionalized the concept of being good neighbors into the Arizona-Mexico Commission, a binational group concerned with improving the economic and environmental well-being of the two entities.[17]

States have for some time now been signing international "agreements" with foreign nations – the Arizona-Sonora Commission is one such development, but there are countless others. The state of Massachusetts signed a trade agreement with the Chinese Province of Guangdong in 1983.[18] The state of Alabama has an agreement to sell Cuba lumber, dairy cattle, and other agricultural products.[19] These documents are intended to be a non-binding summary of points of agreements between officials for the purposes of policy coordination, or at least the intent of coordination. Sometimes the documents are little more than a summary of the proceedings. The question about

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[15] See http://www.sister-cities.org/, "a non-profit citizen diplomacy network."
[16] See http://www.odod.state.oh.us/itd/SisterStates.htm
[17] See the Arizona-Mexico Commission, at http://www.azmc.org/index.asp?from=environment; Retrieved 28 August 2003.
[18] Peter K. Eisinger, *The Rise of the Entrepreneurial State: State and Local Economic Development Policy in the United States.* (Madison: University of Wisconsin Press, 1988): 302.
[19] WSFA.com, Alabama-Cuba Agree to Trade and China Gets Mill Equipment http://www.wsfa.com/Global/story.asp?S=1416385&nav=0RdEHeDl; 25 August 2003; Retrieved 2 September 2003.

such agreements is whether or not they could violate Article I, Section 10 of the Constitution. Article I states, "No State shall enter into any treaty, alliance, or confederation."

Often at the conclusion of their meetings, Texas and Mexican officials sign such a document. A Texas official says they are careful to ensure such a document is never worded like a treaty nor called a treaty.[20] A treaty would contain legally binding language.

There is no systematic process of reporting state-foreign agreements to the U.S. federal government. Peter Eisinger writes,

> …as more and more states have entered into trade agreements with foreign national and provincial governments, federal officials have had to struggle with the question of whether such accords violate the constitutional prohibition in Article I, Section 10…These memoranda of understanding, as well as the stationing of state trade representatives in foreign capitals, have been regarded by the Department of State as constitutionally permissible actions.[21]

But the issue has yet to be litigated in the courts, as of 2003.

The subsequent case study chapters examine these instances of how states expand their capacities to deal with these internationalized areas of domestic governance with no clear constitutional violation, in areas that are no longer strictly domestic but are not quite federal responsibilities.

Foreign Policy Activism

Sometimes subnational governments vocally oppose a federal foreign or security policy. This foreign policy activism is the type of activity most likely to be challenged by Congress or through the court system, and yet only the Massachusetts Burma law has been challenged so far.

Most of the time, foreign policy activism on the part of subnational governments has acted as a source of political pressure on Congress, leading to

[20] Telephone interview with Paco Felici at the Texas Office of the Attorney General, 11 February 1998.
[21] Eisinger, pp. 301-302.

changes in national policy. For example, in the early 1980s, more than 120 cities refused to cooperate with the Federal Emergency Management Agency's nuclear war civil defense program, which led to the federal government's cancellation of the program.[22]

In the 1980s, more than 800 local governments approved nuclear-freeze resolutions, prompting U.S. President Ronald Reagan to begin the Strategic Arms Reduction Treaty in Geneva.[23]

Also in the 1980s, more than 65 cities and 19 states divested more than $20 billion from firms with a commercial presence in South Africa, inspiring Congress to override a presidential veto and impose limited economic sanctions rather than continue the Reagan Administration's policy of "constructive engagement" with South Africa.[24]

But subnational governments have protested other federal foreign policies and found themselves under fire for doing so. In 1996, the state of Massachusetts, as well as several local governments throughout the nation, expressed their dissatisfaction with U.S. ties with the repressive government of Myanmar, formerly known as Burma, by boycotting U.S. companies with a presence there. Responding to public pressure, Congress passed its own sanctions law against Burma. But the state of Massachusetts continued to follow its own, more stringent law that forbade the state from procuring goods or services from companies with a presence in Burma. Massachusetts' law was challenged by a private business group and the case made its way to the Supreme Court. In the Fall of 2000, a unanimous Court found the state law unconstitutional on the grounds that the federal government alone is responsible for foreign affairs.[25]

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[22] "Civil Defense Plan on Relocation Out," *The New York Times*, March 4, 1985.
[23] Strobe Talbott, "Buildup and Breakdown," *Foreign Affairs* 62:3 (1983): 605.
[24] Peter J. Spiro, "State and Local Anti-South Africa Action as an Intrusion upon the Federal Power in Foreign Affairs," Virginia Law Review 72 (May 1986) 824-27.
[25] Peter J. Spiro, *U.S. Supreme Court Knocks Down State Burma Law,* American Society of International Law (June 2000; Retrieved 13 March 2003). Available from http://www.asil.org/insights/insigh46.htm . See also See David Schmahmann and James Finch, "The Unconstitutionality of State and Local Enactments in the United States Restricting Business Ties with Burma (Myanmar)," *Vanderbilt Journal of Transnational Law* 30 (May 1997).

By 4 July 2003, more than 130 local governments and three U.S. states had passed resolutions opposing the Patriot Act, the controversial legislation passed by the U.S. Congress after the terrorist attacks of 11 September 2001. Most of the resolutions acknowledge that all levels of government need to be involved in protecting the nation from terrorism, but object to the Patriot Act's provision for tactics such as surveillance, secret searches, and interrogation that can be seen as violating civil rights.[26] The outcome of this phase of foreign policy activism has yet to unfold.

Whether subnational governments' opposition to federal foreign policies results in a change in federal policy or a court challenge merits further study. Given the inconsistency of outcomes, one may conclude that such "activism" on the part of subnational governments appears to be an extra-Constitutional means for states to involve themselves in the U.S. foreign policy process, which in the open federal system cannot be automatically considered illegal, but requires legal or political action to stop. In the Massachusetts case, a politically powerful group opposed the action, indicating one condition under which states will be preempted.

DEBATE OVER THE STATES' ROLE IN AN INTERDEPENDENT WORLD

The effects of internationally-active states was the topic of a debate between Michael Shuman and Peter Spiro, published in a 1990 issue of *Intergovernmental Perspective.*

Shuman argues that if the Founders had wanted to restrict states entirely from contact with foreign nations, the Constitution would have explicitly restricted such contact. Rather, argues Shuman, the Framers anticipated that states would have contact with foreign countries and would have interests in U.S. foreign policy.

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[26] MSNBC, "Lane County (OR) Joins Governments Opposed to Patriot Act," 3 July 2003, Available at: http://www.msnbc.com/local/kmtr/D-74CAC0A9-B65A-4F98-A8D2-B414F44CFD1D.asp?cp1=1; Retrieved 28 August 2003; Dan Eggen and Jim VandeHei, "Ashcroft Taking Fire From GOP Stalwarts: More Wish to Curb Anti-Terrorism Powers," *The Washington Post*, Friday, 29 August 2003, Available at: http://www.washingtonpost.com/ac2/wp-dyn/A61836-2003Aug28?language=printer.

> The Constitution gave states numerous powers that underscored from the outset that they too have some role in national foreign policy," Shuman argues. "The First Amendment guaranteed the right of all citizens, including governors and mayors, to speak out on foreign policy. The Compact Clause anticipated that state and local governments would meet and negotiate with foreign jurisdictions, even without congressional approval. Likewise, federal courts were granted jurisdiction over controversies between states and foreign countries precisely because communications, relations, and deal making between the two entities were expected.[27]

Shuman implies that the Founders were not so naïve as to think that subnational governmental officials would always agree with federal policies. Shuman sees no real threat to the Constitution when state and local officials disagree with federal foreign policies, viewing such disagreement as a natural part of the political process in a federal system.

Peter J. Spiro, on the other hand, disagrees with Shuman over the significance of active states. He sees the decade of the 1980s, when subnational governments expressed their dissatisfaction with federal policies on nuclear weapons, South African apartheid, and the Nicaraguan *contras*, as a dangerous trend. He argues that foreign policy activism "threatens the institutional integrity of our foreign policymaking." He acknowledges that subnational governments have an appropriate role to play in, for example, attracting foreign investment. But Spiro's concern is that subnational governments walk a fine line between attending to "genuinely local responsibilities" and action that threatens to fragment foreign policy. "The only question is where the line should be drawn between acceptable and unacceptable local foreign policies, and how those actions which cross it can be prevented. The U.S. Constitution sets the line. It is Washington's responsibility to enforce it." He laments that "the federal government has been slow to protect its primacy in the area," and recommends the

[27] Michael Shuman, "What the Framers Really Said About Foreign Policy Powers," *Intergovernmental Perspective* 16 (Washington, D.C.: Advisory Council on Intergovernmental Relations, Spring 1990): 28. Article III, section 2, clause 1 of the Constitution gives U.S. courts jurisdiction over "Controversies…between a State, or the Citizens thereof, and foreign States, Citizens, or Subjects."

federal government set up oversight structures to monitor the activities of state and local governments.[28]

Part of the disagreement between Shuman and Spiro could stem from the fact that there is no clear link between expanded governance and foreign policy activism. Even Spiro acknowledges there are "beneficial forms of local participation in international affairs," such as cultural exchange, trade promotion, and the attraction of foreign direct investment; states are appropriately involved in such "low-politics" activities, says Spiro. What he is objecting to is when states become foreign policy activists, opposing federal positions on foreign economic and security policy.

The question, then, is whether the efforts of subnational governments to handle internationalized domestic issues automatically open the door to foreign policy activism.

It is arguable that as domestic policy has become globalized, subnational governments have become more internationally savvy. A characteristic of increasing interdependence is that domestic politics anywhere are less and less insulated from international politics everywhere. As subnational government officials realize the stake they have in international developments, and how U.S. foreign policy influences those developments, officials could feel increasingly justified in taking positions opposing federal policy.

Already state and local officials have held the federal government responsible for the effects of U.S. immigration policy. The federal government is responsible for *immigration* policy – setting the numbers of legal immigrants allowed and patrolling the borders. But state and local governments handle *immigrant* policy – because the states are responsible for the health, welfare, and education of its population.

Whether or not states must care for non-citizens is hotly debated. State actors argue that the presence of an illegal immigrant population is the result of failures at the federal level to adequately control the border. California has already taken issue with federal immigration policy as it affects the state's welfare and education spending. For

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[28] Peter J. Spiro, "The Limits of Federalism in Foreign Policymaking," *Intergovernmental Perspective* 16 (Washington, D.C.: Advisory Council on Intergovernmental Relations, Spring 1990): 32-34.

several years now, the states have demanded that the federal government reimburse them for the costs of incarcerating criminal aliens.

Since the terrorist attacks of 9/11, many have argued for increased monitoring of illegal immigrants. The Mexican government has urged authorities in the United States to accept a Mexican-issued identification card as a valid form of identity in the United States. Some jurisdictions in the United States have endorsed the cards even while the Federal Bureau of Intelligence has not.[29]

Likewise, controlling the flow of illegal drugs into the United States is primarily a federal responsibility, but states and cities must cope with the effects of illegal drugs in the form of local crime and addiction. Subnational medical marijuana initiatives dispute federal drug laws.

As states are more and more aware of the how federal policies affect them, exactly where Spiro would "draw the line" between reasonable and dangerous state involvement is less and less clear, making it all the more important to understand when the federal government allow the states latitude and when the federal government acts to restrict the states.

But as local interests are increasingly affected by international developments, subnational governments will likely continue to feel justified in opposing federal policy when they feel their interests are at stake. And as the United States enters into more international trade treaties, states will likely find more domestic interests affected by the treaty terms. Traditional state authority in areas such as state contracts and procurement, land use, insurance, and transportation of goods could be forced to yield to standards of international treaties, likely increasing intergovernmental conflict, affecting governance in the United States.

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[29] Nathaëla Budoc, *Rising Popularity, Rising Opposition--The Matricula Consular Identification Card*, email report issued by Frontera NorteSur, an outreach program of the Center for Latin American and Border Studies
New Mexico State University, Las Cruces, New Mexico (16 July 2003); Maria Peña, "Grupo Pide Más Restricción Contra Inmigrantes," *El Norte (de Austin)*, (August 2003): 1. See also http://www.fairus.org/html/911report_2003.html.

States' Interests and the National Interest: Conflictual or Mutual?

The prospect of continued differences between the federal government and subnational governments raises the other concern underlying the debate: what effect do internationally-active states have on the national interest?

The concept of the national interest is notoriously underdefined and subject to change as political need arises. Samuel Huntington's definition is quite specific: "A national interest is a public good of concern to all or most Americans; a vital national interest is one which they are willing to expend blood and treasure to defend…"

During the Cold War, the idea that states could have interests in foreign affairs separate from the national interest was not seriously considered. A political consensus reigned that the U.S. national interest comprised containing communism and supporting the spread of democracy. While there was dissent on the means to those ends, particularly during U.S. involvement in Vietnam, there was little debate over the United States' security goals.

But since the Cold War's end, Huntington explains, there is no consensus on what the national interest is. He writes: "The most striking feature of the search for national interests has been its failure to generate purposes that command anything remotely resembling broad support and to which people are willing to commit significant resources."[30]

Huntington laments how the "domesticization" of foreign policy has resulted in "the displacement of national interests by commercial and ethnic interests."[31] The role of federal governments in the "new world order" is increasingly the subject of debate, as subnational, transgovernmental and nonstate actors become increasingly active in foreign affairs.[32]

States pursuing "their own" foreign interests means the national interest is reduced to "economic particularism," Huntington calls it, which fragments the United States. Huntington writes: "Without a sure sense of national identity, Americans have

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[30] Samuel P. Huntington, "The Erosion of National Interests," *Foreign Affairs* 76 (September/October 1997): 40.
[31] Huntington, p. 40.
[32] See Anne-Marie Slaughter, "The Real New World Order," *Foreign Affairs* 76 (September/October 1997): 183-197.

become unable to define their national interests, and as a result subnational commercial interests and transnational and nonnational ethnic interests have come to dominate foreign policy."[33]

After 11 September 2001, national security concerns once again dominate the U.S. foreign policy agenda. Does the War on Terror translate into a national interest strong enough to unify the nation? Likely yes. But this time around, state and local governments are being asked to play a larger role in national security than ever before, and some are not hesitating to express their disagreement with measures such as the Patriot Act. And states are continuing to pursue foreign relations in order to fulfill their local interests.

While there may be no such "interest" which manifests itself at the national level, U.S. states are committing significant resources, albeit short of blood, to local issues, particularly matters of foreign trade and economic development. Chapter Three will show how willing states have been to commit resources in order to compete against one another for economic gain in a globalized economy.

The question then becomes whether or not the nation as a whole can have a national interest that commands loyalty even while states pursue their own overseas interests. Those who research sectionalism in U.S. politics would argue that throughout the nation's history, the sum of subnational interests has equaled the national interest. Peter Trubowitz has illustrated that even during the Cold War, a time when there was supposedly a "national interest" which was superior to just the sum of subnational interests, support for national security policies rested on regional domestic support. The national interest was actually the product of domestic political struggle between subnational actors with specific interests based on regional resources and capabilities. Trubowitz' analysis upholds the concept that the national interest is the culmination of regional interests. He also illustrates that the national interest is multifaceted, comprising economic as well as military issues, quality of life as well as security. Trubowitz shows how economic gains and losses – the effect of the developing global

[33] Huntington, p. 29.

economy on domestic actors – were deciding factors in the regions' support of Cold War power policies.[34]

David Clinton affirms that the national interest has in the past been defined as the sum of subnational interests. He quotes Arthur Bentley: "'We shall never find a group interest of the society as a whole…(T)he society itself is nothing other than the complex of the groups that compose it.'" Clinton also outlines Charles Beard's argument that any "'particularities'" which succeeded in "imposing themselves on the political system meant by definition that they were a part of the common good."[35] Thus it can be argued the states' international linkages, yet unchallenged by the federal government, have insinuated themselves into a national practice and are thus a component of the common good.

WHO REGULATES THE STATES?

This section elaborates how each of the federal branches could act to limit the states, but how they likely will not because the interests of each branch are not necessarily threatened by current developments in state-foreign relations.

The Courts

Throughout the case law restricting states from international involvement runs the theme that states, in pursuing their own interests with other nations, risk undermining the national interest. The Court consistently has reasoned that states should be limited in foreign affairs because their involvement in the international arena could be harmful, even dangerous, to the nation as a whole.

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[34] See Peter Trubowitz, *Defining the National Interest: Conflict and Change in American Foreign Policy* (Chicago: University of Chicago Press, 1998).
[35] W. David Clinton, *The Two Faces of National Interest* (Baton Rouge: Louisiana State University Press. 1994): 26.

Underlying this assumption is that states might have interests that the federal government does not adequately represent, but this assumption has not explored by the Court.

Holmes v. Jennison, heard in 1840, was one of the first cases to establish the idea that a states' entry into international affairs could only work ill for the nation. The case involved the state of Vermont's plan to return Holmes, a suspected murderer, to Canadian authorities seeking his arrest. Chief Justice Roger Taney objected to a U.S. state claiming the authority to perform (or deny) an extradition request from a foreign nation. If states had that power, he wrote, "then every state of the Union must determine for itself the principles on which they will exercise it; and there will be no restriction upon the power, but the discretion and good feeling of each particular state."[36] Taney wrote, "Any intercourse between a state and a foreign nation was *dangerous* to the Union" (emphasis added) because such contact might "open a door of which foreign powers would avail themselves to obtain influence in several states."[37] Taney feared other nations might use a good relationship with a state government as a back door to influence U.S. policy.

In an 1875 case, *Chy Lung v. Freeman*, the Court ruled against a California state law requiring bond payments be made by foreign nationals arriving by ship. The court acknowledged that while some state laws were "necessary and proper" to protect states against "paupers and convicted criminals from abroad," regulating entry of foreign nationals into the United States is a federal, not a state, function, just as the regulation of foreign commerce belongs to the federal government. The Court added, "If it be otherwise, a single State can, at her pleasure, embroil us in disastrous quarrels with other nations."[38] This case explicitly placed responsibility for immigration policy with the federal government, and not the states, at a time when states were even then internationally active seeking to attract immigrant labor to their states.[39] Immigration

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[36] *Holmes v. Jennison* 39 U.S. (14 Pet.) 568 (1840).
[37] Ibid at 574-575.
[38] *Chy Lung v. Freeman* 92 U.S. 275, 280 (1875).
[39] *Chy Lung v. Freeman,* 92 U.S. (2 Otto) 275, 23 L.Ed. 550 (1875). See *A Legal History of Chinese-Americans: Case Law* (Retrieved 27 August 2003) Available from http://www.chiamonline.com/Laws/case.html.

remains one area in which federal and state concerns converge in a dynamic flux of neither strictly domestic nor strictly foreign policy.

In writing the opinion of the court in the *Curtiss-Wright* case in 1936, Justice Sutherland made it clear that states did not have the capacity or role to have direct relations with foreign governments. He recalled the intentions of the Framers of the Constitution: "though the states were several their people in respect of foreign affairs were one (sic) …In that convention the entire absence of state power to deal with foreign affairs was thus forcefully stated by (signer of the Constitution) Rufus King: 'Considering (the states) as political beings, they were dumb, for they could not speak to any foreign sovereign whatever.'"[40]

In *U.S. v. Belmont* (1937) the Court upheld the concept that the United States is a unitary actor in foreign affairs:

> In respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear…Within the field of its powers, whatever the United States rightfully undertakes, it necessarily has warrant to consummate. And when judicial authority is invoked in aid of such consummation, State Constitutions, state laws, and state policies are irrelevant to the inquiry and decision.[41]

Continuing this theme, a few years later, in *U.S. v. Pink* in 1942, the Court wrote, "Power over external affairs is not shared by the States; it is vested in the national government exclusively."[42]

A 1968 case, *Zschernig v. Miller*,[43] involved an Oregon state allowing U.S. citizens to inherit funds from foreign estates, and for foreign heirs to inherit the proceeds of Oregon estates "without confiscation." The constitutionality of the law was challenged by heirs in East Germany. The Court felled the state law because it intruded into the field of foreign affairs, even though the U.S. Department of Justice, appearing as amicus, testified the state law did not interfere with the conduct of U.S. foreign relations.

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[40] *Curtiss-Wright* 299 U.S. 304.
[41] *U.S. v. Belmont* 301 **US** 324 (1937).
[42] *U.S. v. Pink* 315 U.S. 203 (1942). See also Tribe, 230
[43] *Zschernig v. Miller* 389 U.S. 429 (1968).

Thus the Court has developed a view of the states as subordinate to the federal government in foreign affairs not only on a constitutional basis, but because independent relations with foreign nations would prove dangerous to the national unity. Taney implied that the states' tendency to compete with one another would overrule their "good feeling" towards one another and towards other nations and lead them towards actions that would jeopardize the nation as a whole.

This is not an exhaustive list of Supreme Court decisions, but enough to show the legal basis upon which the concept that states should be restricted from foreign affairs rests. But as Tribe suggests, all these cases were decided during a time when state action abroad could be conceived of as separate from state action at home, and therefore that subnational governments could be limited to one sphere, that of domestic policy. Although this was not an unreasonable assumption for the time, even then it was challenged by reality. That these cases rose to the Supreme Court level show that subnational governments were already crossing that imaginary line separating domestic from foreign affairs, and offending a politically significant complainant capable of challenging the state effectively. Even subnational governments of the past were not completely insulated from the foreign "sphere," and the developments of the past thirty years have only accelerated the exposure of domestic politics to international influence.

Crosby v. National Foreign Trade Council, popularly known as the Massachusetts Burma case, is the most recent case in which the Court could have explored what the states' constitutional role in foreign affairs should be. Even though the Court preempted the state law on the grounds of federal supremacy in foreign affairs, the Court did not address how far the states can go in developing their international roles.[44] So the doctrinal theme stands, that according to the Court, internationally-active states threaten the objectives of federal foreign policy.[45]

But because U.S. states have so many governing responsibilities, many subnational government activities now fall into a grey area: while no longer

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[44] *Crosby*.

[45] See Daniel Halberstam, "The Foreign Affairs of Federal Systems: A National Perspective on the Benefits of State Participation (Symposium: New Voices on the New Federalism)." *Villanova. Law Review* 46, no. 5 (2001): 1015-68.

exclusively domestic actions in either cause or effect, nor are they federal responsibilities. Jack Goldsmith writes, "Sometimes, states act in ways that adversely affect U.S. foreign relations but that do not violate any provision of the Constitution and that are not preempted by federal statute or treaty. For example, states execute aliens, tax multinational corporations, declare themselves refugee sanctuaries, and violate customary international law."[46]

Can the courts be relied upon to rein in subnational governments? The U.S. Supreme Court has original jurisdiction to hear cases filed by one state against another state or between the federal government and a state. While Congress or the Executive Branch could challenge any action by a U.S. state, the following sections will explain why that is unlikely to happen.

The Supreme Court has appellate jurisdiction over cases that originate in a lower court, either federal or state. In the U.S. adversarial legal system, a lawsuit begins with an injured party deemed by a judge to have standing in the case, a significant enough interest in stopping the activity to sue. When states, in exercising routine governing authority, establish international ties for purposes of governance, there are not likely to be many injured parties. Even if there were a critical mass of injured parties, a protest against the state would likely not proceed.

Certainly in trade matters, there are winners and losers created by U.S. trade policy. But because the federal government is primarily responsible for setting trade, immigration, and foreign policy, the states, at least in theory, enjoy a layer of insulation from responsibility. The trade policy decisions that result in certain sectors suffering and workers being dislocated – the creation of "winners and losers" – emanate from the federal level. While local businesses might complain about certain initiatives or actions taken by a state, the negative effects by trade policy are the outcome of federal actions, and would most likely result in a challenge to the federal policy, not a state's commercial efforts.

[46] Jack L. Goldsmith, "Federal Courts, Foreign Affairs, and Federalism," *Virginia Law Review* 83 (November 1997):1620.

Were there a challenge to the connections between a U.S. state and a foreign nation, a court would likely let stand an arrangement that did not implicate an important federal interest, says Jack Goldsmith of the University of Chicago School of Law.[47] But separating domestic from foreign interests is not as simple as it once was. For some 200 years "foreign relations" has been primarily defined in terms of military and diplomatic affairs, unquestionably federal responsibilities. Yet today, U.S. foreign policy covers a wide range of issues far beyond military affairs

So while the courts have historically been the venue through which questions about U.S. foreign affairs are considered, but many obstacles must be overcome for courts to consider the increasing international role of the U.S. states.

[47] Telephone interview with Jack L. Goldsmith in Chicago, 29 April 1999.

The Executive Branch

While the Executive Branch agencies could respond in ways that restrict internationally-active states, this is not likely to happen. One reason is that the Executive agencies spend few resources monitoring the profusion of activity at the subnational government level, and certainly will not know every time a subnational official meets with a foreign counterpart. The agencies may not even be particularly concerned with how state and local governments meet their governing goals. For the most part, agency relations with the states are constructive, and the federal agencies rely on the states to implement many federal policies. Even mild interference with routine state functions by federal officials could be politically sensitive.

If a federal agency were serious about restricting a state's action, the federal agency would threaten to withhold or delay federal funds, threaten a lawsuit to preempt state law, or threaten adverse publicity. But constitutionally, the federal government is not supposed to encroach on the states in their areas of authority. The melding of foreign and domestic policy means there is less clarity on the distribution of authority, but the threatened state could respond by protesting that its actions are within its jurisdiction.

But the Constitution prohibits states from making treaties without congressional consent, and this aspect of the law is indisputable.[48] Even so, U.S. states frequently conclude meetings with foreign governments by drawing up documents summarizing the meeting. In the case of Texas-Mexico relations, Texas officials say they are careful to ensure such a document is never worded like a treaty nor called a treaty or compact. In the past, such papers were called "agreements" or "accords," or a "memorandum of the proceedings," a "joint statement," or a "statement of intent." Currently the most popular term, which also sounds the least binding, is "arrangements."

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[48] Article I, Section 10 states: "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal;…No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws…No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of Delay." U.S. Constitution, article I, sec. 10.

The Treaty Office of the U.S. Department of State (U.S. DOS) is responsible for reviewing the language of every agreement entered into by the U.S. government. The Treaty Office's goal is to preserve the prerogative of the Executive Branch and Congress in foreign affairs, to prevent any erosion of the federal government's treaty power. The U.S. DOS is generally aware that states keep written documentation of their meetings with representatives of foreign governments, but sometimes, the Office is not aware of specific developments. A Treaty Office representative says the office checks about one state-foreign document a month, but admits there is likely a fair amount of state-level international activity of which the office is not aware. Because the Office does not monitor the states' activities directly, it is up to the states to inform the Treaty Office when they negotiate relations directly with a foreign government. If the states don't tell, the federal government likely will not know. A state may, either deliberately, out of negligence, or out of ignorance, fail to inform the federal government of the existence of an international document.

In some cases, the foreign government, and not the U.S. state, will request a review of the wording of a state-foreign "memo," because the foreign power wants to ensure it is not about to make a legal commitment to a U.S. state. If the language of a state-foreign document sounds too much like a promise – for example, if it contains words like "will" or "shall," – then the Treaty Office will advise the state and the foreign nation to change the wording of the memo to make it nonbinding. If a state-foreign arrangement were found to be legally binding under international law, the U.S. federal government could be held responsible for the failing of a U.S. state. This is one reason why states are prohibited from signing treaties.[49]

And, the Treaty Office must make sure that even a nonbinding arrangement does not run afoul of the compact clause and allow a U.S. state to tip the balance of power towards the state and away from the federal government.

In the past, the U.S. Department of State has acted to restrict states from forming international relationships. When Florida considered a trade promotion

[49] Duncan Hollis. Attorney- Adviser, U.S. Department of State Treaty Office, Personal interview in Washington, D.C. 8 November 2000.

agreement with Cuba in 1937, U.S. DOS declared that its "policy in regard to promotion of commerce with foreign countries and the negotiation of commercial treaties does not contemplate the conclusion of special agreements or pacts between separate states and foreign governments even if the consent of the Congress to such special agreements could be obtained."[50]

But things changed. In 1984, Kincaid writes: "The Department of State now sees the Constitution as giving the states considerable freedom in foreign trade matters; the department provides the governors with briefings, including some from the secretary of state; it facilitates state activities abroad through its embassies and consulates."[51]

The Executive agencies are not likely to act to restrict states because they work cooperatively with state agencies in many areas of federal regulation. The U.S. Department of Commerce (U.S. DOC) has for decades enlisted the help of state and municipal governments in export support and in attracting foreign investment, and has vigorously supported the capacity of states in this regard. U.S. DOC supports states in overseas trade missions and fairs; a U.S. DOC commercial attaché is even housed in the Texas economic development agency. Similarly, the Environmental Protection Agency utilizes the Texas Natural Resources Conservation Commission to implement border environment policy.

The Executive Branch agencies are not likely to seek to restrict states because: 1) agencies do not monitor all state-level activity; 2) states will not always inform the agencies of their actions; and 3) federal agencies rely on state agencies to implement U.S. policy and therefore want to maintain good relations.

Congress

There are many areas in which the states and federal government are both legally able to legislate; this is called concurrent jurisdiction. If the states legislate in a manner that Congress finds objectionable, the burden is on Congress to either prohibit

[50] Kincaid "The American Governors in International Affairs." *Publius* 14 (Fall 1984): 99.
[51] Kincaid (1984): 113. But U.S. states are currently aggressively pursuing trade relations with Cuba, despite the continued federal embargo, with little evident reprimand on the part of the federal government.

or preempt state law, as long as there is a constitutional basis for Congress to do so. The doctrine of "foreign affairs preemption" allows courts to invalidate state actions that impinge on federal foreign relations interests. But if Congress has not acted in a certain legislative area, does this mean the states are free to act until preempted by Congress? And if the states are acting and Congress does not stop them, does this mean Congress has given tacit consent to the states' actions? Not necessarily – in either case.

Sometimes Congress will not preempt or prohibit a state action because of a lack of political will. In the 1980s, several states levied "unitary" taxes on multinational corporations (MNCs), by calculating a corporation's tax base on its profits as a worldwide entity, not taxing only profits made in that particular state. Many MNCs objected and began lobbying Congress to end the practice. However, state congressional delegations were reluctant to restrict the state's practice. Thus Congress considered outlawing the state practice, but failed to do so. Unsatisfied with the political inaction, Barclays Bank of London pursued a court case against California, the largest state to employ the unitary tax calculation. The case went to the U.S. Supreme Court, and in June 1994, the Court ruled California had the right to levy a unitary tax and that Congress should make such a tax illegal if it did not like the practice.

There are two interpretations of this case. One is that California's actions – in the absence of U.S. policy – caused a foreign relations controversy and thus the states' use of the unitary tax should have been preempted, given federal preeminence in foreign affairs. But, Congress could not agree whether or not to preempt the state. Thus another interpretation of the case holds that congressional failure to act can be construed as de facto consent for the states to act in the absence of congressional action. The Supreme Court ruling in Barclay's case upheld the notion that states are free to act in the absence of congressional action.

In the future, congressional inaction of the type seen in the unitary tax case could become more common; after all, Congress is composed of state delegations with a strong interest in the domestic welfare of their states, states whose well being is now inextricably intertwined with that of foreign actors.

In a more recent case, the U.S. Supreme Court found the state of Massachusetts' sanctions against Myanmar (Burma) unconstitutional on the basis of interference in federal authority to regulate foreign affairs, discussed above.[52]

The scope of preemption doctrine is unsettled, as the two very different outcomes in the Barclays Bank case and the Myanmar case attest.

How would Congress handle the issue of states signing "memos" with a foreign government? The Constitution states: "No State shall, without the Consent of Congress… enter into any Agreement or Compact with another State, or with a foreign Power…" Does this mean Texas should seek congressional consent every time state officials sign a "memo" with Mexican officials? No. Congress has declared that not all compacts require congressional consent; what matters is the state's intent behind the documents. The 74th and 88th Congresses[53] issued the following statement on the constitutional prohibition:

> The terms 'compact' and 'agreement'…do not apply to every compact or agreement…but the prohibition is directed to the formation of any combination tending to the increase of political power in the States which may encroach upon or interfere with the just supremacy of the United States. The terms cover all stipulations affecting the conduct or claims of states, whether verbal or written, formal or informal, positive or implied with each other or with foreign powers.[54]

Clause 3 of Article 1, section 10, allows for Congress to oversee lower-level external relations between states and foreign powers, writes Greg Craven. "The basic effect is that the Constitution permits 'non-political' external relations by a state, subject to the supervision of Congress."[55] But as in the case of the Executive Branch

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[52] Spiro (June 2000).
[53] The 74th Congress met from 1935-1936; the 88th from 1963-1964.
[54] Senate Document 39, 88th Congress, 1st Session, pp. 416-419, Quoted in Roger Frank Swanson, *State/Provincial Interaction: A Study of Relations Between US States and Canadian Provinces* Prepared for the US Dept. of State (Washington, DC: Canus Research Institute, 1974): 52.
[55] Greg Craven, "Federal Constitutions and External Relations," in Brian Hocking, ed., *Foreign Relations and Federal States.* (London: Leicester University Press, 1993): 16.

agencies discussed above, Congress would have to be aware of a state-foreign action in order to either block it or grant permission for it.

Congress could restrict a state's actions through control of federal funds, specifying that such funds cannot be used for overseas activities that Congress felt was encroaching on federal supremacy. Yet, denying funds in many cases would be ineffective – as the Texas-Mexico case study will show, that there is very little federal funding that goes into the state's international intergovernmental relations.

CONCLUSION

It appears as though a challenge to the states from either of the federal political branches or the courts is unlikely as long as the nature of the states' activities remain focused on finding non-binding, cooperative solutions to what are essentially domestic problems involving foreign actors. But as the nature of foreign relations becomes more state-oriented, the laws and practices governing state-foreign relationships are bound to evolve in unforeseen ways.[56]

The Massachusetts case shows that the federal government might restrict the state if the state's action is challenged by a politically significant complainant. But if states are furthering or implementing U.S. federal goals, then the federal government is unlikely to challenge or constrain the states.

What are the policy areas in which there are is likely to be an organized significant complainant? And in what policy areas are the mutual goals of the states and federal government not likely to produce an injured group to complain? These questions will be considered in the upcoming case study chapters.

But first, the next chapter explains how U.S. states within the open federal system developed interests in international politics as changes in global economics transformed U.S. domestic politics.

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[56] Federal officials did object to the Southwestern border governors discussing issues of federal jurisdiction with Mexican governors in 1980. More on that coming up in Chapter 5 on Relations.

CHAPTER THREE
HOW U.S. STATES BECAME GLOBAL ACTORS

INTRODUCTION

Now that the legal and political context has been laid out in Chapter Two, we can turn to the story of how U.S. states became global actors. This is also the story of how worldwide economic forces reshaped the U.S. economy as trade became integral to U.S. foreign policy.

This chapter addresses part one of the research question: given the constitutional restrictions on U.S. states, why have states developed relations directly with foreign nations?

This chapter argues that U.S. states developed interests overseas as the U.S. economy integrated itself into the world economy. The openness of the U.S. federal system gives states the freedom to pursue local economic development needs. As states competed against one another for international economic advantage, the results were state-level policy initiatives such as economic development agencies, overseas trade offices, and export support programs.

Trade is one area in which the states and the federal government share policy goals. National economic goals are met as subnational governments meet their own policy goals. Therefore the federal government has encouraged the states' endeavors to promote international trade, and has put federal programs in place to assist the states. But the states' trade promotion mechanisms were developed more through state-level innovation and competition than through federal incentive.

The first part of this chapter explains how the roles the federal government and the states play in economic development have developed over the course of the nation's history, focusing on how the development of economic globalization following World War II affected the U.S. economy. Then the strategies the states developed to adjust to the changing world economy are explored: competing for foreign direct investment,

opening overseas trade promotion offices, and increasing the capacity of local businesses to export goods. The general historical development this chapter offers then leads into Chapter Four, which looks at the specific ways Texas responded to the changing global economy by employing these same international outreach strategies.

THE STATES AND ECONOMIC DEVELOPMENT

The economic development of the U.S. states, while geographically and regionally uneven, has not occurred separately from the concurrent development of the U.S. and world economies. Since World War II, the forces that have reshaped the global economy are the same forces that have caused the states to establish a place for themselves in the world economy. John Kline writes, "The potential for a contemporary state role (in foreign affairs) did not arise until international economic forces penetrated the U.S. economy sufficiently to intersect traditional state economic-regulation interests and prerogatives."[1]

The traditional roles each level plays in economics are as follows: constitutionally, the U.S. Congress has the authority to regulate both domestic and foreign commerce as it flows between U.S. states and between the United States and foreign nations.[2] The federal political branches create economic development policy and trade policy, set tariffs, negotiate and approve international treaties, and set certain standards for how goods are to be processed, contained, and transported. But the states are sovereign in several areas of commercial activity including but not limited to transportation, safety, and sanitary standards. As the U.S. federal government enters into more international trade treaties, the momentum is towards a single international standard that subnational governments in signatory countries must implement. The states are finding some areas of traditional regulatory authority overtaken by the federal

[1] John M. Kline, *State Government Influence in U.S. International Economic Policy.* (Lexington, MA: Lexington Books, 1983): 7.
[2] Section 8, Clause 3 of the Constitution authorizes Congress to regulate commerce with foreign nations and among the states.

government. The effect is that the regulation of commercial goods is now more than ever shared between the U.S. state and federal governments.

For federal economic policy to be successful, subnational governments must implement it. As Peter Eisinger puts it, "In the United States, economic development involves efforts to foster subnational economies…the national economy is to some degree the sum of its subnational parts, some developed and prosperous, some not, and all in mutual competition for private investment and resources."[3]

Alberta Sbragia explains that U.S. subnational governments have the autonomy to make their own investment decisions, so states take the lead in fostering their own economic development, including acquiring investment from foreign sources. Structurally then, in the United States "the federal government (plays) an investment role subordinate to that of state and local government."[4]

Both the federal and state governments can spend tax dollars on economic development programs. "Unlike congressional regulatory legislation, federal spending for economic development does not preempt state development spending," writes Robert Stumberg. "Congress may attach conditions for states that want to take the federal money, but states have a choice to turn down the federal money and do what they want."[5]

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[3] Peter K. Eisinger, *The Rise of the Entrepreneurial State: State and Local Economic Development Policy in the United States (*Madison: University of Wisconsin Press, 1988): 3-4. Eisinger defines economic development as "those efforts by government to encourage new business investment in particular locales in the hopes of directly creating or retaining jobs, setting into motion the secondary employment multiplier, and enhancing and diversifying the tax base."

[4] Alberta M. Sbragia, *Debt Wish: Entrepreneurial Cities, U.S. Federalism, and Economic Development* (Pittsburgh: University of Pittsburgh Press, 1996): 25.

[5] Robert Stumberg, of the Harrison Institute at Georgetown Law Center, personal email, "Re: a question and a schedule problem," 8 July 2002.

The Role of Business

In order to have resources with which to govern, governments at all levels develop a special relationship with the business sector. Kenneth Thomas writes,

> Governments rely on business for economic activity to tax, as well as for job creation. Without these factors, they have neither the funds to carry out their jobs nor an economic performance that is likely to get them reelected…Because business performance is so crucial to governments, its status is far more central than that of a special interest group…in other words, government negotiates with business over the conditions of investment.[6]

Thus government in the United States emphasizes policies and regulations that support business development. Almost all investment and production decisions in the United States are made by the private sector, unlike European and Japanese systems with a much higher degree of public intervention in business.[7]

U.S. national trade policy historically has rested on two principles: that of non-discriminatory "national treatment," in which foreign investors are treated the same as domestic investors, with some national security exceptions for technology and strategic minerals. The other principle is of a general "open door" policy, which means the national government neither discourages nor encourages foreign investment in the United States, "but rather provides a framework within which investment flows can be determined as much as possible by free market forces."[8]

The U.S. Department of Commerce describes itself as being "in partnership with U.S. business…to maintain a prosperous, productive America, committed to consumer safety, protective of natural resources and militarily strong."[9]

The following sections will show that as the domestic business climate was changed by exposure to international market forces, the struggle to maintain a viable tax base and gainful employment pushed state governments to reach outside the United

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[6] Kenneth Thomas, *Competing for Capital: Europe and North America in a Global Era.* (Washington, D.C: Georgetown University Press, 2000): 24-25.
[7] Eisinger, p.5.
[8] Kline (1983): 89.
[9] *From Lighthouses to Laserbeams: A History of the U.S. Department of Commerce* (Washington, D.C.: Office of the Secretary Ronald H. Brown, 1995): 33.

States in search of economic development opportunities. After this historical development is outlined, a closer look will be taken at the mechanisms the states developed, such as overseas offices and means of supporting exports.

From the Beginning: National Economic Development and the States

The integration of the United States into the world economy has taken place perhaps more slowly than in other nations because of the vast resources and wealth of this nation. For so long, domestic businesses thrived on the strength of the internal market without needing foreign expansion. With some exceptions, the U.S. economy was relatively insulated until the 1970s. At that point, the U.S. market opened at a dizzying pace, and it became unmistakably clear that international political and economic developments now affected the most basic level of domestic economics and politics in the United States.

But to varying degrees, U.S. states have pursued clearly identifiable interests with other nations from the moment the states were formed. The original thirteen colonies, from whence the United States grew, pursued their own international economic interests with abandon. Even Founding Father and signer of the Constitution Benjamin Franklin represented the mercantile interests of Pennsylvania and three other colonies while in Paris and London.[10]

Under the Articles of Confederation, the power of state governments far outweighed the authority of the central government. Article II granted each state its "sovereignty, freedom, and independence" and entitled the states to "every power, jurisdiction, and right" not assigned to the national government. Congress was permitted to make war and peace, to send and receive ambassadors, to enter into treaties and alliances, to coin money, establish a post office and administer Indian affairs, but was not permitted to raise taxes or regulate commerce.

[10] John Kincaid, "The American Governors in International Affairs," *Publius: The Journal of Federalism* 14 (Fall 1984): 97.

With no overarching authority governing commerce, the states engaged in competitive trade wars against one another. States treated goods from other states as if they were goods from foreign countries. For example, Rhode Island would place special duties on "imports" from Connecticut or New York; those states in turn would slap charges on goods from Rhode Island. States also routinely ignored provisions of the treaties negotiated by Congress. Meanwhile, the central government, with no taxing authority, was perpetually bankrupt.[11]

It soon became clear the confederate design was not meeting the needs of the growing nation. A new constitutional convention was assembled in Philadelphia; the Articles were thrown out and the delegates began the process of negotiating a new constitution. The 1788 Constitution gave Congress the power to levy and collect taxes and duties and to regulate commerce with foreign nations as well as between the states. The states were prohibited from forming treaties or international agreements, but ensured influence in foreign affairs through votes on treaties and ambassadors and through the House of Representatives' control of the federal government's newly-gotten funds. [12]

During the 1800s, rapid population growth and Westward expansion meant that most businesses were satisfied with domestic market opportunities, so state governments were not under pressure to support their commercial sectors in international expansion. [13]

But early on in the nation's development, states forged international relationships with bankers as they financed internal developments to support domestic economic expansion. Alberta Sbragia examines how U.S. states, not the federal government, mobilized financial resources for building the crucial transportation infrastructure necessary for development to take place in the 1800s. In the industrializing years before the Civil War, state governments actively pursued their own economic development by establishing banks and granting corporate charters and franchises. States developed the

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[11] Earl Fry, *The Expanding Role of State and Local Governments in U.S. Foreign Affairs.* (New York: Council on Foreign Relations): 56.
[12] Ibid.
[13] John Kincaid, "American Governors in International Affairs," in *Publius: The Journal of Federalism* 14 (Fall 1984): 98.

legal right of eminent domain in order to lay claim to property as needed for internal developments such as railroads.[14]

States competed fiercely against one another even then. At this point in time, the incentive was to develop the infrastructure necessary to establish and control trade routes to the rapidly growing country's interior. "To lose in the transportation race was, at best, to lose regional economic supremacy and, at worst, to suffer dramatic economic losses," Sbragia writes. As transportation routes went, so went urbanization: the towns of Utica, Syracuse, and Rochester flourished after New York state built the Erie Canal in 1825. New York State's plans spurred other states to begin their own transportation projects. Pennsylvania was first to respond; then Ohio began building canals in 1825; in 1827, South Carolina began constructing the Charleston and Hamburg Railroad; Maryland and Virginia broke ground on canals in 1828; and in 1836, Indiana planned canals and railroads for the entire state.[15]

States clearly embraced their role as forces of economic development. When Michigan gained statehood in 1835, its state constitution even declared outright "internal improvements shall be encouraged by the government of the state." State politicians nationwide took to this idea. Political battles took place within state legislatures about where to locate infrastructure projects, but few questioned that internal improvements were an appropriate activity for state governments to pursue.[16]

To fund these projects, states borrowed substantial amounts of capital, often from foreign banks. Some states accumulated more debt than they could repay. As some states began to default on their loans, foreign lenders shunned all U.S. states as high-risk. State legislatures in the states that defaulted or nearly defaulted quickly passed mandatory debt limits for their states, often in the form of constitutional amendments. These restrictions, says Sbragia, "established a norm of limited rather than expansive public investment. The acceptance of restrictions preempted any potential federal role in regulating state investment" because the states showed themselves capable of self-regulating without federal intervention. Whereas subnational governments in European

[14] Sbragia, pp.20; 25-26.
[15] Ibid, p. 28.
[16] Sbragia, pp. 29-31.

federal systems have their levels of borrowing and investment controlled by their federal governments, U.S. subnational governments remain autonomous when it comes to capital investment levels.[17] This structural feature sets the stage for states to develop the global roles they play today, courting foreign direct investment and promoting local business expansion.

The passage of the Fourteenth Amendment restricted the states' capacity to exercise eminent domain and lay claim to privately-owned lands for government purposes without adequately compensating the owner. Later, states imposed debt limits and withdrew somewhat from building canals and railroads; local governments took up some of the slack. The U.S. federal government subsequently became more active in funding capital projects, such as the transcontinental railroad and later the interstate highway system.

The nation's development was temporarily sidetracked by the Civil War. Relatively steady growth ensued during Reconstruction.

At the end of World War I, the U.S. economy was still healthy enough that there were few pressures for domestic businesses to venture into exports. This was just as well, as the War had also led the federal government to develop greater interests in foreign affairs, "which inclined it to protect its prerogatives," writes John Kincaid.[18] At the same time, an isolationist mood evidenced itself as the United States rejected membership in the League of Nations.

In domestic economic matters, the federal government took a step towards increasing its role when the U.S. Department of Commerce opened a Division of Domestic Commerce in July of 1923, to "coordinate domestic commerce studies and to conduct research on such general problems as plant location, warehousing and distribution."[19]

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[17] Ibid, pp. 40-43.
[18] Kincaid (1984): 99.
[19] *From Lighthouses to Laserbeams,* p. 37.

Freer Trade Policies Develop

The Great Depression of 1929 proved a tremendous turning point in the nation's development, and government at all levels began to take a more active role in U.S. economic matters. States were required to establish economic development agencies in order to receive public-works funds from the federal government. Every state but Delaware did so, although these agencies were neither sophisticated nor durable. Their activities consisted mostly of "taking inventories and coordinating the location of public works facilities with industrial development needs," writes Peter Eisinger. The state planning agencies were closed after the National Resources Planning Board was shut down in 1943. Eisinger explains, "State bureaus designed to implement efforts to stimulate industrial and other economic development spread after the war but did not become a universal element of state government machinery until recently (the 1980s)."[20]

Trade policy also began to take on a new shape in the 1930s. The Smoot-Hawley Tariff was intended to protect the U.S. agricultural sector and other industries damaged by the 1929 stock market crash. The legislation raised tariffs on more then 20,000 items by an overall average of 53 percent. But the new tariffs dampened the faltering economy even further. From 1929 to 1933, global trade fell approximately 70 percent in volume and 35 percent in dollars. U.S. exports fell from $5.2 billion to $1.4 billion, while imports declined from $4.4 billion to $1.4 billion.[21]

The disastrous results of the Smoot-Hawley tariffs led to an overhaul of U.S. trade policy in both practice and content. In passing the Reciprocal Trade Agreements Act of 1934 (RTAA), Congress yielded significant power to craft foreign trade policy to the executive branch. The presidency was given the discretion to negotiate reciprocal trade agreements by executive order and to change tariff rates without congressional approval. In less than ten years, from 1934 to the start of WWII in 1941, the executive branch had negotiated twenty reciprocal agreements, lowering the average tariff from the 52 percent set by Smoot-Hawley down to an average of 35 percent.[22]

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[20] Eisinger, p. 16.
[21] Philip A. Mundo, *National Politics in a Global Economy: The Domestic Sources of U.S. Trade Policy*. (Washington, D.C.:Georgetown University Press, 1999): 43-45.
[22] Ibid, p. 45.

After World War II, the United States' economy had prospered while other nations' economies had been decimated. Now the undisputed political hegemon, the United States took the lead in establishing an international economic system to nurture worldwide trade liberalization. The Bretton Woods Agreement provided a framework for international investment flows and established rules for exchange rates and liquidity.[23] The International Monetary Fund and the World Bank were created to support developing nations as they moved to freer trade. The General Agreement on Tariffs and Trade began lowering barriers to trade, and decreasing costs of transportation and communication began to increase the mobility of capital both within and between nations, a trend that would accelerate and lead to the eventual fraying of the Bretton Woods agreement.[24]

Yet even while the United States supported the opening of other economies, the sheer size and strength of the postwar U.S. economy insulated it from growing world interdependence by its position of "aberrant economic dominance."[25]

The States Fight the Cold War

Politically, U.S. foreign policy was dominated by the concept of containing the spread of communism from the Soviet Union, China, and Cuba into other nations. The nation's politicians showed unusual unity of purpose, forming what came to be known as the "Cold War consensus" – the agreement that maintaining national security was the highest purpose of federal government and that all other policy concerns, domestic and international, were subordinate to this mission. The concept that domestic and foreign policies occupied different spheres relegated states to a conceptual role as purely domestic actors. This bifurcated view overlooked the fact that subnational governments were already taking small steps towards greater international involvement, as the U.S. federal government began to rely on economics as a means of achieving foreign policy goals.

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[23] Joanne Gowa, *Closing the Gold Window: Domestic Politics and the End of Bretton Woods* (Ithaca: Cornell University Press, 1983): 34.
[24] Thomas, pp. 28-29.
[25] John Kline, "The International Economic Interests of U.S. States," Publius: The Journal of Federalism vol. 14, no. 4 (1984): p. 82.

But policymakers at the state level saw they had a role to play in protecting the homeland from the threat of international communism. State governments developed their own policies to ferret out communists from institutions of government and public education. In 1949, the Texas Legislature passed a law permitting the firing of any faculty member at state educational institutions who advocated any form of "totalitarian State doctrine, which is the antithesis of the American ideal…"[26]

Texas also prohibited any official election ballot from printing the name of any political party advocating the forceful overthrow of the U.S. constitutional government. The quickly-passed legislation reasoned, "Communism threatens the peace, prosperity, and happiness of this country." The act was unanimously approved by both legislative chambers and went into effect immediately after its passage on 10 May 1949.

A few days later, Texas lawmakers approved a lengthy resolution denouncing Stalin's communist threat to the United States as "far more dangerous than the combined threat of Nazi Germany, Fascist Italy, and Imperialistic Japan ever was." The resolution criticized the U.S. Department of State for apparently employing those disloyal to the American way of life and urged the federal government to use all its influence to create a European Federation to "increase Europe's chances to survive" the communist threat. The resolution passed both chambers unanimously.[27]

In 1951, during the next Texas legislative session two years later, Texas lawmakers unanimously approved the Communist Control Law, requiring members of any communist organization to register with the state or face either fines of up to $10,000 or prison time. The law laid out punishment for sabotage or destruction of state property and barred any communist from being employed by the state of Texas. The preamble to the bill states,

> There exists a world Communist movement…which has as its declared objective world control…to be accomplished (by)…the use of fraud, espionage, sabotage, terrorism and treachery. Since the state of Texas is the location of many of the Nation's largest and most vital military establishments, and since it is a producer of many of the most essential products for national defense, the State of Texas is a most

[26] *General and Special Laws of the State of Texas* (51st Legislature, Regular Session, 1949): 234.
[27] Ibid, 1457-1459.

> probable target for those who seek by force and violence to overthrow Constitutional Government, and is in imminent danger of Communist espionage and sabotage…the world Communist movement, temporarily halted by American dead, constitutes a clear and present danger to the citizens of the State of Texas.[28]

The viewpoint at the federal level – and in academia – saw foreign and domestic politics as distinct. But at the state level, the line separating international from domestic politics was blurred even in 1951.

The trend during the Cold War was for the federal government's power in foreign affairs to grow. The Presidency in particular asserted itself across several administrations, solidifying in popular thought the view of foreign affairs as the exclusive domain of the federal government, and of the executive in particular. John Kincaid explains that "with the rise of the modern Presidency in the twentieth century, the expanded use of executive agreements rather than treaties as a foreign policy mechanism, the U.S. Supreme Court's willingness to interpret federal powers over foreign affairs and commerce quite broadly, and the emergence of a bipartisan foreign policy during World War II, the role of the states as states in foreign affairs became nearly invisible."[29]

Thus the role the states were making for themselves during the Cold War went largely unnoticed.

The Domestic Effects of Linking Trade and Containment

Economics mattered to containment politics. During the Eisenhower Administration, trade policy was used as a tool to contain communism – and certain domestic sectors began to feel the effects of free trade for the first time, to their detriment.

In order to curry favor with foreign governments, the United States imported more products from Cold War allies. Thus some U.S. industries began feeling pressure

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[28] *General and Special Laws of the State of Texas* (52nd Legislature, Regular Session, 1951):10-13.
[29] Kincaid (1984): 99

from foreign competition as early as the mid-1950s. This pressure was acknowledged by the U.S. Tariff Commission, which unanimously ruled that tariff concessions on lead and zinc from Mexico, Canada, Peru, and Bolivia had "seriously injured" the U.S. mining industry. The Commission urged corrective action. But U.S. Secretary of State John Foster Dulles would not restore the tariffs on these goods, warning that to do so would have "grave consequences…(t)here would be strong popular resentment in Canada and Mexico, which will make our borders less secure. The great opportunity to combat Communism in this hemisphere, won by the success of Guatemala, would be more than canceled out. Soviet Communist leaders would be elated and would redouble their efforts to divide the free world."[30]

The Tariff Commission also found the U.S. fishing industry was being hurt by imports from Canada, Iceland, and Norway. But if the United States restricted imported fish, "adverse effects on vital United States political, economic and security interests" in these countries might result. Import duties, it was thought, would aid "those elements in Iceland which wish to drive out U.S. NATO troops. As fish goes so goes Iceland."[31]

Concessions were also made on Japanese imports in 1954. Patrick Buchanan argues that during the Cold War, "National security became the *ultima ratio*, the final argument, in every trade dispute. As the free world leader, America needed allies in the Cold War. The way to bind those allies to the United States and strengthen them for the struggle was through 'trade, not aid.' In truth President Eisenhower had his priorities straight. National security was a compelling – indeed, a conclusive – argument in the early years of the Cold War. But our European and Asian allies did not need to be bribed to enlist in America's cause. They were in far greater and more immediate danger than we were from Communist aggression or subversion."[32]

The move to freer trade had some industries feeling pressure from foreign competition as early as the mid-1950s. As some business sectors began to struggle, some in state government began to notice the connection between imports and domestic

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[30] Alfred E. Eckes, Jr., *Opening America's Markets: U.S. Foreign Trade Policy Since 1776* (Chapel Hill: University of North Carolina Press, 1995):157.
[31] Ibid, p. 328.
[32] Patrick J. Buchanan, *The Great Betrayal* (Boston: Little, Brown, and Company, 1998): 29.

change. "With national foreign policy being generally oriented toward free trade, the states and their governors were being increasingly affected by international economic events," writes John Kincaid.[33]

At the federal level, the U.S. Department of Commerce (U.S. DOC) was making its own efforts to encourage U.S. business to move into the international economy. In 1955, the U.S. Department of Commerce established the Office of International Trade Fairs.[34]

As the world economy's significance to the United States became evident, the U.S. Congress was granting the presidency more control over international trade negotiations. In 1962, the Trade Expansion Act (TEA) authorized the presidency, rather than Congress, to enter into GATT negotiations over the next four years, from 1963 to 1967. The so-called Kennedy Round produced major cuts in tariffs. The TEA also established the Trade Adjustment Assistance program, designed to provide financial assistance and retraining to workers and companies in distress due to increased imports, and created the Special Trade Representative, today known as the U.S. Trade Representative (USTR).[35]

The late 1960s were marked by inflation, which undermined economic stability at both the domestic and global levels.[36] Robert Gilpin explains, "By mid-1971, the U.S. dollar had become seriously out of line with other major currencies and the differential rates of inflation between the United States and other market economies had produced a fundamental disequilibrium in exchange rates." Confidence in the dollar plummeted. The United States was experiencing its first trade deficit since 1893, prompting pressures for protectionism. The surging economies of Europe and Japan were, according to some

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[33] John Kincaid, "American Governors in International Affairs," *Publius: The Journal of Federalism* 14 (1984): 105.
[34] *From Lighthouses to Laserbeams,* p. 29.
[35] The USTR is both an office in the executive branch and a person with cabinet-level and ambassadorial rank. I.M. Destler, *American Trade Politics* (Washington, D.C.: Institute for International Economics, June 1992): 433-444.
[36] Robert Gilpin and Jean M. Gilpin, *The Political Economy of International Relations* (New Jersey: Princeton University Press, 1987): 140.

analysts, already making the Bretton Woods system obsolete and eroding the autonomy of the United States.[37]

So on 15 August 1971, President Richard M. Nixon announced what Gilpin calls "a new U.S. foreign economic policy." President Nixon ended the convertibility of the U.S. dollar into gold, putting the global monetary system on a "pure dollar standard." Surcharges on U.S. imports forced the Europeans and Japanese to link their currencies to the dollar. Domestic wage and price controls were enacted as a means of slowing inflation within the United States. The dollar was devalued in December of 1971. In March of 1973, in a controversial move, floating exchange rates began.[38]

Floating exchange rates were intended to force variety in the business cycles among industrialized nations to avoid the synchronous pursuit of expansionary or restrictive policies, and to stabilize exchange rates. While flexible exchange rates did help nations adjust to the economic crises of the 1970s, the goal of monetary stability was not reached. [39]

The assumption behind flexible rates was that "domestic economic management would not be constrained by international factors," Gilpin writes. But the removal of capital controls beginning in Europe in the late 1950s and the formation of the Eurodollar market began a process of economic integration that would make the hope of domestic autonomy "increasingly unrealistic."[40]

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[37] See Gowa.
[38] There is some debate as to which of these actions – or neither – mark the end of the Bretton Woods system. See Gowa; Keohane and Nye, p. 83; Alfred E. Eckes, *A Search for Solvency: Bretton Woods and the International Monetary System, 1941-1971* (Austin: University of Texas Press, 1975): 265-267; and Fred L. Block, *The Origins of International Economic Disorder: A Study of U.S. International Monetary Policy from World War II to the Present* (Berkeley: University of California Press, 1977): 199, 203.
[39] Gilpin (1987):140-141.
[40] Ibid, p. 144.

Oil and Politics Mix

"International factors" were now unavoidably influencing the U.S. economy, and one of the biggest factors was the dramatic change in the global oil market. This would hit U.S. consumers hard, and shatter any sense that the U.S. domestic economy was somehow insulated from the pressures of the world market.

Blessed with abundant oil resources, the U.S. energy sector had never been fully exposed to world forces. In 1959, the Eisenhower administration had passed oil import quotas that limited imports of foreign oil, thereby protecting domestic oil producers and keeping the independent companies, most of them Texans, in business. U.S. companies that could afford to went overseas in search of markets.[41]

From 1957 to 1963, the United States had enjoyed a surplus of about 4 million barrels per day. Thus the nation and its allies had always had secure oil reserves, ensuring the capacity to increase output during any time of crisis, such as during World War II.

Domestic U.S. oil output had for decades been controlled by the Texas Railroad Commission, the oddly-named state agency responsible for regulating the Texas oilfields, and, by extension at the time, the entire domestic oil industry. In order to keep prices low and promote conservation, the Commission had controlled production, keeping it well below capacity. But the rising economic growth of the 1970s meant that demand for oil worldwide suddenly jumped. Seemingly overnight, the United States' domestic production capacity could no longer maintain the surplus enjoyed in previous decades.

By 1970, the nation's surplus had fallen nearly a million barrels a day. Domestic production reached its peak of 11.3 million barrels a day. The Railroad Commission allowed 100 percent domestic capacity to be produced in March 1972, but even so, demand continued to rise. The Nixon administration established price controls on oil, but predictably low prices served to discourage domestic investment while simultaneously encouraging increased consumption.

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[41] Daniel Yergin, *The Prize: the Epic Quest for Oil, Money and Power* (New York: Simon and Schuster, 1991): 546.

Daniel Yergin writes, "Free world petroleum demand rose from almost 19 million barrels per day in 1960 to more than 44 million barrels per day in 1972. Oil consumption surged beyond expectation around the world, as ever-greater amounts of petroleum products were burned in factories, power plants, and cars. In America, gasoline use increased not only because people were driving more miles but also because cars were getting heavier and were carrying more 'extras,' such as air conditioning."

In April of 1973, the U.S. President for the first time gave a national address devoted to energy issues. President Nixon announced the abolishment of the oil import quotas, meaning "the United States was now a full-fledged, and very thirsty, member of the world oil market." Just a few months later, the nation was importing 6.2 million barrels a day, up from 3.2 million in 1970 and 4.5 million in 1972. Two-thirds of the consumption increase was being satisfied by oil imported from the Middle East.[42]

On 6 October 1973, Egypt attacked Israel in the fourth of the Arab-Israeli wars. The October War had the greatest impact on the United States. The Arab countries used their control over oil to cause a global energy crisis. The Organization of Petroleum Exporting Countries (OPEC), dominated by the Arab oil producers, orchestrated cuts in production and export restrictions.[43] The resulting near-panic buying caused oil prices to surge higher. The United States – and the globe – had moved from a comfortable, seemingly perpetual oversupply of oil to tensely confronting chronic shortages. The Western world was now dependent on Middle Eastern and North African oil. The realization that oil supply would likely forever be subject to the political difficulties of that troubled region introduced even more economic uncertainty to the U.S. consciousness.[44]

The integration of the U.S. economy into the world economy was now obvious. It was now undeniable that the welfare of U.S. citizens was affected by events and decisions in other countries. Oil shocks were the rude announcement that the United

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[42] Ibid, pp. 589, 567-568.
[43] OPEC was established on September 14, 1960 and was patterned after the Texas Railroad Commission. See Yergin, p. 523 and for a detailed history of the Railroad Commission, see David F. Prindle, *Petroleum Politics and the Texas Railroad Commission* (Austin: University of Texas Press, 1981).
[44] Yergin, p. 567.

States was affected by political decisions made thousands of miles away from the corner Texaco station, where suburban Americans in their heavy domestic cars idled in gas lines for hours.

Competing in the Global Market

Beginning in the 1970s, the need for capital among developed nations inspired the loosening and removal of restrictions on capital controls, thereby planting the seeds of global markets. Robert Gilpin explains, "Although the term 'globalization' is now used broadly, economic globalization has entailed just a few key developments in trade, finance, and foreign direct investment by multinational corporations."[45]

The lifting of restrictions on the international movement of capital is one of the key developments leading to economic globalization. By the mid-1970s, advances in money-transfer technology and the deregulation of national financial institutions caused the volume of the flow of international capital assets to exceed the volume of world trade many times over. In 1979, total exports were estimated to be $1.5 trillion while foreign exchange trading of money was at $17.5 trillion; by 1984, exports had increased only to $1.8 trillion, but foreign exchange trading had mushroomed to $35 trillion. "In a world where huge amounts of money and capital overwhelmed trade flows and were free to move across national boundaries in search of security and higher interest rates, international capital movements and the overall balance of payments became an important determinant of international currency values and especially of the exchange rate of the dollar."[46]

As money flowed more freely between nations, international trade also boomed. From 1913 to 1948, the annual volume of international commerce had grown by only 0.5 percent; but 1948 to 1973, the volume of international trade grew at an annual rate of 7 percent. Gilpin writes, "Over the course of the postwar era, trade has grown from 7

[45] Robert Gilpin and Jean Millis Gilpin, *The Challenge of Global Capitalism: The World Economy in the 21st Century* (Princeton, N.J.: Princeton University Press, 2000): 20.
[46] Gilpin (1987): 144.

percent to 21 percent of total world income. The value of world trade has increased from $57 billion in 1947 to $6 trillion in the 1990s."[47]

As the world's largest consumer market, purchases by U.S. consumers accounted for a significant chunk of those numbers. Beginning in 1970, imports to the United States as a share of gross national product/gross domestic product (GNP/GDP) began to increase. While imports constituted only two percent of GNP/GDP in 1945, and were still less than 4 percent in 1965, imports grew to almost 6 percent in 1970 and then jumped to more than 10 percent in 1980. The percentage of foreign trade as a share of GNP/GDP showed similar changes: holding steady at less than 10 percent from 1945 to 1965, foreign trade rose to ten percent of GNP in 1970 and by 1980 was up to 20 percent.[48]

A paradox of the time was that "(m)any of the world economic conditions which made the United States a favorable investment location in the 1970s also rendered American products less competitive on the world market," writes John Kincaid. The trade deficit grew from $5.8 billion in 1976 to $28.4 billion in 1978.[49]

Domestic Support for Free Trade Fragments

The effects of global economic change were not warmly received in the United States. There was evident public concern about the influx of foreign products into the United States and corresponding job losses. Complaints about rising immigration increased. There was a sense that the United States' position as the world's economic, cultural, and political leader was slipping away.

Because U.S. trade policy was linked to U.S. national security, the faltering economy was seen as synonymous with the erosion of U.S. power worldwide. One critic wrote: "As American incomes shrink, Americans will become unable to carry the burden

[47] Gilpin and Gilpin (2000): 20.
[48] Buchanan, pp. 53, 70.
[49] Kincaid (1984): 108.

of military defender and political leader of the West. Important consequences will follow from that."[50]

Popular resentment took the form of "Buy American" campaigns. By mid-1981, more than thirty U.S. states had adopted "Buy American" restrictions, including banning the purchase of foreign products as well as other efforts to favor the purchase of U.S. over foreign goods.[51]

Book titles from the time reflect the rising concerns about what effect global changes would have on the American way of life: In 1980, a team of BusinessWeek reporters wrote *The Decline of U.S. Power (and what we can do about it*); and in 1982 a book called *While the United States Slept* was published. More recent titles reflecting unease with so-called globalization include *The Great Betrayal: How American Sovereignty and Social Justice Are Being Sacrificed to the Gods of the Global Economy*.[52]

And yet, U.S. consumers continued to buy foreign products, increasing the disjuncture between imports and exports. In 1985, the U.S. trade imbalance with Japan alone stood at $33.6 billion, the largest ever between the United States and any single country.[53] And despite the unpopularity of foreign ownership of U.S. business, states and cities continued to aggressively seek foreign investment, as will be elaborated later in this chapter.

Accelerating economic change and the perception of a loss of hegemony took its toll on the Cold War consensus that had supported U.S. foreign policy formation since the end of World War II. The consensus was supposed to insulate foreign policy formation from the struggles that characterized the domestic policy process. The phrase "politics stops at the water's edge" meant that national security was of such paramount

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[50] John M. Culbertson, *The Trade Threat and U.S. Trade Policy* (Madison, WI: 21st Century Press, 1989):39.
[51] Kline (1984): 87.
[52] Business Week, *The Decline of U.S. Power (and what we can do about it)* Boston: Houghton Mifflin, 1980.; Nasrollah S. Fatemi, *While the United States Slept* (New York: Cornwell Books, 1982; Patrick J. Buchanan, *The Great Betrayal: How American Sovereignty and Social Justice Are Being Sacrificed to the Gods of the Global Economy* Boston: Little, Brown and Company, 1998
[53] Destler, p. 88

importance that no one would squabble over it; the foreign policy agenda was so singular and necessary that foreign policy formation was protected from partisan divisiveness.

But as the consequences of worldwide economic integration for domestic politics became obvious, U.S. anticommunist foreign policy was questioned. Conflict in Vietnam split the country. By the end of the 1970s, the Vietnam withdrawal and the uncertain future of U.S. citizens held hostage in the American Embassy in Iran perpetuated the feeling of national powerlessness on the world scene.

The 1980 election was the culmination of emotions over the changes. In the contest between President Jimmy Carter and former California governor Ronald Reagan, the domestic effects of U.S. foreign policy were an issue. Polls showed more than 80 percent of the U.S. population believed the United States had slipped into "deep and serious trouble."[54] The Republican Party, led by Ronald Reagan, won the Presidency, the control of the Senate for the first time in decades, and made gains in the House of Representatives and at the state level. While rising unemployment and double-digit inflation made economics the deciding issue, exit polls showed that dissatisfaction with the Carter administration's foreign policy gave an edge to Ronald Reagan and his promise to "Make America Great Again."[55]

While Pres. Reagan made national security and increasing military strength the basis of his policy, gaining support for such policy goals was not easily done. Peter Trubowitz argues there was no consensus on foreign policy during the 1980s. The effect of global economic changes on the U.S. domestic business sector was a major cause of the lack of support for foreign policy, as different domestic sectors suffered different degrees of negative impact caused by the uneven integration of U.S. industry into the world economy. [56]

It is questionable exactly what effect the lack of consensus had on subnational governments. Certainly at the federal level, trade and security policy were becoming

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[54] Walter LaFeber, *America, Russia and the Cold War, 1945-1992*, 7th ed. (New York: McGraw-Hill, 1993): 303.
[55] Peter Trubowitz, *Defining the National Interest: Conflict and Change in American Foreign Policy* (Chicago: University of Chicago Press, 1998): 169.
[56] Trubowitz (1998): 169-234.

more intertwined, bringing subnational governments into the mix. The Export Administration Act of 1979 stated that: "It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, consistent with the economic, security, and foreign policy objectives of the United States."[57] The means of achieving higher exports being state and local governments, states were enlisted in achieving the foreign policy objectives of the United States in the new economy.

US. States Respond to Global Economic Changes

As the vulnerability of the U.S. economy to international forces became clear, U.S. states and cities were plunged into circumstances for which they were ill-prepared. The dizzying changes left subnational government officials at a loss, with no blueprint to follow. William Schweke wrote at the time: "What seemed to work well and make sense for most of this century is suddenly obsolete, pushed aside by a rush of new forces linked to the internationalization of the U.S. economy and the introduction of information technologies into the workplace."[58]

The lowering of tariffs meant U.S. manufacturers suddenly faced stiff competition from foreign-made products. As the United States began importing these lower-priced and often more energy-efficient foreign appliances and automobiles, consumption of these items rose and domestic products lost market share. Manufacturing jobs in the United States dwindled. While layoffs increased, the high price of oil and an overall sluggish economy prevented the creation of new jobs. Loss of jobs and businesses compromised tax bases, putting state and local bureaucrats under tremendous pressure to act to secure sources of tax revenue for the continued operation of government, not to mention jobs for dislocated voters.

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[57]Export Administration Act of 1979, as amended. PDF document, Legal Authority Export Administration Regulations (Retrieved 30 August 2003.) Available at cr.yp.to/export/ear2001/latoc.pdf.

[58] William Schweke, Carl Rist, and Brian Dabson, *Bidding For Business: Are States and Cities Selling Themselves Short?* (Washington, D.C.: Corporation for Enterprise Development, 1994): 34.

Elected officials who had yet to wake up to the new economy paid the price. In August of 1985, a Texas Democrat who made clear the link between imports and local unemployment won a close race after his opponent naively questioned, "what trade had to do with East Texas."[59]

During the 1970s, state officials took advantage of the open U.S. federal structure to compete against other states for economic advantage. Worldwide, developed nations were competing against one another for newly mobile capital as it circled the globe, searching for investment possibilities. In the United States, although the federal government sets the rules for the entrance of capital, the means of competing for it are state and local governments. Thus the changes in global capital restrictions introduced another generation of subnational actors to the world of competitive global finance. As U.S. involvement in foreign trade expanded, "state government officials became alert to the possibilities of claiming a larger share of this growing economic pie."[60]

The remainder of this chapter will outline the international outreach mechanisms the states developed in order to adjust to the changing domestic economic picture. States first created economic development agencies; then competed against one another for foreign direct investment; cultivated foreign markets for domestic exports; and opened overseas trade offices. These mechanisms gave states an institutionalized means of interacting directly with foreign actors, all with the goal of meeting domestic governing goals.

[59] Destler, p. 89.
[60] Kline (1984): 83.

THE STATES' INTERNATIONAL ECONOMIC STRATEGIES

Wanted: Direct Investment

The first sign of adjustment to the new economy was the development of state-level economic development agencies. Forty-four states responded to a Council of State Governments survey in 1982: thirteen of those states had established economic development agencies in the 1970s, and eight started such agencies as the 1980s began. Cities and urban counties had also joined the trend.[61]

These economic development agencies were far more sophisticated than the short-lived entities of the Depression era. These agencies aggressively courted foreign direct investment by publicizing their states as a favorable place to do business. [62] Promotional methods included overseas trade missions showcasing the businesses in a state, training seminars for exporters, and publishing directories of exporters and databases of trade leads. States and even cities began offering corporations "development incentives" such as specialized worker training; tax rebates, credits, or reductions; infrastructure improvements; or even direct grants offered to entice a company to establish a presence in the state or city.[63] A National Governors Association (NGA) survey showed that in 1980, states spent more than $18.8 million on international promotion efforts, about the same as the U.S. DOC spent on the same activities.[64]

One ongoing difficulty in research into state economic development efforts is measuring the effectiveness of initiatives such as these. In 1984, John Kline pondered whether state promotional efforts influenced business decisions as much as did other factors such as labor quality, competition, market share, and so on. "Nevertheless, there appears to be enough general confidence in the effective return from state international

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[61] Eisinger, p. 16.
[62] The U.S. Department of Commerce defines direct investment as "all such ownership relationships that involved at least 10 percent ownership of the affiliate by the foreign parent." *Foreign Direct Investment in the United States: Completed Transactions, 1974-1983, Volume I: Source Country* (Washington DC: U.S. Department of Commerce, International Trade Administration, Office of Trade and Investment Analysis, June 1983): 11.
[63] Schweke, p. 3.
[64] Kline (1984): 85.

business promotion efforts that they have become a prominent feature in most states' economic development programs over the last decade (1974-84)."[65]

The subnational efforts to attract foreign direct investment had an overall positive effect. IMF statistics show that from 1975-1979, the United States' share of total inward direct investment rose from 16.2 percent to 24.3 percent; and in 1980-1982, a two-year period, the United States received 35.3 percent of total world direct investment.[66]

The U.S. Department of Commerce gave these reasons for the increase in foreign direct investment in the United States: "relative U.S. political strength and economic stability; the sheer size and strength of the U.S. economy; the emergence of large companies based abroad with the resources needed to become active multinational corporations; a relatively non-restrictive U.S. policy toward foreign direct investment, and the low value of the dollar during the 1978-1980 period."

In the United States, manufacturing and real property accounted for three-fifths of the recorded foreign direct investment transactions from 1976 to 1983. Real property comprises non-agricultural land, hotels, office buildings, shopping centers, apartment buildings, and so on, but does not include private residences or farmland. Most of the transactions were real estate purchases and mergers and acquisitions.[67] Almost half of the completed transactions took place in only four states: New York, California, Florida, and Texas.[68]

The multinational corporation began to develop around this time, as companies put resources into acquiring shares of foreign properties or opening overseas subsidiaries. For the same reasons that the United States was an attractive place to invest, it was also an attractive place to open a plant or office.

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[65] Ibid, 85.
[66] IMF table published in *Foreign Direct Investment, Volume I,* p. 11.
[67] Ibid, pp. 14, 17.
[68] Ibid, p. 21. These same five states, along with Illinois, are also the states that today attract the most immigration.

The Tax and Incentive Wars

Because the U.S. federal government pays a smaller proportion of subnational governments' expenses than do the central governments in other federal systems, U.S. subnational governments have more autonomy to set their own taxing levels and generate their own tax revenues than do subnational governments in most other advanced industrial nations. Since U.S. states inevitably differ in their taxable resources, business tax rates also differ from state to state, furthering rivalries between the states as to which state can offer the lowest tax rates in order to attract business.

But as the competition for capital grew more and more intense, some states and cities offered foreign firms so much in the way of tax abatements and subsidies, that the ultimate worth of any resulting business relocation was questioned. Southern states in particular, hit hard by textile imports, aggressively pursued foreign investment. The competition between the states was so fierce that BusinessWeek published a 1976 special report referring to the U.S. Civil War and called the fierce competition a "second war between the states."[69]

The incentives proved costly to some jurisdictions. In the throes of competition, governments had difficulty seeing "when widespread competition has eliminated the economic return – the point at which the subsidies benefit business alone because the net returns to communities as a group have been driven to zero."[70] In 1989, the state of Louisiana spent $273 million in business property tax exemptions, the same as giving up 25 percent of local property tax collections; yet only six percent of all of Louisiana's industrial tax exemptions went towards the building of new plants, indicating that Louisiana's spending did not bring new industries to the state.[71]

Competition for foreign automobile manufacturing was characterized by a particular trend towards self-defeat. In 1980, the town of Smyrna, Tennessee offered Nissan financial incentives that amounted to $11,000 per employee. In 1985, 38 states competed for a Saturn automobile plant that landed in Spring Hill, Tennessee, where the

[69] Schweke (1994): 17.
[70] Nonna A. Noto, "Trying to Understand the Economic Development Official's Dilemma," in *Competition among States and Local Government: Efficiency and Equity in American Federalism*, Kenyon and Kincaid, eds. (Washington, D.C: The Urban Institute Press, 1991).
[71] Schweke (1994): 21.

incentive package costs rose to more than $26,000 per employee. The next year, Lafayette, Indiana paid incentives of more than $50,000 per employee for a Fuji-Isuzu plant. In 1992, BMW was paid incentives amounting to $68, 421 per job for a new plant in South Carolina, which was expected to produce only 1,500 jobs. In six years, the cost-per-job paid by state and local governments in financial incentives rose 37 percent.[72]

Not surprisingly, some existing businesses in the states did not respond well when they saw the overtures made to new businesses, and threatened to relocate in order to get a piece of the incentive action. Some communities began to feel they were being manipulated by local businesses. Sometimes even incoming companies did not deliver the number of jobs promised. In some cases, companies that were lured to one location were then lured again to different location, leaving behind unfinished buildings and bitter feelings. Adding insult to injury, some corporate officials admitted that the tax incentives were not the decisive factors in relocation; geography and workforce capabilities were more important. But the incentives were accepted anyway.[73]

State officials began to wise up after some promised relocations fell through altogether, even after considerable development incentives were offered. The former director of Nevada's economic development office complained, "Any company that is more interested in tax breaks or subsidized financing than trained workers is very likely to move on again. It is not a good prospect upon which to build a stable economy."[74]

The cutthroat competition between states eventually prompted Congress to restrict how federal economic development funds could be used. For example, funds from the federal Small Business Administration, Economic Development Administration and Community Development Block Grant programs, among others, are not supposed to be used by one state or city to woo the relocation of a business in another state. Some states even agreed to self-police and reduce competition among themselves, but those efforts did not succeed for long.[75]

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[72] Ibid, p. 23.
[73] Ibid, pp. 3, 24-27.
[74] Ibid, p. 3.
[75] Thomas, pp. 148-149.

The Move To Exports

The fierce competition for foreign direct investment took its toll on local economies. Following a steep learning curve, state economic development agencies, with the assistance of the federal government, soon moved to a more demand-side, entrepreneurial approach of supporting local business' capacity to export and find niches in foreign markets.[76] Soon the race was on among subnational governments to support their local businesses in developing the capacity to export products into foreign markets.

A 1978 U.S. DOC State Export Series reports: "From 1972-1976 most states at least doubled their manufacturing production, with these sales often increasing faster than general manufacturing production…almost 80 percent of the country's new manufacturing employment between 1977-1980 was related to production for exports."[77]

U.S. exports more than doubled in value from 1975-1980, creating more than 1.5 million new jobs and accounting for more than 80 percent of employment growth in the manufacturing sector. Approximately 5.5 million jobs in the mid-80s were the direct result of growth in exports, and likely twice that number was related indirectly to exports. U.S. DOC estimated in the early 1980s that each $1 billion of exports directly created 25,000 jobs.[78] By 1984, it was estimated that one billion dollars of exports now created 40,000 jobs in the United States.[79]

Peter Eisinger reports that the Congressional Budget Office reviewed state development initiatives in 1984, and found that "whereas during the 1970s most state involvement in foreign trade was concentrated on attracting foreign investment, over two-thirds of these expenditures are now on export promotion." In 1976, 25 states spent a mere $3.3 million on foreign trade programs; whereas in 1984, 42 states spent $27.5 million for export promotion.[80]

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[76] Eisinger, pp. 12-13.
[77] Kline (1984): 84.
[78] Eisinger, p. 297.
[79] Alan R. Posner, *State Government Export Promotion: An Exporter's Guide* (Westport, CT: Quorum Books, 1984): 23.
[80] Eisinger, p. 294.

Federal support for exports

By now, all levels of U.S. government are more involved in economic matters than ever before. The U.S. federal government unquestionably supports the states' capacity to support exports. Although several states began their overseas promotion efforts without significant federal help, several federal programs were created in the 1970s, although their funding has fluctuated through the years.

In 1973, District Export Councils (DEC) were created by Presidential Directive in order to encourage businesses to increase overall export activity. The U.S. Secretary of Commerce appoints DEC members. The Councils comprised representatives from universities, government, non-profit organizations, and manufacturers. DECs supported the trade initiatives passed by state legislatures. The Councils generally did not receive U.S. government aid, but their creation shows the U.S. federal government's emphasis on increasing exports.[81]

U.S. President Jimmy Carter openly encouraged states to increase exports. During his years as governor of Georgia, Carter had visited ten nations. In October 1978, now as President, he asked the National Governors' Association to establish a new standing committee on International Trade and Foreign Relations.[82] Carter's secretary of state, Cyrus Vance, vigorously encouraged the states to help expand foreign trade as a means of helping the U.S. economy as a whole.[83]

During the Reagan administration, the U.S. DOC was empowered to distribute funds to public or private actors assisting small businesses in search of export opportunities through the 1980 small Business Export Expansion Act. In 1982, Congress passed the Export Trading Company Act. An Export Trading Company is a middle-management organization that will, for a fee, assist small businesses with exports, including research, purchasing, transport, and financing.[84]

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[81] Frank Blanco, *State Export Promotion Programs: A Look at Maryland and Texas,* (Washington, D.C.: Foreign Service Institute, March 1997): 15.
[82] Kincaid, p. 103.
[83] Eisinger, p. 299.
[84] Eisinger, pp. 299-300.

In 1992, Congress passed the Export Enhancement Act, and in 1993, the administration of President Bill Clinton created the Trade Promotion Coordinating Committee, in the Department of Commerce, to develop the National Export Strategy. By 1997, the number of U.S. firms involved in exports stood at more than 112,000 and the dollar value of exports in 1996 was a record $849 billion. The number of jobs created by exports was estimated to be more than 11.5 million.[85]

At the federal level, the U.S. DOC's U.S. and Foreign Commercial Service, part of the International Trade Administration of the U.S. DOC, offers assistance to states and cities in overseas trade missions. The Export-Import Bank also gives small business support and loans. National organizations of state agencies such as the National Association of State Development Agencies (NASDA), the National Governor's Association, and the Council of State Governments also developed means to assist states in expanding foreign trade.[86]

Given that both the federal and state levels work on commercial development, some have raised concerns about the duplication of programs. In 1995, the U.S. House of Representatives, under the leadership of Newt Gingrich (R-Georgia), proposed eliminating the U.S. Department of Commerce. The Senate approved the elimination as well, but President Bill Clinton vetoed the Department's closure.[87]

The federal government has at times imposed some restrictions on exports due to national security concerns, for example, sales of "dual-use" technology have been restricted to some countries, and during the 1990s, encryption technology development was hindered by the federal government, much to the chagrin of U.S. computer developers.

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[85] *Fifth Annual Report to the United States Congress, The National Export Strategy: Cornerstone for Growth*, (Washington, D.C.: Trade Promotion Coordinating Committee, October 1997): 5-6.
[86] Blanco, p. 3.
[87] Timothy Conlan, *From New Federalism to Devolution: Twenty-five Years of Intergovernmental Reform* (Washington:D.C.: Brookings Institution Press, 1998): 239-243.

Opening Overseas Offices

Even before state economic development agences were a trend, some states were opening overseas offices for the purpose of wooing foreign direct investment and developing niche markets for local exports.

The state of New York opened an office in Europe as early as 1954.[88] In 1959, then-governor Luther Hodges of North Carolina took a delegation to Europe to encourage direct investment and also sought business opportunities with the Soviet Union. Gov. Hodges later served, fittingly enough, as the Secretary of Commerce in the Kennedy Administration. The state of Virginia took a bold step around this time and sent a state employee to Brussels, Belgium. Within the year, at least one Belgian company opened an office in Virginia.[89]

At the federal level, the general level of interest in foreign markets was still so low that in 1969, the U.S. Department of Commerce had but one employee in charge of foreign direct investment.[90] In 1970, only three states had opened foreign offices. But only twelve years later, in 1982, nearly forty states had sixty-six overseas offices, an indication of how rapidly states reorganized themselves to gain a position on the international economic scene.[91]

By 1976, 42 states had established domestic offices for the purpose of attracting international trade, and 23 states had established trade offices overseas in one or more countries."[92]

It is difficult to pin down the numbers of overseas offices; many were not continuously open; some states opened offices only to close them later on as budgets or gubernatorial priorities changed. During the recession of 1981-82, some states

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[88] Jerry Levine, "American State Offices in Europe: Activities and Connections," *Intergovernmental Perspective* (Fall 1993/Winter 1994): 43.
[89] John M. Kline, "The States and International Affairs," draft document prepared by the Advisory Commission on Intergovernmental Relations (5 September 1989): 33; quoted in Fry, *The Expanding Role*, p. 67.
[90] Blaine Liner, "States and Localities in the Global Marketplace," *Intergovernmental Perspective* 16 (Spring 1990): 11.
[91] Kincaid (1984): 107.
[92] Department of Commerce, Domestic and International Business Administration, *State Government Conducted International Trade and Business Development Programs: Technical Study Report* (Washington, D.C.: U.S. Department of Commerce (June 1977): 2.

established legislative committees to examine the effectiveness of foreign trade initiatives, which likely resulted in the closing of some offices.

Between 1981 and 1984, the number of states with overseas offices increased from 20 to 28, and the total number of foreign offices grew from 40 in 1981 to 66 in 1982; then down to 55 in 1984. The annual budgets for these offices ranged from $94,000 to $901,000; the average staff was 2.4 employees; more than half the employees were foreign nationals.

In 1984, the distribution of offices by country was:

Western Europe	28
Japan	17
Canada	4
Other Asian	2
Mexico	2
Brazil	1
Africa	1[93]

By 1989, all fifty states had sponsored overseas trade missions.[94]

Peter Eisinger sees a pattern in how overseas offices opened: the first offices, opened in the late 1960s, were in the capital cities of established European trading partners. Then states opened offices in Canada, Mexico, Brazil, and Japan. In the 1980s, states moved into Hong Kong, and Illinois opened the first state office in China. Ohio was the first to open an office in Africa, in Lagos, Nigeria.[95] The story of the opening of the Texas Trade Office in Mexico City in 1971 will be told in the next chapter, on Texas' international trade role.

As near as can be discerned, it appears that the first overseas offices were opened at state expense, with little to no direct federal funding involved. It was not until 1980

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[93] John Griffing, *The Other Deficit: A Review of International Trade in California and the U.S.* (Sacramento: Senate Office of Research, California Legislature, November 1984): 20.
[94] Information from the National Association of State Development Agencies cited in Blaine Liner, "States and Localities in the Global Marketplace," *Intergovernmental Perspective* 16 (Spring 1990):13.
[95] Eisinger, p. 292.

that the federal government reorganized to better support overseas trade; on 2 January 1980, the export support division of the U.S. Department of State was transferred into the Department of Commerce, creating the International Trade Administration (ITA), "in response to highly-charged international trade competition."[96]

Again in the 1990s, some state legislatures began to question the value of their offices. Some states reformed their trade promotion efforts, decreased the budgets of state development offices and closed overseas offices, or began charging corporate clients for the assistance they were given.[97] Texas had opened overseas offices under Gov. Ann Richards; Governor George W. Bush closed all but one, leaving only the Mexico City office, continuously open since 1971. As recently as August of 2003, California's overseas trade offices were severely criticized for falling prey to political favoritism and a failure to deliver, and finally abolished amidst a severe state budget crisis.[98]

The Role of Governors

The role of the governor is increasingly cited as essential to trade promotion and development. Governors sought trade adjustment assistance for industries negatively affected by trade as early as the 1950s, bypassing the federal government and appealing directly to foreign investors.[99]

John Kincaid writes, "Since the New Deal especially, governors have acquired considerable skill and experience as intergovernmental diplomats representing their states in negotiations with the federal government as well as other states. They have also developed greater abilities to act together to resolve problems cooperatively without Washington and to represent their common interests jointly."[100]

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[96] *From Lighthouses to Laserbeams*, p. 35.
[97] Blanco, p 3.
[98] Jock O'Connell, "Foreign Trade Offices are a Boondoggle." *The Sacramento Bee*, 29 June 2003. (Retrieved 30 June 2003). Available from http://www.sacbee.com/content/opinion/forum/story/6944813p-7894076c.html.
[99] Kincaid (1984): 105.
[100] Kincaid 105.

When President Nixon initiated formal diplomatic relations with China in 1972, nearly half of the United States' governors sought invitations to travel to China to establish potentially lucrative contacts in what appeared to be a vast untapped market for U.S. goods. Texas Lt. Gov Bill Hobby led the first Texas trade mission to China in 1979 with a dozen oil industry representatives.[101]

As states have become more active, organizations like the National Governors' Association and the National Association of State Development Agencies have expanded to include assistance for promoting states overseas. The Western Governors' Association, the Border Governors' Conference, and other regional governing associations are also available to assist today's governors and officials in promoting their states overseas.

The National Governors Association (NGA) was formed in 1908 to help governors resolve a water dispute; today it acts as a forum in which governors may gather to discuss issues of common concern. The NGA also lobbies the federal government on behalf of the governors. The Border Governors Conference, discussed in Chapter Five of this dissertation, is a spin-off of the NGA.[102]

Federal vs. State Assistance for Small Business

Despite constitutional grounds for limiting states to the domestic sphere, the U.S. federal government has consistently supported state-level international initiatives. In the 1980s, an official from the newly-created International Trade Administration testified before Congress: "We at the Commerce Department recognize the important role the states play in the international trade arena. We also recognize that by joining forces with the states the export position of the United States can be strengthened."[103] Thus the U.S. federal government renders considerable assistance to states in their efforts abroad through officials stationed at U.S. embassies and consulates worldwide.

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[101] Kincaid (1984): 95.
[102] See the National Governors Association, http://www.nga.org/nga/1,1169,C_FAQ^D_302,00.html.
[103] Eisinger, p. 299.

Although the federal government has supported the states' efforts, the state-level viewpoint has been more effective for smaller businesses, argues Alan Posner. In a 1984 guidebook for exporters, Posner wrote that the federal agencies responsible for export promotion – the U.S. DOC, the Small Business Administration, and the Export-Import Bank – "have very little to do with export promotion on behalf of small and medium firms." He explains that most of the assistance given by these federal agencies goes to larger companies. Posner says U.S. DOC has been criticized for giving general information rather than specific guidance on how manufacturers can begin or increase exporting their goods, and the agency's funds for domestic development were cut in the 1980s, "part of the Reagan Administration's design to have less Federal involvement in the domestic economy."[104]

Export regulations can be daunting for a small business to negotiate, and getting information about overseas opportunities and market conditions is expensive. Thus small and medium businesses are better off looking to their state development agencies for export assistance, Posner argues. States can give the personal attention that the federal agencies simply cannot give to a multitude of small actors across the nation. State officials often have helpful personal contacts that federal agencies cannot cultivate from the federal level. And state officials are able to give the specific information about regional services that meets a potential exporter's immediate needs, according to Posner.[105]

John Kincaid explains that the state apparatus for supporting local business developed because the federal government was not as responsive. "Owing to the inability of the federal government to respond adequately to the problems of particular states and local industries, businesses tended to turn to their governor's office for assistance," Kincaid writes.[106]

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[104] Posner, Alan R. *State Government Export Promotion : An Exporter's Guide.* (Westport, Conn.:Quorum Books, 1984): 47-48.
[105] Ibid, p. 48.
[106] Kincaid (1984): 105.

This difference in response might stem from the differing ways that state and federal officials viewed the domestic economic changes as they unfolded. Peter Eisinger explains,

> Officials in Washington, observing the deepening penetration of international forces in the American economy, seem to have focused principally on the unrelenting growth of the merchandise trade deficit. But state and local officials, ever alert for opportunities to exploit for economic development, appear to have adopted a more balanced view: although they have persistently worried about the loss of jobs to import competition, they have also seen in the growth of exports evidence of an expanding universe of markets for American producers and, in the expansion of foreign investment, a way to save domestic manufacturing jobs and industries.[107]

Even so, the states have come around to the viewpoint that trade can be beneficial only through hard experience. Eisinger shares an anecdote from the 1985 Southern Governors' Association meeting that sums up the contradiction of the position U.S. states find themselves in a global economy. Eisinger tells, "In one session, the governors' central concern was the devastation of the textile industry in their region under the onslaught of imports. In the next session, however, the theme of the meeting was 'The South Going Global – The Internationalization of the South.'"[108]

CONCLUSION

This chapter has told how global political and economic changes affected the U.S. economy, bringing international concerns to bear on the welfare of the U.S. states, and leading the states to begin developing relations directly with other nations.

While the U.S. federal government regulates foreign and domestic commerce and sets U.S. trade and tariff policy, states have the legal authority to tax and spend in order to serve the public welfare. Both levels of government are under intense electoral pressure to keep voters employed, provide public services, and maintain a growing economy. Thus the states and the federal government share the goals of a thriving

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[107] Eisinger, p. 291.
[108] Ibid, pp. 290-291.

economy, and the states are the most necessary means through which national economic goals are met. The openness of the U.S. federal system gives states the freedom to innovate their own policies, and the tendency of the states to compete against one another leads to the replication of mechanisms from state to state.

It is the states and cities, not the federal government *per se*, that feel the direct impact of U.S. trade policy. Thus state and local officials were the first to recognize the need to develop new economic development strategies to keep local economies afloat. The strategies employed by the states – cultivating foreign direct investment, opening overseas offices, helping local businesses to increase exports – were state-level initiatives that spread across the nation as states competed against one another for position in the world economy. The federal government supported these mechanisms, but the states responded to local needs independently by initiating direct contact with foreign nations.

Why did the involvement of states in international economics not cause conflict with the U.S. federal government or result in restriction? Because states have the legal authority to promote economic development, the question of the constitutionality of the states' international economic role has not been a serious issue, largely because this role has been one of trade promotion.

The states' trade promotion activities have not caused intergovernmental conflict due to the common goals of economic development that both the federal government and subnational governments pursue. Therefore, rather than act to restrict the states, the federal government has supported an increased international role for states for the purposes of economic development.

However, trade is one area which in the future may lead to increased intergovernmental conflict. While the states' short-term goals of economic development do not conflict with federal policy goals, the federal government is considering future trade negotiations that may lead to intergovernmental conflict. Already the states have been asked to yield some areas of traditional regulatory authority, such as sanitary standards for the production and transportation of products, to an harmonious international standard. The pressure for a single standard from other nations and

multinational corporations will only increase. The ability of state and local governments to subsidize local businesses, or to award procurement contracts, could be forced to yield to a single standard for the purposes of harmonization of international standards and the removal of barriers to free trade.

Thus in the future, the states and the federal government could find themselves in serious conflict over the conduct of international trade and how it will affect the states in ways that directly undermine the levels of sovereignty the states currently enjoy.

Following the same timeline traced here, the next chapter looks at how changes in the global economy played out in the Texas case, leading the state to take several measures to support the interconnection of the Texan and Mexican economies, including opening a trade office in Mexico City in 1971 and promoting increased agricultural exchange in 1984, among several other developments.

CHAPTER FOUR
TEXAS FORGES A PLACE IN THE WORLD ECONOMY

INTRODUCTION

The previous chapter gives an historical overview of how the opening of the U.S. economy affected the U.S. states in general, and the several strategies the states employed to adjust to changing economic conditions at home. This chapter looks more closely at one state's response. The central focus of this chapter is on Texas' trade relations with Mexico, but those developments are a part of the larger story of how Texas established a place for itself in the global economy.

By looking closely at this one case, we can gain a greater understanding of the specific ways one state responded to changes in domestic policy by adopting new strategies to compete against other states.

This case shows how one state realized how its interests were affected by developments in the world economy, and, in competition against other states, Texas used its autonomy to innovate and adopt economic development policies that were in harmony with federal economic policy goals.

Looking closely at this one specific case also brings some other influences to light, such as the role played by the state's private sector, how interpersonal relationships facilitate the establishment of international intergovernmental relations, and the differing nature of international relationships formed by state officials and federal lawmakers. As James Rosenau might explain it, state officials have less responsibility for national security and therefore can put a priority on economic goals, enabling state officials to act in the international arena where federal officials might be restrained.[1]

In this case, the federal government did not move to restrict the state, rather, the change in foreign policy focus at the federal level, moving from a focus on military

[1] See James Rosenau, *Along the Domestic-Foreign Frontier: Exploring Governance in a Turbulent World* (Cambridge: Cambridge University Press, 1997).

power to embrace commercial relations as a strategy for maintaining the United States' hegemonic position, gave the state opportunities to expand its international economic activities. At arguably one of the most intense periods of the Cold War, at that point just before the Cuban Missile Crisis and escalation of the U.S. involvement in Vietnam, U.S. states were already stepping into the world scene through trade relations, in order to meet their economic development goals. The change in strategic focus at the federal level to emphasize trade then draws the states in to play a greater role in U.S. foreign relations.

But even while the state and federal levels goals of increased trade and national security strategy coincide, the Texas-Mexico case reveals that Texas officials were able to form productive relations with Mexican officials even during times of tension between Washington and Mexico City, because of the differing levels of foreign policy responsibility between the two levels of government. Texas, acting within its jurisdiction to meet its domestic economic development needs, does not carry responsibility for national security and therefore is able to reach out the Mexico in a different way from the federal government, albeit still with the common goal of meeting national economic goals.

This chapter is a timeline of sorts: the first section unfolds a growing awareness that the Texas economy is affected by international developments. Texas' first institutionalized response was to open its Trade Office in Mexico City in 1971. The next section does not include a direct venue, but tells how the state-level officials and representatives from the oil business played a vital role in the federal national security strategy of warmer U.S. relations with China. The next section details Texas' experience with foreign direct investment. The next institutional venue is the Texas-Mexico Exchange Commission to facilitate relations between Texas and Mexican agricultural sector. Next follows a series of steps toward U.S.-Mexican commercial integration, supported at the state and local level, which eventually leads to the negotiation of NAFTA by the U.S. and Mexican federal government.

TEXAS IN THE WORLD ECONOMY, 1960-1970S

In 1961, the nation of France sent a trade commissioner to Texas – but by this time, France already had six trade offices in the States: in Washington, D.C., New York, Chicago, San Francisco, Los Angeles, and New Orleans. The opening of the Texas office recognized "the increasing importance of Texas, and Dallas in particular, in the American economy," French officials said. The commissioner, who planned to office in both Houston and Dallas, was to promote exports and investments both to and from France and Texas and expedite business contacts. French officials said at the time that eight to ten percent of France's exports to the United States went to Texas, and that five to eight percent of U.S. exports to France came from Texas.[2]

In Texas, there was a growing consciousness that developments in the international economy mattered to the Texas economy. The European Economic Community (EEC) was initially formed in 1952 to allow allies to trade coal, iron, and steel, those products vital for European defenses. In 1962, an oil pipeline, at the time called one of the world's largest, was built to carry Middle Eastern and North African oil to the first six nations to form the EC – West Germany, France, Italy, Holland, Belgium, and Luxembourg. Oil consumption in Europe was on the rise, as consumers changed from coal to fuel oil, and the number of automobiles on European streets increased. The predicted effect of this political action halfway around the world was a reduction in market share for Texas oil.[3]

The formation of the European trading bloc inspired a sense of urgency among Texas business. A report published by the University of Texas *Business Review* cautioned that a "failure to keep Texas-made products competitive in price and quality would result in declining sales along with unemployment and reduced profits for the

[2] "France Names Trade Commissioner to Texas," *The Dallas Morning News*, 16 February 1961.
[3] Oil consumption in Germany rose 120 percent in the four years prior to 1962. Richard M. Morehead, "Common Market Vital to Texas," *The Dallas Morning News*, 23 June 1962.

state's industries," particularly agriculture, the report said. "With the huge year-to-year gains being made in agricultural productivity, it is imperative that the European market for U.S. farm products is held and even expanded." The report urged Texans to welcome the challenge of the European Economic Community by adapting to the changes rather than building "a tariff wall around ourselves."[4]

The Dallas Morning News printed another story about the European Community in 1962, this one about how the EEC had responded to an increase in U.S. tariffs on European-made carpets and other products by raising tariffs on U.S.-made chemical products. The article questioned whether or not Texas chemical manufacturers would be affected by the EEC's tariff action – proof that even as early as 1962, the connection was being made between international economics and state-level interests.[5]

Former Gov. John Connally was reportedly the first Texas governor to support state efforts to promote international trade. Gov. Connally initiated Texas' first overseas trade mission in 1968, to Australia.[6]

The consumption of Texas products worldwide translated into a healthy trade relationship with Japan. Trade in cotton between Texas and Japan was well-established, dating back to 1886. In 1972, Texas had exported more than $142 million worth of food and livestock. The Japanese were apparently quite fond of Texas grapefruit, which they referred to as "pinkies."[7]

But as other states began to open overseas trade offices, Texas officials were eager to jump into the race for foreign market share. Texas was in a natural position to cultivate a relationship with its next-door neighbor, Mexico, although for a long time, many businesses were too intimidated to venture there.

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[4] Ibid.
[5] Richard M. Morehead, "Texans May Feel Pinch of ECM," *The Dallas Morning News*, 9 July 1962.
[6] Bo Byers, "Efforts Being Made to Hike Texas Exports," *The Houston Chronicle*, 23 December 1979.
[7] "Briscoe Hails WTC," *The Dallas Morning News,* 5 September 1973.

VENUE ONE: THE TEXAS TRADE OFFICE IN MEXICO CITY

The Texas Trade Office had an auspicious debut on 1 October 1971. On hand for the opening were a number of Mexican officials, including the extant president, Luis Echeverría.[8] Also attending were past Mexican president Miguel Aleman[9], acting Minister of Foreign Relations Ruben Gonzalez Sosa, and Jose Campillo Sainz, undersecretary of the Ministry of Industry and Commerce.[10]

The Trade Office was a part of the Texas economic development agency, at the time known as the Texas Industrial Commission (TIC).[11] According to two TIC staff members at the time, Texas governor Preston Smith and Mexican president Luis Echeverría became good friends, most likely by virtue of being in office at the same time.[12] They had a mutual respect for one another, even though the two were very differently politically: Gov. Smith, a conservative Texas Democrat, and Pres. Echeverría, a Mexican nationalist and leftist. Gov. Smith had allowed a Mexican trade office to open in Dallas in 1970, and in seems that in return, Echeverría endorsed the Texas office in Mexico City.

Competing against other states for position in the world economy was a motivating factor for Texas to open the Mexico office, according to Jim Harwell, who was executive director of the TIC from 1968-1978. At the time, he remembered, "we had this quasi-mandate from the (Texas) Legislature to promote international business."

The TIC board's minutes from 1967-1971 show that increasing international trade was a significant part of TIC's mission. In 1967, board and staff members discussed how Texas was competing with "the far East," also called "the Orient," for industrial

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[8] Interview with Jim Harwell, Wimberley, Texas, 28 November 1998.
[9] Interview with Col. James Harris and Col. Frank Alagna, Austin TX , 3 November 1998.
[10] Conrad C. Manley, "Smith Lauds Texas-Mexico Cooperation," *The Dallas Morning News*, 3 October 1971.
[11] Now the Texas Department of Economic Development.
[12] Harris and Alagna interview, Austin, Texas, 3 November 1998.

development.[13] A competitive awareness of other U.S. states' international efforts is also evident: at a 1969 meeting, commissioners spoke with envy of the multi-media presentation the Denver Chamber of Commerce would make to foreign visitors to attract international business opportunities to the Denver area.[14]

Domestic and overseas trade shows were also part of the Commission's activities. During the 1968 World's Fair – Hemisfair – in San Antonio, TIC helped sponsor an international trade center, financed by contributions from members of the Texas International Trade Association and featuring a staff fluent in 10 languages. Other trade missions are mentioned in the commission's minutes: to Osaka, Japan ("the Orient"); to Australia; and two to the Soviet Union, sponsored by the U.S. Department of Commerce, but featuring only Texas oilfield equipment manufacturers. Texas at the time was not shy in claiming to be "the center of the petrochemical industry in the US." At this time, U.S. Department of Commerce (U.S. DOC) sponsored overseas trade missions that were categorized as "horizontal" — featuring many types of products — or "vertical" — featuring one type of industry, such as oilfield equipment. Businesses from any state could participate in these kinds of missions. But Texas was the first state to sponsor its own, single-state overseas trade missions.[15] Texas' two missions to the Soviet Union took place "before Nixon was there and announced détente," explained Mr. Harwell.[16]

So when other states, such as Georgia and New York, opened overseas offices, – "Hell, Arkansas had one!" Harwell recalls – but no state had a Mexican office, Harwell felt Texas had a unique opportunity.[17]

Before the trade office opened, at least one trade mission to Mexico was led by the Texas Secretary of State (part of the Texas Governor's office) and accompanied by 50 businessmen. Also the TIC export director, Col. Jim Havey, took a "market survey" in Mexico during the summer of 1970. Havey reported to the TIC board that on this trip, a Mexican buyer was persuaded to change a $3,000,000 order from a Canadian supplier to a "Texas concern." The product was likely telephone poles, which were transported from

[13] Texas Industrial Commission minutes, 14 December 1967.
[14] TIC minutes, 23 October 1969.
[15] Interview with Col. James Harris, Austin, TX, 16 November 1998.
[16] Jim Harwell interview, 28 November 1998.
[17] Harwell interview, Wimberley, Texas, 28 November 1998.

Houston to Mexico on Texas trucks that were also bought by Mexicans. A bus took Mexican truck drivers from the border to Houston and the Mexicans then drove the trucks, loaded with telephone poles, to their new owners in Mexico. The Texas Department of Public Safety arranged for the drivers' crossing into Texas and designated their routes.[18]

The Texas Legislature authorized the trade office in 1970. For the fiscal year in which the office opened, (from September of 1971 to the end of August 1972), the Legislature allocated $150,000 from the General Revenue Fund for "international trade projects including but not limited to foreign trade missions, overseas offices, reverse investment missions…travel consumable supplies and materials…planning grants and all other activities for which no other provisions are made." The agency estimated it would receive $200,000 in federal funds but there are no details on how those were used or if they were used for the office.[19]

Given the state was venturing into uncharted territory, state officials had to take steps to ensure that the state could act legally in another nation. A few months before the office opened, the TIC director for international trade, James Havey, wrote to the Texas Attorney General to ask whether the state could legally pay for the services of an employee working and residing in Mexico.

Unforeseen complications still arose. Shortly before the office opened, Mr. Harwell wrote the state AG to ask that the Mexico Office be allowed to buy stamps from the Mexican post office, because "Mexico requires that all correspondence utilizing its mail system, and originating in Mexico, must have Mexican postage stamps affixed to such pieces of mail." At that time, state law allowed for purchases of stamps only from U.S. post offices.[20]

It seems there was a tacit agreement on the part of Texas and Mexican officials that no other U.S. state would be allowed to open a Mexico office.[21] Texas had the only office there for eighteen years. Mr. Harwell says the director of an industrial

[18] Phone interview with Frank Alagna, Austin, TX., 17 November 1998.
[19] Col. James Harris, formerly of the TIC, said federal funds were not used for the Mexico office.
[20] Letters from the Texas Industrial Commission to the Texas Attorney General dated 8 July 1971 and 23 November 1971; from the State Law Library Archives; in the author's possession.
[21] Statement by Ben Glawe, director of the Mexico office, TIC minutes, 25 April 1974.

development office in Arizona tried to open a Mexico office in 1973 or 1974. The Mexicans refused the offer. The Arizonan called Harwell and asked with obvious frustration, "How did you do that, get to open an office there?"[22] A California trade office had been proposed but the story is that a California office lacked the support of the Mexican federal government. California did open a Mexico City trade office, but not until 1989, followed by Illinois six months later.[23]

The function of the Texas office was to arrange meetings between Texan and Mexican business representatives. The Texas businesses were looking for buyers for their products, opportunities to invest in Mexico, or to lure Mexican manufacturers to establish a plant in Texas.

According to Mr. Harwell, the presence of the Trade Office encouraged Texas businessmen to make contact with Mexico that would not have otherwise occurred because of how suspicions U.S. business was of Mexico. The expropriation of U.S. oilfield equipment and leases by Mexican President Lázaro Cárdenas in 1938 had soured many U.S. businesses on venturing into Mexico. Some of those who did would come back with "horror stories," said Mr. Harwell. "Learning how to do business in Mexico was the only difficulty. Someone would buy something and then suddenly it wasn't his. Or he sent stuff down and it was confiscated by (Mexican) Customs and he couldn't get his stuff back, and couldn't get any authorization, couldn't file insurance, you were just swallowed up down there if you didn't go through the right channels."

Then the U.S. Congress passed a law prohibiting U.S. companies from bribing foreign companies. "That was a hell of a thing, it was a bind for American companies how to figure out how to do business over there if you can't do it in the normal way," said Mr. Harwell. But the effect of the law was that U.S. businesspeople had to rely on the Texas Industrial Commission to help "do business above board," Mr. Harwell explained.[24]

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[22] Harwell interview, 28 November 1998.
[23] Electronic communication with Cesar Bueno, Trade and Investment Specialist, State of Texas-Mexico Office, 9 November 2000.
[24] Harwell interview, 28 November 1998.

State/Federal/International Issues

The U.S.–Mexico axis (international causes): what were the international political and economic conditions that contributed to or prevented the state's effort to reach across the Rio Grande?

Relations between the United States and Mexico can be characterized at this time as both tense and neglected. Mexico did not figure prominently on the Nixon administration's limited Latin American agenda. Vice-President Nelson Rockefeller's visit through the region had led him to conclude there was a strong potential for Marxist, Castroite, and Communist influence throughout Latin America, including Mexico. The new U.S. policy of cooperation with Latin American dictators necessitated ignoring significant human costs, frustrating many segments of Latin American and Mexican society. U.S. Pres. Richard Nixon's support of dictators and possible instigation of the overthrow of Salvador Allende in Chile did not make him a popular man in Mexico.[25]

There are disagreements over U.S. federal trade policy and drug trafficking during this time. The Nixon administration responded favorably to Mexico by rescinding a 10 percent import surcharge but refused to open the market to Mexican tomatoes. A disruptive anti-drug operation was replaced by a new tactic of supposedly mutual cooperation, but U.S.-Mexico relations over drugs have been marked by distrust and tension since then.

Mexico's creation of the border tariff-free zone in 1966 is of huge significance. This marks the beginning of the *maquiladora* industry. A *maquiladora* is a corporation allowed to temporarily import raw materials and equipment duty-free. The raw materials are assembled in Mexico and re-exported to the United States or elsewhere. Under current Mexican law, foreigners can own 100 percent of a *maquiladora*. Labor costs are very low and transportation back to the United States inexpensive and quick.

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[25] Peter H. Smith writes: "In retrospect, it appears the overthrow of Allende was due more to the escalation of political and social conflict within Chile than to the efforts of the United States. It is undeniably true, however, that the United States was making strenuous efforts to undermine and overthrow the Allende regime." *Talons of the Eagle: Dynamics of U.S.-Latin American Relations* (New York: Oxford, 2000): 177.

Given Mexican Pres. Luis Echeverría's preference for a closed economy, the creation of the tax-free zone seems incongruous. Nevertheless, the *maquiladora* industry stands as the most significant intertwining of the U.S. and Mexican economies.

In short, neither Mexico's violent internal struggles, Echeverría's protectionism, nor the Nixon administration's support of dictatorships and neglect of Mexico seemed to limit Texas' pursuit of the Trade Office. This indicates that the U.S. government sees all levels of government as appropriately involved in meeting federal goals to increase exports. Acting within its authority, in conjunction with federal goals and in competition with other states, Texas shows initiative in venturing into Mexico, the first U.S. state to do so.

Despite high levels of concern on the part of the United States about Mexico's susceptibility to communist influence, Texas is not prevented from institutionalizing trade relations with Mexico by opening the Trade Office in Mexico City.

The Texas-U.S. axis (national causes): was the problem Texas sought to address under state or federal jurisdiction? What was the corresponding federal response: did the federal government support the mechanism, ignore it, or move to restrict the mechanism?

Adjusting to a changing domestic economy by reaching across national borders is arguably within the state's jurisdiction. There is no indication the state of Texas sought – nor needed – federal permission to open its Mexico City office, given that Texas has the authority to pursue its own economic development goals. But it is clear federal authorities knew of and approved of the opening of the office.

By all accounts, the relationship between Texas Industrial Commission and U.S. Department of Commerce officials was completely amicable, even symbiotic. The trade office in Mexico City was right next door to the U.S. embassy, which included the office of the federal agency's commercial attaché. Although publicly, Department of Commerce officials claimed Texas would receive no special treatment over any other state pursuing trade opportunities in Mexico, covertly there was some advantage to being next door to the attaché. Federal officials would assist Texas Trade Office personnel in

making appointments and in publicizing upcoming missions, including printing the occasional trade fair brochure. According to former state officials, USDOC did not fund any TIC activities, except for the occasional brochure.

Interestingly enough, even if U.S. DOC sponsored a trade mission, it was always billed as a Texas trade mission with no mention of the federal agency's sponsorship. Thus Texas received the credit for the trade mission. In turn, the Industrial Commission required any trade mission participants to report any sales or projected sales made while on a trade mission, and would share this information with the Department of Commerce. Thus U.S. DOC would get the overseas sales figures it often had difficulty in obtaining, because competitive businessmen tended to keep that information secret. These figures were also included in TIC's reports to the Texas Legislature.

The Texas-Mexico axis (state causes): How was the venue created? Did Texas' interest in and method of contact with Mexico differ from the U.S. government's relations with Mexico?

U.S. federal government policy at the time encouraged increasing exports and foreign direct investment and the U.S. federal system allows states the freedom to pursue these goals. U.S. states then found themselves competing against one another for overseas opportunities. Mexico was the most logical venue for the Texas Industrial Commission to pursue to fulfill the national goal of economic development and to be the first state to establish a presence in Mexico.

Personal relations between Gov. Smith of Texas and Pres. Echeverría of Mexico opened doors to international trade that would have remained closed otherwise. Echeverría's acceptance of the trade office could have been a statement that he saw a place for U.S. involvement in the Mexican economy, and yet other states were unable to do so. This indicates the personal relationships between the two leaders mattered.

The TIC manager who ran the Mexico City office was also on exceedingly good terms with the Mexican president's office. Col. Benoid Glawe had been the air attaché to

the U.S. embassy for six years prior to his appointment as manager of the office, and served as manager during three Mexican presidential administrations.[26]

The Texas and U.S. governments shared goals of economic development, so the interest was mutual. But relations between Texas and Mexico were far warmer than relations between Mexico and the United States. The lack of public support for Mexico from the Nixon administration could certainly have made Echeverría more receptive to a friendly Texas governor, and given Mexico an opportunity to interact with a U.S. capitalist who did not also carry the baggage of anti-communist ideology. This case indicates that sometimes states are able to accomplish lower-security goals, because states carry less responsibility for enforcing U.S. national security goals.

CITIES AND INTERNATIONAL TRADE

As the state is opening its first foreign trade office, hoping to gain an edge over other U.S. states, Texas cities were already working on trade promotion as well. In 1973, the Dallas Chamber of Commerce sponsored three trips in which state officials participated. Then-Governor Dolph Briscoe went to Tokyo, a group of businesspeople went to Osaka, Japan; and Lt. Gov Bill Hobby accompanied 27 businesspeople to Stuttgart, Germany to improve trade relations, seek real estate capital, and attract a proposed Volkswagen plant to Texas.[27]

The Texas Legislature also got involved. In 1976, a subcommittee of the House Committee on Business and Industry held hearings in the border city of Laredo, Texas, "to evaluate the status of international trade in Texas" and to determine "the means which might be used to assist Texas industry and commerce to more fully utilize the international trade opportunities available within the state," particularly how trade could be developed through Texas land and sea ports. The subcommittee invited others to the

[26] Harwell interview, 28 November 1998.
[27] Jim Burnett, "Texas Traders Head for Stuttgart," *The Dallas Morning News*, 24 November 1973.

meeting, including Laredo customshouse brokers, bankers, truckers, and others involved in the movement of goods.[28]

By now, Texas politicians were spreading the word that foreign trade mattered to the state's economy. In 1977, House Speaker Billy Clayton told an audience of farmers, "An open door to trade with the rest of the world is a necessity for Texas." In 1976, more than $1.5 billion worth of Texas-produced farm goods were exported overseas; that figure represented seven percent of total U.S. farm exports.[29]

The state Legislature held hearings in September of 1977 to study whether or not foreign trade zones would benefit the state.[30] The development of foreign trade zones in Texas cities is one indicator that the U.S. federal government supported the entry of subnational governments into international trade. The U.S. Congress had passed the Foreign Trade Zones Act in 1934. The Act defined a foreign trade zone as an "isolated, enclosed, policed area, operated as a public utility…in or adjacent to a port of entry, and furnished with facilities for handling, storing, manufacturing, exhibiting, and shipping goods."[31] Cities were required by federal law to get the state's permission before applying to the federal government for a grant to designate a part of the city, often an airport, as a foreign trade zone, where foreign companies could show manufactured goods and raw materials at trade fairs or open permanent offices without paying federally-imposed tariffs or posting bonds. The purchasing company, upon delivery in Texas or the United States, would pay duties.[32]

Businesses that operate in a foreign trade zone save money if the tariff rate drops while imported goods are stored in the zone. Even if the import of a product is restricted by import quotas, the product can still be stored in the zone, awaiting a new quota period to open. Raw materials can be brought into the zone and processed into a different product with a lower tariff rate. It was believed that cities with foreign trade zones would

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[28] "Trade Hearing Due in Laredo," *The San Antonio Light*, 28 July 1976.
[29] Editorial, "Texans Need an Open Door," *The Dallas Morning News*, 29 June 1977.
[30] Dick Merkel, "Legislators Planning Trade Fair hearings," *The San Antonio Express*, 8 September 1977.
[31] Sharon Donovan, "Port Study Geared to Determine if a Foreign Trade Zone Will Float," *The Houston Chronicle*, 3 March 1981.
[32] "Bill Makes Trade Center of S.A., Backers Say," *The San Antonio Express*, 4 March 1977; Dick Merkel, "S.A. Duty-free Zone Gets Nod," *The San Antonio Express*, 29 April 1977.

attract new industries.[33] One study estimated that if the city of El Paso developed a foreign trade zone at the airport, the city would create 6,000 jobs and gain $322 million a year.[34]

The process was this: a city would request permission of the state to apply for and receive the federal funds necessary to create a trade zone. The Texas Legislature would pass authorizing legislation; once done, federal approval was likely, albeit time-consuming: it took about 18 months of effort before the Dallas-Ft.Worth Regional Airport successfully completed the application.[35] The U.S. DOC announced approval of the zone, and cities received some development funding from the Economic Development Administration of the federal government.[36]

By April of 1977, there were 19 foreign trade zones in the United States, five of those in Texas. Three were along the border, (Harlingen, Laredo, and McAllen) and two in the interior in major cattle centers (San Angelo and Amarillo).[37]

El Paso and San Antonio were granted state permission to apply for foreign-trade zone status in April of 1977.[38] El Paso got permission in April 1980; San Antonio finally received its designation in 1982. Texas Gov. Bill Clements and San Antonio Mayor Henry Cisneros announced the zone at a San Antonio luncheon celebrating Mexican Independence Day, *Diez y Seis de Septiembre*.[39] Mayor Cisneros said the trade zone was "a very positive direction in our relations with Mexico, a new wedge, a new tool on that front." Gov. Clements said he hoped the zone would strengthen the relationship between Mexico and the United States. "The United States has no friend or ally more important than Mexico," the governor said.[40]

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[33] "Foreign Trade Zone Offers Pluses," *The El Paso Times*, 31 July 1977.
[34] Jerry Large, "Trade Zone Could Mean $322 Million," *The El Paso Times*, 27 August 1978.
[35] Bill Choyke, "Good News Expected on Trade Zone," *The Ft. Worth Star-Telegram*, 17 August 1978.
[36] Editorial, "Texans Need an Open Door," *The Dallas Morning News*, 29 June 1977.
[37] Michael Wallis, "Island foreign zone bill OK'd," *The Beaumont Enterprise Journal*, 8 April 1977
[38] Ibid.
[39] James McCrory and Jim Wood, "Clements Makes S.A. Trade Zone Official," *The San Antonio Express-News*, 17 September 1982.
[40] Jeff Davis, "Trade Zone Revealed at *Diez y Seis* Lunch," *The San Antonio News*, 17 September 1982.

U.S. OPENING TO CHINA: THE COINCIDENCE OF FEDERAL SECURITY AND STATE COMMERCIAL GOALS

The previous chapter told how the federal government's national security goals resulted in increasing imports from European allies in order to retain them within the U.S. sphere of influence, to the detriment of certain sectors of the U.S. economy. But the federal government's use of trade as a national security tool arguably reached its zenith when the United States established relations with the People's Republic of China.

The U.S. opening to China created a new global security configuration. In February of 1972, U.S. President Richard Nixon began to restore diplomatic relations with China, in a well-recognized bid to prevent a closer relationship from developing between communist China and the United States' main adversary, the Soviet Union. On 15 December 1978, the administration of President Jimmy Carter and the People's Republic of China (PRC) issued a joint communiqué announcing that the United States would change its formal diplomatic recognition from Taiwan to China, effective 1 January 1979.

Certainly, in keeping with the concept that state involvement in international relations was unnecessary, inappropriate, and even dangerous, one would not expect to see a subnational government presence in China at any time. Yet, even before diplomatic relations were fully restored, Texas business was courting opportunities with China with the state government's assistance and support – and with the encouragement of the U.S. federal government.

Just as the change in recognition was announced, China made public its intent to aggressively develop its energy sector and its need for advanced technology. That same week, U.S-based LTV Corp sold $40 million in drilling rigs to China. Beijing had already purchased two drilling rigs from National Supply Co., a division of Amoco Steel in Houston, for $30 million, for use off the Chinese coast; China lacked the technology to explore this petroleum-rich area. In 1978, Coastal States Gas Company was the first U.S. company to agree to buy Chinese oil; Coastal planned to import 3.6 million barrels

of high-grade, low-sulfur crude for $50 million. Processing the Chinese oil was expected to create business for other U.S. firms involved in oil processing.[41]

U.S. oil executives – mostly Texans – were invited to China shortly after President Nixon's visit. There the capitalists found communist officials in need of oil technology, but in possession of a sense of humor. As the story goes, a senior Beijing official was explaining that Chinese crews had been directed to drill very deeply to find oil. But he quickly promised that technicians would "refrain from drilling too deep, so as not to drill through into" the United States.[42]

Apparently reassured by this promise, U.S. business was more than willing to help China improve its drilling technology. At the time, the most realistic estimate of the amount of oil under Chinese soil was 50 billion barrels, more than the proven deposits under U.S. soil.

The year 1977 was a busy one for transit between Texas and China. In September, at least eight oil companies from Houston and Dallas sent representatives to China to tour Chinese oil facilities. The next month, sixteen Chinese oil experts visited Texas to tour U.S. energy facilities. Future president George H.W. Bush, then only "the former liaison chief in Peking (who) was himself a Texas oilman (who) has traveled several times to China with other Texas equipment executives on trade missions" held a reception for the Chinese.[43]

Before the opening of diplomatic relations, China had to make all purchases in cash. But the new status opened the door to lines of credit, increasingly open trade, the entrée of U.S. private investment into China, and the possibility of Export-Import Bank funds and other forms of U.S. government aid, as well as future formal trade agreements.

After the change was announced, the U.S. Energy Secretary James Schlesinger said that diplomatic recognition would be good for business: "The companies will perceive the political risks are lower, that greater confidence can be placed in financial

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[41] Bob Dudney, "Chinese Rounding Up Texas Oil Technology," *The Dallas Times-Herald*, 24 December 1978.
[42] Ibid.
[43] Dudney.

arrangements, and, as a consequence, one of the barriers to investment will be reduced."[44]

At this point, the involvement of subnational government in exports had the full support of the federal government. A Carter administration official, former Florida Speaker of the House Richard Pettigrew, told *State Legislatures Magazine* that the "new challenge we face nationally and in each state" is to increase exports and strengthen trade policy. "It is a new national priority. The reason is, that we are beginning to understand that our future is very much tied to how well we can improve our competitiveness abroad in moving out our goods."[45]

In January of 1979, Chinese Vice Premier Teng Tsiao-ping visited the United States, including a swing through Texas. Reflecting their differing policy responsibilities, state and federal officials responded differently to Premier Teng's visit. During his time in Washington, Texas' two U.S. Senators attended a Capitol Hill luncheon in the vice premier's honor. But, citing previous commitments, neither traveled with the communist leader from Washington to Texas, despite a request by the White House that they do so. Republican Sen. John Tower and Democrat Lloyd Bentsen's refusals were seen as expressions of disapproval of President Jimmy Carter's China policy, although Sen. Bentsen had supported the normalization of relations.

Linking trade and national security was not wholeheartedly endorsed by Republican Sen. Tower. After the luncheon, Sen. Tower acknowledged that a China-U.S. alliance was "prudent," given their shared threat posed by the Soviet Union. But he was critical of the Carter administration's conduct of foreign affairs, and cautioned against expecting too much benefit from trade with China, at the risk of eroding U.S. power. "The administration must demonstrate far more diplomatic cunning and political acumen than it has to date, lest its continuing ineptitude in the conduct of foreign relations places this country in an inferior position," Sen. Tower said after the luncheon. "We must remember that the PRC is a long way from the economic capability or

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[44] Ibid.
[45] Bo Byers, "Efforts Being Made to Hike Texas Exports," *The Houston Chronicle*, 23 December 1979.

consumer and industrial readiness to absorb any great influx of American products and services."[46]

While the Texas delegation to Congress was fairly cool towards the Chinese officials, state officials were quite welcoming. Texas Gov. Clements had opposed the change in diplomatic recognition, but when Teng arrived in Texas, Gov. Clements was at a Houston reception arranged by the U.S. Department of State for Teng and his 225-member entourage. "Whether we agree with him or not…whether we like chop suey or not, we intend to treat him as a guest," Gov. Clements said in response to news that the Conservative Caucus in Houston would protest the Chinese leader's visit. Gov. Clements explained that the development of China's petroleum reserves would be mutually beneficial to China and Texas. "(The Chinese) would have to buy from us the kind of equipment they need." Clements added that contracts to sell drilling equipment to Mexico were also in the works.[47]

Gov. Clements' oil services company, SEDCO, was one of the companies negotiating with China over the sale of semi-submersible offshore drilling platforms, which sold for up to $60 million.[48]

Gov. Clements, of course, was not officially involved in SEDCO's daily business dealings while governor. All the same, the close relationship between Texas politics and the oil industry is reflected by the trade mission taken by Texas Lt. Governor William P. Hobby later in 1979 with a dozen oil industry reps. Hobby said that "we are optimistic that this first Texas-China Trade Mission will result in increased economic exchange between the new Chinese market and Texas suppliers."[49] The international development department of the Texas Industrial Commission coordinated the mission. Gov. Clements had considered heading the mission but had gone to Eastern Europe on a three-weeks-long agricultural trade mission instead, possibly to avoid an impression of a conflict of

[46] "Texans' views Mixed After Meeting Teng," *The Houston Chronicle*, 31 January 1979.
[47] Patrick Martinets, "Clements ofers no sympathy for Teng-visit Protesters," *The Fort Worth Star-Telegram*, 30 January 1979.
[48] Dudney, "Chinese Rounding Up Texas Technology."
[49] "Hobby, Oilmen Join in China Trade Talks," *The Dallas Times-Herald*, 20 September 1979.

interest due to SEDCO's negotiations with China.[50] Thus in September of 1979, Texas state officials were leading trade missions into the United States' two largest communist security threats, with the knowledge and support of the federal government.

What does this tell us about the relationship between security and trade? At the time, the analysis of economics and security were still largely treated as distinct in International Relations theory, and were often referred to as "high" vs. "low" politics, with trade being designated as of lesser importance to national security. But in practice trade is now a tool of national security strategy, and because states are necessarily responsible for economic development, states are now venturing into the arena of international commerce and thereby are involved in national security strategy, despite the conceptual and legal limits on state involvement in foreign affairs prevalent at the time.

Indeed, the federal government had already opened the door for U.S. business to increase trade with communist nations. The Bureau of East-West Trade opened as part of the 1969 Export Administration Act, to promote trade in non-strategic, peaceful commodities between the United States and the centrally-planned economies of the Soviet Union and the People's Republic of China. By 1975, two-way trade between these entities stood at more than $3.2 billion.[51]

But at times, the subnational officials' eagerness to expand trade overseas clashed with federal practices, such as national security restrictions on some exports and the need for federal licenses for some exports. In March of 1979, Gov. Clements and Georgia Gov. George Busbee, representing the National Governors Association, appeared before the U.S. Senate Banking Committee to complain about the difficulties that business had in trying to obtain the export licenses necessary to sell their products or technology overseas. Gov. Clements said businesspeople seeking export licenses faced an obstacle course of overlapping jurisdictions and incompetent, uncaring bureaucrats. As Gov. Clements was wont to do, he offered his own plan to fix the problem,

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[50] Saralee Tiede, "Hobby Sees Huge Oil Benefits With China," *The Dallas Times-Herald*, 10 October 1979.
[51] *From Lighthouses to Laserbeams: A History of the U.S. Department of Commerce*, (Washington, D.C.: Office of the Secretary Ronald H. Brown, 1995): 40.

suggesting that only the departments of State, Defense, and Commerce have jurisdiction over export licenses, with a final appeal to the president available. "Continuation of the cycle of increased licensing constraints on exports, criticism of their ineffectiveness and congressional reaffirmation of increased restraint must come to an end if our nation is to remain a respected power in world trade," Gov. Clements told the committee.[52]

TEXAS' INTERNATIONAL STRATEGIES

Increasing Exports

In 1977, Texas ranked sixth in the nation in export dollar volume with $5.2 billion in exports, behind California, Michigan, Illinois, Ohio, and New York.[53]

By April of 1979, Texas still ranked sixth out of all U.S. states in export dollar volume, a position that accounted for nearly 97,000 jobs and about $5.2 billion worth of exports. From 1972 to 1976, eight percent of Texas' economic growth was attributable to its exports. In 1976, Texas sea and airports sent $8.9 billion worth of goods to foreign markets, in the form of cotton, chemicals, non-electric machinery, transportation equipment, and feed grains. Nationwide, 4.3 million U.S. jobs at the time were linked to exports, and sixteen percent of all products, manufactured or mined, were exported. During the 1970s, U.S. exports overall quadrupled – the outcome of efforts by the federal government as well as many a subnational government.[54]

Despite its number six rank, Texas still did not have an overseas international trade program, when reportedly, two-thirds of all states did. Texas still had a department of international development, but only one foreign office: the Mexico City office had a staff of two and a total annual budget of $53,574. The office claimed an 800-to-1 return on that annual investment in the office. But the manager Texas' international trade department – which itself had only two employees by the end of 1979, due to a budge

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[52] Larry Neal, "Clements points out export license trouble," *The Fort Worth Star-Telegram*, 13 March 1979.
[53] Richard Alm, "Study Shows Texas 2nd in International Trade," *The Dallas Morning News*, 9 February 1982.
[54] Editorial, "Texans as Exporters in Top-Rank Position," *The San Antonio Express-News*, 16 April 1979.

cut that took one employee – cautioned that Texas' lack of an overseas program meant Texas was losing out on opportunities that other states were likely to get. [55]

By 1980, Texas had moved from sixth place among U.S. states to second in exports: Texas sold $19.8 billion of manufactured goods overseas; second only California with $25.1 billion in foreign sales. International trade created some 70,000 jobs for Texans from 1977 to 1980. [56]

The concern about competing with other states spurred efforts to open another overseas office. A former state senator wrote a report for the 1981 Legislature called, "An International Office for Texas." The report argued that exports are

> …the principal means by which America pays for its purchases from foreign countries, and that all Americans are affected when exports do not grow rapidly enough. A large trade deficit makes U.S. economic growth more difficult to achieve. It is also a major reason why the value of the dollar has declined. This has increased inflation, raising the prices Americans have to pay for all goods. [57]

The report argued that more offices could help Texas manufacturers find overseas markets and distributors and determine the creditworthiness of foreign firms.

In 1983, another TIC official was voicing the same refrain – that Texas was not sufficiently funding development efforts to gain the full benefit. At the time, Texas was wooing companies in California to persuade them to relocate to Texas, where taxes were lower. But the Texas Legislature had allocated only $90 million for the Texas Industrial Commission's advertising campaigns. TIC Executive Director Charles Wood expressed dismay: "A couple of major ad campaigns can use up most of that," he said. He compared Texas' efforts with those of North Carolina, which had an enviable industrial development program. "They have 22 people and $6 million to do what we do with four people and $2.1 million," Wood lamented. [58]

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[55] Bo Byers, "Efforts Being Made to Hike Texas Exports," *The Houston Chronicle*, 23 December 1979.
[56] Richard Alm, "Study Shows Texas 2nd in International Trade," *The Dallas Morning News*, 9 February 1982.
[57] Byers, "Efforts."
[58] Terry Kliewer, "Promoting World Trade," *The Houston Post*, 20 July 1983.

Foreign firms were also courting Texas companies to relocate on foreign soil. Representatives from foreign firms enthusiastically sought out executives in Dallas and Houston in particular, and to a lesser extent in San Antonio, Austin, and El Paso, hoping to lure Texas energy and high-technology companies to their home nations through such incentives as reduced rents, guaranteed sales, lower wages, and grants for technology development. By 1983, several Texas companies were present in Great Britain, France, and Ireland.[59]

Foreign Investment in Texas

Most investment into the United States as a whole came from European, Canadian, or Japanese sources. Middle Eastern investors also bought into the Texas oil industry. There were fewer Mexican investors in the United States, but most of the Mexican money went to the Southwestern United States. From 1978-1983, Mexican businesses completed 19 transactions in the United States; five of those were in Texas, five in California, one in Arizona, five in NY, one in Massachusetts, and two in unknown locations. The U.S. firms receiving the investment included two hotel companies, a carpet plant, two shopping centers, and several banks. The investors were largely Mexican banks, individuals, or groups of investors.[60]

The list of other foreign direct investment transactions in Texas is far-ranging, as are the sources of the investment capital. Companies from the Netherlands, the United Kingdom, Saudi Arabia, Canada, Lebanon, France, Germany, Japan, Mexico, Hong Kong, Singapore, Sweden, and Norway invested in the following endeavors: a cafeteria company, oil and gas and chemical companies as well as oil and gas exploration leases, shopping centers, business parks, hotels, lots of land, a fiberglass company, a property development company, Dillard's department store chain, banks, apartment buildings, a drilling company, condominiums, oil field equipment, business parks, San Antonio's

[59] Michael Geczi, "Exporting Texas: Nations Try to Persuade Firms to Set Up Shop on Foreign Soil," *The Dallas Morning News*, 2 August 1983.
[60] *Foreign Direct Investment in the United States: Completed Transactions, 1974-1983, Volume I, Source Country* (Washington, D.C.: U.S. Department of Commerce, International Trade Administration, Office of Trade and Investment Analysis, June 1983): 103-104.

Crockett hotel, a bakery in Dallas, a shipping company in Houston, engineering companies, semiconductors, an agricultural supply company, makers of metal building components, a cement company, mining company, Winn's five and dime stores in San Antonio, and a steel company. Foreign investment took the form of either merger or acquisition, joint ventures, real estate, equity increases, or new plants.[61]

From 1974 to 1983, Texas had 526 completed transactions. New York led all states with 871 transactions while California had 857 and Florida, 830.[62]

Some Texans did not look favorably on the increase in foreign investment. In 1983, Texas Commissioner of Agriculture Jim Hightower complained that foreign purchases of Texas land would likely hurt Texas farmers. Hightower was testifying before the Texas House of Representatives State Affairs Committee, in favor of two proposed bills to limit the amount of land owned by foreign investors. Commissioner Hightower said that although foreign ownership amounted to only around 1 percent of total agricultural acreage, included in that 1 percent was some of Texas' best agricultural land, along the Red, Brazos, and Trinity Rivers and along the Rio Grande. From January 1982 to January 1983, 137,000 acres of Texas land was purchased by foreign investors, increasing the total of foreign-owned acreage by 17 percent, Comm. Hightower reported.

Comm. Hightower's concern was that these "absentee investors – foreign corporations and cash-rich speculators (have) no common interest to share with a Texas farm family. How does foreign ownership of our agricultural resources affect our farm economy?" asked Hightower. Some of the possible effects he listed are "inflated prices (that) artificially raise the appraisal values and thus the taxes on adjoining farms owned by already hardpressed Texans"; higher land prices reduces the affordability of land for "our own citizens" to purchase; absentee landlords will not maintain the land as well as would "the hand-on farmer who's out there day-in-day-out, doing his best to earn a

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[61] *Foreign Direct Investment in the United States: Completed Transactions, 1976-1983, Volume III, State Location* (Washington, D.C.: U.S. Department of Commerce, International Trade Administration, Office of Trade and Investment Analysis, June 1983): 131-141.
[62] *Foreign Direct Investment: Volume I.*

livelihood from the soil – with hope one day of passing that land on to his children," Hightower testified.[63]

Commissioner Hightower's Department of Agriculture would release fact sheets on "statistics that shape agriculture." On 18 July 1983, TDA released a sheet titled "Exports Fail to Boost Farm Income," showing that as exports steadily rose from 1973 to 1981, from $15 billion to $44 billion, farm incomes fell steadily from $33 billion in 1973 to $18 billion in 1977, and in succeeding years incomes rose and fell with no reliable pattern. "Farm Exports Up 143 percent Since 1973; Farm Income Down 40 percent Since 1973," the text concludes. The cutline of the graphic acknowledges the Reagan administration's export-based farm policy. Comm. Hightower is quoted: "Agriculture exports have helped to diminish the U.S. international trade deficit, and have boosted the income of many export firms, but farmers have seen their commodity prices fall and their income plummet to the lowest level in 50 years."[64]

Later in 1983, TDA released another set of statistics showing that "the real value of U.S. farm sales has declined 25 percent since 1973." Hightower's comment is that the "falling value of farm sales is directly responsible for the crisis in net farm income." Hightower concludes that "a fair price for farm products" is all that will improve farm income.[65]

Despite his vocal opposition to exports, Commissioner Hightower enthusiastically pursued sales of Texas agricultural products to Mexico. Comm. Hightower developed what is apparently the first set of "agreements" between a U.S. state and Mexico, and developed a mechanism for information sharing and policy coordination, the Texas-Mexico Exchange Commission, examined in the following section.

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[63] *Hightower Tells Panel That Foreign Investors Are Buying Texas Farmland,* Press Release, Texas Department of Agriculture, 28 March 1983 (Retrieved from the Texas State Archives, 11 July 2003).
[64] Texas Department of Agriculture, "Exports Fail to Boost Farm Income," *TDA Flashfacts.*
[65] *TDA Flashfacts*, "Down on the Farm," 26 August 1983, Retrieved from the Texas State Archives, 11 July 2003.

VENUE TWO: THE MEXICO-TEXAS EXCHANGE COMMITTEE

Even while general efforts were made to increase Texas trade in the 1970s, there is no evidence that any significant efforts were made to specifically promote Texas agriculture worldwide. The Texas Department of Agriculture organizational charts from 1977 show a "Marketing Division," but there is but no mention of international marketing at that time.

But an International Marketing Division was developed during the two terms of Texas Agriculture Commissioner Jim Hightower, who served from 1983-1991. Through the work of the division, Hightower sought to increase the presence of Texas agricultural products worldwide, by reaching out to Texas farmers to encourage them to sell their products directly overseas.

Today, TDA still has a separate international marketing division today, and food and fiber production accounts for ten percent of Texas' gross state product. Eighty percent of Texas land is devoted to agriculture, including ranching and livestock. Ten percent of Texas annual GDP is from agriculture.[66] In 2002, Texas exported more than two billion dollars' worth of agricultural products and $114 million in livestock and livestock products.[67]

Democrat Hightower was elected to his first term as commissioner of agriculture in 1982. He was reelected in 1986 and then lost his bid for a third term in 1990 to Republican Rick Perry, who served as Agriculture Commissioner and later was elected Texas Lieutenant Governor. When Gov. George W. Bush became the President of the United States in 2000, Perry succeeded George Bush as governor, earning that title for himself in the election of 2002.

Today Jim Hightower is not an elected official, but he calls himself "America's #1 Populist." He publishes books and a newsletter critical of the current administration's

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[66] *Texas Department of Agriculture Statistics*, electronic communication with Lisa Elledge, TDA, September 2003.
[67] BIDC, *Texas Exports Database.* (Retrieved 27 October 2003.) Available from http://www.bidc.state.tx.us/exportdb2/default.cfm.

policies.[68] While serving as Texas Agriculture commissioner, Hightower had a platform for his populist philosophies, and took every opportunity to express his disagreement with the Reagan administration's export-led trade policy. As shown in an earlier section, his department routinely issued statistics showing how increased trade negatively affected American small farmers.

So when Commissioner Hightower took steps to increase trade between Texas and other nations, one of his goals was that exports should benefit the small producers rather than the large multinational corporations. He hired Paul Lewis, a Texan who had spent the previous six years living in Brussels, Belgium, working on export development for the U.S. National Cotton Council.

Marketing director Lewis recalls that in the first days of developing the international program, he felt a sense of promise about what the Department hoped to accomplish for Texas' small farmers. While working overseas for the Cotton Council, Mr. Lewis noticed who was benefiting the most as U.S. exports increased – "It was the big corporations, the cotton merchants, the textile producers, the cotton seed producers. As Hightower used to say (in speeches), the small hardscrabble farmer had no voice, was not on the radar screen," Lewis says. The large corporations "don't share with the farmers who are the producers," the ones doing the hardest work, he explains.

At a time when the statistics showed U.S. farms were foreclosing, Comm. Hightower began several initiatives designed to support the "just folks," as he called them, who were working the Texas land. He encouraged farmers to join cooperatives, but given Texas' individualistic culture, only a few were formed. These eventually came under the influence of larger corporations, Lewis says.

Hightower's populism was the foundation for his approach to increasing exports. His goal was to "eliminate the middlemen," where possible, by encouraging small business to do their own processing and export the final product directly to foreign buyers. Processing items such as soybean oil required a large capital investment, which was out of reach for most Texas farmers. But Texas farmers were accustomed to selling their harvests of vegetables like tomatoes and peppers to a company like Campbell's

[68] See www.jimhightower.com.

Soup, to turn into Pace's Picante Sauce. Hightower wanted Texas farmers to process their own produce and benefit from the higher prices they could get for processed products such as bottled salsa or fruit preserves.

TDA started a "Taste of Texas" program where Texas-made goods were given a special label and featured in overseas trade missions and food shows. Hightower encouraged growers to move into niche markets by growing Christmas trees or delicious Texas blueberries. He began an agricultural development loan program. Also, TDA would defer the costs of participation in foreign trade shows: if a small producer could get a case of product and literature to Austin, TDA would ship the items overseas and exhibit the foodstuffs at trade fairs.[69]

TDA's international marketing department was at the center of Comm. Hightower's strategy to involve the small farmer in international trade. International marketing director Lewis enjoyed his job. "We had a sense we were getting to the guy being overlooked, the little mom and pop salsa producers – someone who'd never exported before," he says today. He quickly hired foreign nationals with the language skills and cultural knowledge he felt were necessary to form successful business relationships with other countries. He hired marketing specialists from Egypt, Hong Kong, the Netherlands, and Mexico. The Mexican and a South Texan were paired up to be the marketing team for Mexico. [70]

Focus on Mexico

While the "Taste of Texas" program supported processed goods for export, those goods had limited appeal in Mexico, where bottled goods are less popular due to uneven access to refrigeration. Thus marketing to Mexico was focused mostly on livestock.

Mr. Lewis recalls that Texas and Mexico already had some trade in cattle going on between private parties. Mexicans had been buying Texas cattle for breeding purposes and selling grass-fed corriente cattle to Texans.[71] Once bought by Texas

[69] Personal interview with Paul Lewis, Austin, Texas, 19 July 2003.
[70] Ibid.
[71] The corriente breed's ancestry can be traced to hardy stock brought to the New World by Spanish explorers as early as 1493. "Breeds of Livestock," website of the Department of Animal

ranchers, the corriente would be given shots of growth hormone and fed grain and oats to fatten them up for market.

TDA had six livestock export facilities along the border; all livestock going from Texas to Mexico passed through these facilities and were inspected by Mexican veterinarians for disease or parasites. The manager of the export pens was a TDA employee who would often introduce Texas cattle breeders to Mexican buyers, who in turn linked TDA to the Mexican federal agriculture secretary.

Building on contacts with Mexican cattle buyers, Lewis and Hightower arranged for a four-day trade mission to Mexico City in August of 1983. Hightower, Lewis, and other TDA personnel met with Mexican federal officials from the ministries of agriculture and commerce, as well as a United Nations food delegate and representatives of the Mexican Farm Organization Federation. The TDA delegation was also received by the U.S. Ambassador to Mexico, evidence that U.S. federal officials had knowledge that a group of Texas officials were in Mexico seeking to develop commercial ties.[72]

Upon his return to Texas, Comm. Hightower said the trip had "laid the groundwork for a long-term relationship that will benefit both Texas farmers and Mexico." He said he was "greatly encouraged" that Texas farmers would be able to sell agricultural products directly to Mexican buyers. "By cutting out the big middlemen," the national corporations that broker grain sales and instead selling direct, "our farmers will get a higher price and Mexico will pay a lower price," Comm. Hightower said. He added that in the previous year, purchases of Texas agricultural products by Mexico had fallen by half.[73] This was likely the effect of the 1982 Mexican peso crisis on Texas trade, but could also indicate that Texas had lost some sales to other U.S. states, such as Wisconsin, and large agricultural companies such as Cargill.[74] "The single best thing

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Science, Oklahoma State University, http://www.ansi.okstate.edu/breeds/cattle/corriente/; (Updated 30 May 1996; Retrieved 2 August 2003).

[72] TDA Press Release, *Hightower 'Encouraged' About Trade Mission to Mexico*, 26 August 1983.

[73] Ibid.

[74] Anne Miller, "Trade Pact Step Towards Texas-Mexico Alliance," *The San Antonio Light*, 1 September 1985.

that could happen to the farmers of Texas is for Mexico to have a healthier economy," Comm. Hightower declared.[75]

While it is clear that this trip shows an awareness of the importance of international links to Texas politics and business, is not at all clear what results followed this trade mission to Mexico City. A year passed, with no press about Texas-Mexico agricultural ties, until November of 1984, when TDA announced that Hightower was now cultivating ties with Mexican officials at the state level. What followed was a series of agreements between Hightower and several Mexican states.

Texas' State-to-Foreign-State Relations

First, in November of 1984, Comm. Hightower and the governor of the Mexican state of Tamaulipas, Emilio Martinez Manautou, announced a bilateral agreement to increase trade and to share agricultural information with the other state's government and agricultural organizations.

The agreement lists the following goals: that the two states will work to establish "information exchange procedures among governments, universities, and agricultural organizations pertaining to prices, supplies, and trade prospects" including exchange programs for students and agricultural personnel; that each state would learn the import and export restrictions put in place by the other nation's federal government; and that the committee would consider how best to coordinate business, trade, and cultural exchange between the two states.[76]

"The agreement puts into place a lasting mechanism by which Texas and Tamaulipas can address dozens of important agricultural issues," Comm. Hightower said at the public signing ceremony in Ciudad Victoria, Tamaulipas' capital city.

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[75] TDA Press Release, *Hightower 'Encouraged'*.

[76] TDA Press Release, *Hightower and Governor of Tamaulipas, Mexico sign Bilateral Agreement on Agriculture*, 13 November 1984. One month later, in December 1984, Comm. Hightower announced a similar arrangement with the nation of Israel, to promote projects ranging from "joint-ventures, technological exchanges, economic development to direct trade." TDA Press Release, *Hightower Announces Texas-Israel Exchange, Holds First Meeting*. 7 December 1984.

Comm. Hightower acknowledged that it was unusual for two state governments from two different nations to form such a pact. "Normally we think of such bilateral agreements as being a function of federal governments, not the states," Hightower said. "What we are witnessing today is two states which have identified a mutual area of concern – agriculture – that we intend to address ourselves." Hightower then insinuated that the remote federal governments in each nation did not fully understand the needs of their states. "This approach will make the views of the two states better known to the federal governments of both the United States and Mexico."[77]

The Texas-Tamaulipas agreement created an eight-person committee – comprising four Texans and four Tamaulipans – to implement the cooperative business-boosting projects outlined in the agreement. In December of 1984, Comm. Hightower introduced the members of the Texas-Tamaulipas Bilateral Exchange Committee at a ceremony on the International Bridge that crosses the Rio Grande. At the bridge, the United States and Mexico are linked via the states of Texas and Tamaulipas, through the cities of McAllen and Reynosa.

From the international bridge, Hightower also announced that TDA would be signing bilateral agreements with the Mexican states of Nuevo Leon and Coahuila, thus giving Texas agreements with the three out of the four states along the Texas-Mexico border.[78] "Texas cannot prosper if our neighbors in Mexico do not also prosper. All of us – the agricultural producers of Texas, Tamaulipas, Nuevo Leon and Coahuila – have the same purpose. We want to work together for mutual progress," Hightower said.[79]

Two months after the public introduction on the bridge, the Texas-Tamaulipas Exchange Committee had its first formal work session in February of 1985 in Matamoros, Mexico, just across the border from Brownsville, Texas. The agenda included discussion of a possible joint venture to develop a cattle embryo transplant clinic, and how to import citrus from Mexico to Texas without also importing the Mexican fruit fly, banned by USDA regulations. TDA was interested in importing citrus

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[77] TDA Press Release, *Hightower and Governor of Tamaulipas.*
[78] Marketing director Lewis recalls there were agreements with all four of the border Mexican states, along with Jalisco state in Central Mexico.
[79] TDA Press Release, *Texas-Tamaulipas Bilateral Exchange Committee Announced at International Bridge*, 12 December 1984.

because a severe freeze in the Rio Grande Valley in December 1983 had left Texas citrus packers and shippers in the Valley without fresh fruit to process.[80]

Texas' State-to-Foreign Nation Relations: The Mexico-Texas Exchange Committee

While Hightower was cultivating arrangements with the neighboring state governments, he was maintaining contact with Mexican federal officials as well. Some officials visited Austin on occasion. After crafting the several state-to-state agreements, the agriculture commissioner from the state of Texas then moved on to sign an accord with the federal agriculture secretary from the nation of Mexico. In July of 1985, Comm. Jim Hightower and Sec. Eduardo Pesquiera Olea signed what they each said was the first "bilateral trade accord" between a U.S. state and Mexico.[81]

At the memorandum-signing ceremony in Mexico City, TDA released statistics showing that trade between Texas and Mexico had shown steady improvement over the past year, from mid-1984 to July of 1985. "The value of livestock shipments to Mexico, as recorded at TDA's six export facilities, has increased from $26.2 million in all of 1981 to over $55 million in just the last ten months," Hightower said. Texas had exported $32 million worth of Holstein dairy cattle and $12 million of feed cattle to Mexico. Hightower credited the presence of "international marketing experts who know Mexico, its customs, and agriculture" for the successful sales increases.[82]

While the previous documents signed by Hightower and Mexican state officials were referred to as "agreements," the paper signed with the Mexican federal official was not referred to as an agreement, but as either an "accord" or a "memorandum of understanding." It is possible that the Mexican federal government was more mindful of the need to use non-binding language than was the state agency.

Except for the change in language, the Mexico-Texas Memorandum was similar to those signed between Texas and the Mexican states. It included commitments to cooperate on technical projects, exchange technical personnel, to promote livestock and

[80] TDA Press Release, *Texas-Tamaulipas Exchange Committee to Meet Thursday at Matamoros*, 27 February 1985.
[81] TDA Press Release, *Pesquiera, Hightower Sign Historic Trade Agreement for Agriculture in Texas and Mexico*, Mexico City, 29 July 1985.
[82] Ibid.

products through trade fairs, and to exchange information on livestock and agricultural production in Texas and Mexico.

Following the pattern of the state-to-state level arrangements, the memorandum gave rise to a forum for officials to convene. The Mexico-Texas Exchange Committee (M-TEC) was a larger version of the state-level committees, formed to develop specific projects in order to pursue the agreed-upon goals.

To co-chair the M-TEC alongside him, Comm. Hightower invited former U.S. Representative from Texas Robert Krueger, of New Braunfels, Texas, himself from a ranching family.[83] From 1979-1980, Bob Krueger had filled a special Ambassador-at-Large position created by the Carter administration to coordinate policy with Mexico. Because of his time in that office, Amb. Krueger had knowledge of Mexican business culture as well as some long-standing contacts. "Successful, long-term relations are built on personal contact with key government and private sector officials," Krueger said upon accepting the appointment. "Nowhere are personal contacts more important than in Mexico."[84]

While co-chairing the M-TEC, Amb. Krueger told a Texas business newsletter, "It is highly unusual for Mexico to be willing to work with a state interest instead of the federal government." He explained that Mexico was willing to do so because of the high levels of tension between the two federal governments over the illegal drug flows between the United States and Mexico. But the Commission allowed Mexico to communicate with state-level officials, "where such tensions do not exist," the newsletter reads.[85]

In keeping with the theme of competition for trade opportunities, Amb. Krueger acknowledged that Texas was hoping to increase trade with Mexico at the expense of other entities, such as the state of Wisconsin, from which Mexico was buying dairy cattle, and Cargill, the international agriculture distributor, from which Mexico was

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[83] Ibid.
[84] TDA Press Release, "Krueger to Serve as Deputy Chairman of Texas-Mexico Exchange Committee," 23 April 1985.
[85] "Texas, Mexico Set up Agricultural Commission," in *Texas Business Prospects International Agriculture Report*, 6 May 1985.

buying grain. TDA's goal was for Mexico to buy grain directly from Texas cooperatives, according to Krueger.

Today known as Senator Krueger,[86] he recalls taking several trips to Mexico in his capacity as deputy chairman of the M-TEC. Hightower's staff would call on him for help finding contacts within Mexico and for occasional advice. "I was a symbolic tie" between Texas and Mexico, Sen. Krueger says now.

The Texas-Mexico Exchange Committee held its first formal meeting on March 18, 1986, in Ciudad Juarez, Chihuahua, across the border from El Paso, Texas. A newspaper account explained, "Mexican officials, who are fond of pomp and ceremony, rented a huge hall and filled it with Mariachi music to mark the first meeting…which they hope will open up new Texas markets to their producers." Among the products Mexicans hoped to sell in Texas were citrus, chili peppers, peaches, vegetables, fresh flowers, and brooms.

The day's events included workshops on crop and livestock regulations and meetings to share technological information. One attendee was Manuel San Miguel, president of the Mexican Meat Packers Association. Señor San Miguel said his industry was hoping to buy 40,000 head of Texas cattle for processing in Mexican plants to resell in the United States as beef products. But U.S. Department of Agriculture regulations prohibited this practice, because the Texas beef could become mixed with Mexican livestock exposed to pesticides banned in the United States, according to Sr. San Miguel. Unable to plead his case effectively at the federal level, Sr. San Miguel appealed to the Texans for help. "What we need from Mr. Hightower and the senators from Texas is a little push, a little help with the USDA in Washington because they claim the meat from the Texas cow will lose its identity when it gets to Mexican plants and will return as Mexican beef," he told the Austin American-Statesman. "We're willing to let U.S. inspectors go into out plants to certify that" the beef slaughtered in Mexico will meet U.S. regulations.

[86] Krueger was appointed Senator in 1993 by Gov. Ann Richards to fill the unexpired term of Sen. Lloyd Bentsen, who died in 1993. He has also served as U.S. Ambassador to Botswana and Burundi, where he survived an assassination attempt in 1995.

Years later, Paul Lewis remembers the federal government as unresponsive to this Mexican producer's willingness to open his plant to U.S. inspectors. "Here he wanted to do things the right way and USDA was not working with him," Mr. Lewis recalls.

Sr. San Miguel wasn't the only one complaining about the U.S. federal government that day. In another dig at the Reagan administration, Hightower was quoted as saying: "If things were hunky-dory between producers in Mexico and the U.S. Department of Agriculture, there wouldn't be a need" for the state-level commission. [87]

Results

It is unclear what effect these initiatives had on Texas-Mexico agricultural exchanges. Paul Lewis, the former international marketing director, recalls that the M-TEC helped export a lot of beef, pork, and other meat products. His staff helped the Agriculture commissioner from the state of Kentucky network with Mexican officials. But there are no hard numbers to show the M-TEC's accomplishments.

Mr. Lewis says that the office had intended to develop a system of tracking sales to Mexico. The office built what he calls the "first local-area-network" using one IBM computer, several clones, "250K of memory and very slow processors" in order to create a master list of every potential Texas exporter of live animals, breeding stock, food products, and so on. But "one component that was never fully developed was tracking the results" of linking suppliers with distributors. In speeches, Commissioner Hightower would refer to trade numbers indicating an increase in commerce between Texas and Mexico, but Lewis says these numbers likely came from counting the livestock that flowed through the TDA border export facilities, not necessarily from numbers tracked on office computers.[88]

At least one, and perhaps several, cattle embryo transfer facilities were developed out of M-TEC negotiations. Embryo transfer technology was developed for ease of

[87] James Pinkerton, "Texans, Mexicans Mark Beginning of Trade Initiative," *The Austin American-Statesman*, 18 March 1986.
[88] Personal interview with Paul Lewis, Austin, Texas, 19 July 2003.

breeding. The preceding technological method had been frozen bull semen. Embryo transfer involves harvesting cow eggs that are then fertilized and sold to be implanted in a "surrogate mom" cow. The embryo transfer facilities were at least in part to develop humped Zebu cattle for export to Central and South America.[89]

Mr. Lewis says that although he was in the thick of things at the time, developing Texas' international trade, he had no sense then of how global economics were changing, "not until NAFTA brought it to (my) attention."[90]

In 1990, Hightower lost his re-election bid to Republican Rick Perry in a truly mud-slinging battle.[91] His independent streak had hit a roadbump when he promised the European Union a consistent supply of hormone-free beef, at a time when very few Texas ranchers were open to raising hormone-free beef. Although consistent with his organic approach to all things agricultural, the issue turned into a liability for Hightower. The Texas Beef Council and other agricultural interests donated large sums of money to Rick Perry's campaign, and Hightower lost the race.

State/Federal/International Issues

The Texas-U.S. axis (national causes): was the problem Texas sought to address under state or federal jurisdiction? What was the corresponding federal response: did the federal government support the mechanism, ignore it, or move to restrict the mechanism?

Increasing agricultural exports was within the state's jurisdiction and therefore the federal government was not likely to restrict the state.

The U.S. federal government knew of Comm. Hightower's efforts to promote Texas products in Mexico and worldwide. Mr. Lewis recalls that TDA officials would be in touch with the USDA attaché to the U.S. embassy and the U.S. ambassador wherever

[89] TDA Press release, 11 September 1985. Zebu cattle are thought to be the world's first breed of domesticated cattle, and where introduced to the United States around 1849. See Cattle Today, Zebu. (Retrieved 27 October 2003.) Available from: http://www.cattle-today.com/Zebu.htm.
[90] Paul Lewis interview.
[91] Julie Blase, "Texans Wrangle Over State Agriculture Seat," *The Christian Science Monitor*, 1 November 1990.

they would go for a trade show. “It wasn’t like we were trying to end-run them; we kept them in the loop,” he says. U.S. federal officials would alert TDA to upcoming foreign trade shows, and also help TDA with overseas food shows by helping to clear shipments through foreign customs, co-sponsoring receptions, and giving tips on where to find hotels with good government rates. “We had good support,” Lewis says. Federal officials

“were helpful wherever we went: Hong Kong, Singapore, Riyadh, Beijing, Japan. We were not trying to do anything secretly – usually the local USDA guy was up there with Hightower, doing his job, supporting the exports. We were not establishing American foreign policy. We knew the line is trying to establish foreign policy – that’s the president’s deal. But we were just looking for ways to help Texas.”

Sen. Krueger does not recall having any contact with federal officials about the operation of the Commission, showing how free the state was to pursue its own economic goals even in a changing domestic policy environment. The state’s freedom comes from its authority to tax and spend as it sees fit for economic development purposes. To wit, the M-TEC was completely state-funded. “Hightower would never have asked for support from the Reagan administration,” says Sen. Krueger. “He would have liked to do what the federal government had not done for the small farmer.”

In a separate interview, Mr. Lewis confirms no federal money supported the program. “Jim Hightower would have never asked the Reagan administration for financial help,” he says.

The U.S.–Mexico axis (international causes): what were the international political and economic conditions that contributed to or prevented the state’s effort to reach across the Rio Grande?

In the 1980s, tensions between the United States and Mexico ran high over politics in Central America. In 1983, U.S. Ambassador to the United Nations Jeanne Kirkpatrick cautioned that Mexico’s economic struggles made it susceptible to communist influence that could seep up from Central America. Former U.S. Secretary of State Henry Kissinger chaired a commission on Central American policy that, in its 1984

report, warned of the likelihood of Nicaragua's Marxism spreading throughout Latin American, including Mexico. Also in 1984, the chief of the U.S. Southern Command in Panama, General Paul F. Gorman, testified before a U.S. Senate committee that within ten years Mexico would be the United States' "No. 1 security problem" because it was "the most corrupt government and society in Central America" and it was already "a center for subversion."[92]

Mr. Lewis also recalls that there was little positive contact between the U.S. federal government and Mexico at the time over trade issues. Yet in the midst of unfriendly relations between federal governments, state actors were free to establish their own ties, due to having less responsibility for national security than the federal government.

Sen. Krueger confirms that hypothesis when he recalls that the tensions at the time between the United States and Mexico "opened up an opportunity (for Mexico) to deal with a state government. It made overtures from state-level officials more attractive."[93]

The Texas-Mexico axis (state causes): How was the venue created? Did Texas' interest in and method of contact with Mexico differ from the U.S. government's relations with Mexico?

Both Mr. Lewis and Commissioner Hightower felt strongly that hiring foreign nationals gave TDA an edge in cultivating foreign relationships. Mr. Lewis recalls, "We hired people who knew what they were doing. It was a new thing to hire foreigners. Two white guys did stuff before. Other states, we'd see them at food shows, they were not hiring so many foreigners. They were envious we had the budget to hire people with language skills and expertise." Hightower allocated the budget, Lewis says, because hiring foreign talent "was a priority with him."

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[92] Alan Riding, *Distant Neighbors: A Portrait of the Mexicans* (New York: First Vintage Books, 1986): 473.
[93] Personal interview with Sen. Bob Krueger in New Braunfels, Texas, 31 July 2003.

In 1985, Hightower had said in a speech, "Having the international marketing experts who know Mexico, its customs and its agriculture, is another important reason TDA is able to help our Texas livestock producers."[94]

"There was no down side" to the M-TEC, Lewis says. Having visible ties to Mexican federal officials gave Texas officials more credibility with Mexican importers, particularly in a culture like Mexico's that emphasizes personal relationships. "We could get local support more easily" in Mexico because the locals knew the Texans were tight with Mexican federal officials, Lewis says.

Sen. Krueger bluntly explains that while there was a practical need for a Texas-Mexico forum to discuss technical matters, there was also a political motivation for Comm. Hightower to seek closer ties with Mexico. "Texas politicians are always looking for ways to expand their electoral base, and make ties with Hispanics. There were real problems Texans had with the import of Mexican cattle – brucellosis was a problem, and some felt the inspection procedures were a problem. There were legitimate issues to be explored. There may have been a significant commercial reason (for the M-TEC) but the political reason was strong. If (Hightower) deals with Mexico, that helps cement his Hispanic political base. Doing more with Mexico on agriculture satisfied the Anglo landowner and the Hispanic."[95]

Do State-Level Efforts Culminate In NAFTA?

The idea of a North American common economic market between the United States, Canada, and Mexico was first put forth by officials in U.S. border states. In 1979, Texas Gov. Bill Clements and California Gov. Jerry Brown endorsed the idea while they founded the Border Governors' Conference.[96]

During the summer of 1980, Gov. Clements headed a National Governors' Association committee on North American Cooperation. The nine-member group held its first formal meeting in February of 1981 in Washington, where ambassadors to the

[94] TDA Release, *Pesquiera*, 29 July 1985.
[95] Krueger interview.
[96] See Chapter Five of this dissertation.

United States from Mexico and Canada met with governors to discuss how North American cooperation could develop in the future. "I envision that this council, while it would have no policy-making powers, would provide a forum for all levels of government and the private sector to discuss issues of importance to all," Gov. Clements said. He urged the U.S. federal government to "put Canada and Mexico in a priority status in our foreign policy (and) treat them as peers and as equals."[97]

Former governor of California Ronald Reagan supported a trilateral trade accord in his first campaign for president in 1980.[98]

The idea of a common market was also popular with Texans in the federal government. Abelardo Valdez was Pres. Jimmy Carter's chief of protocol at the U.S. DOS. Upon leaving office in 1980, the native of Floresville, Texas, near San Antonio, became a vocal advocate for a free trade zone, 200 miles deep along each side of the border. The purpose of a Western Hemisphere "common market," he explained to a meeting in San Antonio in December of 1980, would be to compete against the European Common Market. Ambassador Valdez also saw such a mechanism as a means of lessening tension between the United States and Mexico. He said that in 1979, total U.S.-Mexican trade was worth $18.6 billion, 50 percent more than the figure for 1978.[99]

How much did Mexico's newfound oil reserves contribute to the idea of a common market? Amb. Valdez cautioned that any U.S.-Mexico talks on economic cooperation should exclude discussion of oil. "I don't think we should tie our cooperation in this venture to oil," Amb. Valdez said. "The Mexicans get upset whenever we talk about oil, because they think, 'You just want our oil.' The Mexicans don't want to be thought of as an oil well, but I think (a free trade agreement) can be built up to include energy down the road."[100]

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[97] Carl P. Leubsdorf, "Clements eager to begin N. America panel talks," *The Dallas Morning News*, 24 February 1981.
[98] "Why the Governors Support the NAFTA (and Washington Doesn't)." *State Backgrounder* (Washington, D.C.: The Heritage Foundation, 15 June 1993).
[99] Mark Thompson, "Texan Pitching for Free Trade Zone on Border," *The Fort Worth Star-Telegram*, 14 December 1980.
[100] Ibid.

Amb. Valdez hoped that a border-long free trade zone would, by the year 2000, expand to include Canada, other Latin American countries, and the Caribbean. The Reagan administration had shown some interest in Valdez' plan, and was already pursuing a U.S.-Canadian Free Trade Agreement. Because of the increasing intertwining within the hemisphere, Amb. Valdez argued that economic development was crucial if there was any hope of alleviating the chronic unemployment characteristic of the border economy, particularly given the projected growth in population for Latin America.[101]

Federal support of free trade was important, according to Amb. Valdez, because

> The United States is finding it increasingly difficult to compete in the world market, due mainly to reduced production and ineffective marketing…the attraction of new industry to the border lands and the increase in jobs and human services would spark a renewal that eventually could be expanded throughout Latin America…. We are past the time when unrest and upheaval in El Salvador, say, has no effect on the United States.[102]

An important aspect of economic cooperation for Valdez was the involvement of the private sector. "Federal development aid, drastically cut when our priorities changed during the Vietnam War, is still necessary," he said. "But private money is even more so. Without the private sector on both sides, the concept won't work. After all, there's the money is."[103] Valdez' comments foreshadow the fact that the main issue on the future NAFTA negotiations table for the United States would be investor protection, necessary for U.S. businesses to overcome the fear and mystery surrounding business transactions in Mexico.

But others on the U.S. side of the border did not warmly embrace the idea of a border-wide free trade zone. Concerns were raised about immigration and the effectiveness of regulating the flow of goods and protecting the public health, and the proposal to move border control to the edge of the free trade zone, 200 miles away from the border. The director of the port of Brownsville, Texas, Al Cisneros, vigorously

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[101] Bruce Millar, "Some Critics Say Free Trade Zone Idea Unrealistic," *The Corpus Christi Caller-Time*s, 28 June 1981.
[102] David McLemore, Ex-Carter Aide Urges U.S.-Mexico Zone," *The Dallas Morning News*, 19 March 1981.
[103] Ibid.

opposed free trade and the idea of the zone. "It's going to have too many repercussions for too many people," he said.[104]

Indeed, the Mexican government itself was cool to the idea, as predicted by Bob Krueger. A free trade zone is "counter to the policy many of their (Mexico's) business and government people have been following," Amb. Krueger said in 1981.[105]

At the time, the idea did not catch on at the federal level. But along the border, fostering cross-border cooperation became more and more common and regular.

U.S. exports to Mexico were also growing steadily: in 1986, the United States exported $12.39 billions of dollars' worth of goods while importing $17.56 billion of goods from Mexico. These values grew; in 1994, U.S. exports to Mexico valued $50.84 and imports from Mexico were almost even at $49.94 billion.[106]

Developments in Texas moved apace. Gov. Bill Clements' first term ran from 1978-1982. He lost a bid for reelection in 1982 to Democrat Mark White. Then Clements ran again in 1986 and this time defeated White.

In his first term, Clements had helped start the Border Governors' Conference and had been a vocal advocate of closer ties to Mexico, often visiting Mexican officials, even their president. Clements' support of Mexico was often criticized as being based on a lust for Mexican oil. But in his second term, Clements continued to formalize closer ties with the governors of the neighboring Mexican states.

In the first four months of 1988, Gov. Clements signed cooperative accords with the governors of all four Mexican states bordering Texas – Tamaulipas, Nuevo Leon, Coahuila, and Chihuahua. The documents acknowledged that Texas and each neighboring Mexican state would benefit from working together to develop their economies, promote tourism, catch auto thieves, and discourage drug abuse.[107] Gov.

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[104] Millar, "Some Critics Say."
[105] Joe Fohn, "Free Trade Zone Reaction Mixed," *The San Antonio Express-News*, 12 July 1981.
[106] *U.S.-Mexico Trade and Transportation: Corridors, Logistics, Practices and Multimodal Partnerships.* (Austin: LBJ School Report, 1995): 7.
[107] The four governors and the approximate dates of the 1988 agreements were: 11 February, Gov. Jorge Treviño Martinez of Nuevo Leon; 22 March, Gov. Americo Villareal of Tamaulipas; 19 April, Gov. Fernando Baeza of Chihuahua; and 27 April, Gov. Eliseo Mendoza of Coahuila. Sources: Wayne Slater, "Two Governors Sign Economic Pacts," *The Dallas Morning News*, 12 February 1988; Wayne Slater, "Economic Panel to be Formed," *The Dallas Morning News*, 23

Jorge Treviño Martinez of Nuevo Leon said through a translator, "If we can develop the economy in our border, if we do this together, thousands of Mexican families and thousands of Texas families will benefit jointly."[108]

The state-to-state pacts promised a jointly-financed tourism promotion called "Vacation in Two Nations." The state governors exchanged taped anti-drug abuse announcements for broadcast in each of the states. The Mexican states of Nuevo Leon and Tamaulipas planned to open government offices in Texas. A program to share information on auto thefts was planned. Promises were made to exchange information on transportation, including swapping research staff. Plans were made for sewage treatment plants and the construction of new bridges over the Rio Grande/Rio Bravo. Texas and Chihuahua planned cooperative ventures between the University of Texas at El Paso and the Autonomous University of Chihuahua, including satellite links between the campuses.

At the same time as these state-level developments, members of the U.S. Congress were criticizing Mexico for what it said was a lack of effectiveness in the war on illegal drug traffic. Gov. Fernando Baeza of Chihuahua took the occasion of the signing to comment on the tensions over drugs evident in the U.S.-Mexico relationship. "All countries should get involved in the war against drugs. Nothing good or positive will come out by criticizing," he told reporters through an interpreter. "Mexico has paid a very high price, a very high toll, in its war on drugs."[109]

Gov. Clements, always consistently vocal in supporting Mexico, now began to speak up in support of Mexican governors. He saw his outreach to Mexico as mutually beneficial in the short-term, but hoped that connections with U.S. governors would eventually lead to more empowerment for Mexican governors. After a visit with Mexican President Carlos Salinas de Gortari in February of 1989, Clements said he felt the Mexican governors were being given more autonomy in decisionmaking. Increasing the governors' authority could only be beneficial for accelerating development along the

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March 1988; Michael Holmes, "Mexico Governor, Clements OK Pacts," *The Dallas Morning News*, 20 April 1988; and Wayne Slater, "Clements, Coahuilan Sign Pacts," *The Dallas Morning News*, 28 April 1988.

[108] Slater, "Two Governors."

[109] Holmes, "Mexico Governor, Clements."

Texas-Mexico border, Gov. Clements said. "You will see these things take on a life of their own along the border without the usual bureaucratic delays that have historically taken place where so many other activities were dictated by the federal government in Mexico City," he said.[110]

The idea of freer trade between the United States and Mexico was supported by the attendees of the Border Governors' Conference in 1990, during the ten-year anniversary of the creation of that cooperative body.[111] One of the points included in the 1990 resolutions concluding the meeting was that the governors would support talks between U.S. and Mexican federal officials aimed at eliminating non-tariff trade barriers on agricultural products.[112]

Each nation had sent their highest commercial officials to the 1990 Border Governors' Conference meeting, and used the occasion to introduce the idea of greater economic cooperation between the two countries. Mexican Secretary of Commerce and Industrial Development Jaime Serra Puche told attendees that Mexico needed to participate in the international marketplace in order to modernize. He said Mexican President Carlos Salinas de Gortari had initiated Mexican technology development programs, deregulation, and diversifying Mexican exports beyond petroleum. He said the *maquiladoras* had grown in importance to the Mexican economy. From 1983 to 1989, Mexico had seen a 19 percent annual increase in the number of *maquilas*, and that 1,742 plants now employed 450,000 workers.[113]

U.S. Commerce Secretary Robert Mosbacher told the governors they were "part of a laboratory experiment" in commercial integration. He praised Mexico for the decline in its inflation rate, which decreased from a whopping 159 percent in 1987 to less than 20 percent in 1989. Texan Mosbacher said he expected Mexico to have a

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[110] Wayne Slater, "Clements Links Bridges, Pollution Fight," *The Dallas Morning News*, 18 February 1989.
[111] The story of the creation of the Border Governors' Conference is in the next chapter of this dissertation.
[112] Maggie Rivas, "Border Governors Forge Economic Ties," *The Dallas Morning News*, 31 March 1990.
[113] Ibid.

"world-class" economy. "The Mexican people can ignite growth in Latin America and inspire others around the world," Secretary Mosbacher told the governors.

By this time, Mexico had committed to opening its economy and was seeking sources of foreign investment. First, President Salinas went to Davos, Switzerland, to the 1989 World Economic Forum to seek stronger trade ties with the European Union, but Europe was preoccupied with the ending the Cold War, and Salinas was virtually ignored. Salinas then resigned himself to the fact that if Mexico wanted to improve its economy, it must do so through closer ties to the United States, his second choice. Mexico began an intense lobbying campaign to generate support for the agreement, both throughout Mexico as well as in Washington, the first time Mexico ever launched such a campaign.[114]

Meanwhile, back in the United States: after the 1988 round of the General Agreement on Tariffs and Trade (GATT) negotiations, U.S. state officials began to realize how the federal government's international commitments were affecting state laws. The GATT's intent was to eliminate trade restrictions that would put foreign producers at a competitive disadvantage. Thus the federal government now required some state laws to be changed in order to be in compliance with the international treaty.

The states consequently found themselves to be the underdogs in trade negotiations. Since U.S. trading partners prefer a single national standard rather than scrambling to meet 50 different state standards, the states would be the ones whose traditional areas of regulatory authority would be affected.

During the NAFTA negotiations, the U.S. Department of Commerce did provide a "single point of contact" through which states could stay informed on the negotiations and be better prepared for regulatory changes. States were allowed to "grandfather" in a

[114] Personal interview with Dr. Antonio Ortiz Mena, formerly of the Mexican Trade Ministry, *Secretaría de Comercio y Fomento Industrial* (SECOFI), now Professor of Political Science and *Director de División de Estudios Internacionales* at CIDE, *Centro Investigación y Docencia Económicas*, Mexico City, 4 November 2002.

selected number of state regulations, protecting those laws from being challenged in the future by trading partners.[115]

But as NAFTA negotiations got underway in 1992 among representatives from each federal government, the governor of the State of Texas, Democrat Ann Richards, was a vocal supporter. She said, "the issues discussed here are not only (of) regional importance, they are hemispheric." At the 1991 Border Governors' Conference meeting, the newly-elected Richards said the support of the border states would make or break the success of the agreement. "We know that no matter how carefully crafted a free trade agreement is, the burden of (e)nsuring its success is going to remain primarily with those of us along the border," Gov. Richards said. "We must work together to develop the infrastructure, the roads and the bridges and the ports and the railroads that tie us together." Without the infrastructure, the roads and bridges linking the two nations, Gov. Richards said, the agreement "will be little more than words on a piece of paper."[116]

The border governors as a whole expressed support for NAFTA, as did many governors throughout the United States.[117] At the time of the 1993 Border Governors Conference in Monterrey, Mexico, NAFTA had been negotiated and signed, but not yet ratified, and was facing a skeptical U.S. Congress. One reporter said the meeting of the governors "turned into a muted version of a pep rally" for the three-nation accord. The governors, as always, signed a document to conclude the meeting; the Monterrey Declaration expressed the border governors' support for NAFTA.[118]

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[115] "The NAFTA's Impact on State Governmental Authority," *Special House Select Committee on NAFTA and GATT: Interim Report to the 74th Texas Legislature*. (Austin: Texas House of Representatives, November 1994).

[116] "Richards Says Pact Would Boost Border: Governors Continue Free Trade Talks," *The Dallas Morning News*, 23 February 1994.

[117] "Why the Governors Support the NAFTA (and Washington Doesn't)." *State Backgrounder*, Washington, D.C.: The Heritage Foundation, 15 June 1993.

[118] Maggie Rivas, "Border Governors Reaffirm Free Trade Pact," *The Dallas Morning News*, 24 April 1993. Gov. Richards did not attend the 1993 meeting; she was forced to forgo the trip because, just a few days earlier, the standoff between law enforcement authorities and a religious cult near Waco, Texas, had come to a tragic end. Texas authorities took responsibility for investigating the tragedy because of the number of federal agencies involved.

In the 1990s, the link between the Mexican and U.S. economies only strengthened. The value of U.S. exports to Mexico rose from 33 billion dollars in 1991 to 111 billion in 2000.[119]

Gov. Bush and Mexico

Gov. Richards was defeated by George W. Bush in 1994. Five Mexican governors attended Gov. Bush's inauguration ceremonies, and attended a working breakfast with him the next morning.

Illustrating the importance of the Mexican economy to the Texas economy, Gov. Bush got right to work supporting Mexico, which was in an economic mess following the 1994 Mexican peso crisis. But it was not only the Texas governor who realized the effect Mexico had on the U.S. economy – the U.S. state governors were largely supportive of the Clinton administration's proposed bailout package to lend Mexico some $40 billion. At a National Governors' Association (NGA) meeting in January of 1995, Gov. Bush in particular lobbied for the aid to Mexico, and he was joined by governors from other regions of the United States, such as Christine Todd Whitman, Republican governor of New Jersey, and Gov. Mike Lowry of Washington state, a Democrat. The bailout was "the right thing to do," Gov. Lowry said. "It will cost our economy much more if Mexico is very unstable economically. Our relationship with Mexico is very important to all the people in this country. The stability of their economy is very important to us from the standpoint of 700,000 jobs in our country."[120]

Gov. William Weld of Massachusetts proposed an NGA resolution asking the federal government to pass aid for Mexico. "Mexico must receive the support necessary to get through this current difficulty in order for states to achieve the benefits projected under" NAFTA, the proposal read.

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[119] U.S.-Mexico Chamber of Commerce, *Economy – Trade Statistics.* (Retrieved 28 October 2003). Available from http://www.usmcoc.org/eco2.html.

[120] Wayne Slater, "Bush Seeks Support for Mexico Aid," *The Dallas Morning News*, 30 January 1995.

Even so, the traditional idea that states should not participate in foreign relations was persistently manifest. Another Republican governor, Arne Carlson of Minnesota, opposed any loan to Mexico, but also opposed the governors discussion of a federal matter, which he felt "does not belong at the governors' conference."[121]

CONCLUSION

The story of how Texas developed its place in the world economy illustrates the many elements that come into play for other U.S. states as well: the effect of a changing global economy, the open U.S. federal system that encourages states to compete against one another, the capacity of states to innovate policies and policy mechanisms, the influence of the private sector, and the importance of shared goals with the U.S. federal government. The Texas case also shows how interpersonal relationships at the subnational government level can operate more freely than international relations at the federal level sometimes do, because state actors do not carry the same responsibility for enforcing national security as does the federal government.

As the U.S. economy became more integrated with the world economy, Texas officials responded by establishing economic relations directly with foreign actors. Texas officials, aware that other U.S. states were developing direct foreign relations and aggressively courting foreign economic opportunities, were eager to find a niche for the state in the world economy before other states beat them to it. Because each state is responsible for its own economic development, states are free to compete for advantage. Texas' geographic proximity to Mexico made it a natural market for Texas business to pursue. But given the veil of mystery surrounding how to do business in Mexico, the private sector turned to Texas state officials to pave the way through venues such as the Texas Trade Office and the Mexico-Texas Exchange, started by the Texas Department of Agriculture.

But given the traditional view of states as having limited capacity and interest in foreign affairs, why would the federal government not exercise its authority to restrict

[121] Ibid.

the state and others from developing relations directly with foreign nations? While the federal government set the nation's trade policies, economic development is a state responsibility. But maintaining a growing economy, especially at a time of rapid global economic change, requires a magnitude of effort demanding the efforts of all levels of government. Although technically the federal government could act to restrict any state-level contact with a foreign nation, the states play a vital part in meeting the nation's economic development goals. Thus, even when the states developed relationships directly with foreign actors, the federal government supported these developments, recognizing that subnational-international economic relations are crucial means of meeting domestic goals, and that states were expanding their traditional responsibility to maintain economic development by moving into the global economic arena.

Texas found its domestic commercial goals in harmony with the federal government's goals, particularly as federal foreign policy expanded to include trade as a means of redefining security relationships. The position Texas would take in the world economy was shaped by its natural resources, particularly its oil resources and the expertise in that area shared by private businessmen and state officials like Gov. Bill Clements. Texas' oil resources allowed it to benefit – perhaps more than other states, in this case – from this change vis-à-vis the U.S. opening to China.

In the Texas-Mexico case, the two venues described here highlight the importance of personal relationships in developing state-foreign links. Texas governors and state officials have played an important role in developing venues for trade promotion, and for promoting regional relations and policy coordination, as will be explained in the following chapter on Relations.

During the Cold War, state officials were able to relate to foreign actors differently from federal officials, due to differences in policy responsibility between the two levels of government. Even though Texas saw itself as having a role in fighting the Cold War, the state did not bear the burden of responsibility for anti-communism or national security. Therefore Gov. Smith was able to cultivate a friendly relationship with Mexican President Echeverría, despite the vast ideological differences between the two,

and despite the fact that many in Congress saw Pres. Echeverría as unreliable.[122] Not bearing full responsibility for U.S. national security, but striving to meet the demands of the Texas economy, Gov. Smith was able to cultivate friendly relations with a foreign leader even when relations at the federal level are tense.

Texas Agriculture Commissioner Hightower used his freedom to cultivate relations with Mexico as an opportunity to criticize the federal government for trade policy he saw as eroding the independence of U.S. farmers, and for a lack of flexibility in federal regulatory standards. Hightower's case shows that he could pursue relations and policies that differed from the federal government's with no repercussions, but when he offended the private sector by pursuing organic beef production, then his opponents aggressively supported his opponent and he lost his reelection bid. Hightower's experience show the private sector role undergirds policy development at all levels of government. The private sector is a powerful influence on state and federal policymakers, because of the reliance of the public sector on private business activity as a source of income.

But even though the states have been unrestrained in seeking trade ties with other nations, the future of U.S. trade relations may include changes for the states. It can be argued that increasing activity at the subnational government level served to further economic globalization in ways that have led to the desire for more international trade treaties, such as NAFTA. But as the United States negotiates more such trade agreements, the international pressure for harmonization of standards will only increase, and state laws will have to yield. The irony here is that as the states responded to federal trade policy changes, and were supported in developing their international roles, the states' actions furthered the volume and frequency of international trade to the point that

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[122] Recent access to taped conversations made by U.S. President Richard M. Nixon shows he and Pres. Echeverría had a friendly relationship, and shared an interest in geopolitics and antagonism towards Cuban leader Fidel Castro. However, the two men seldom discussed matters of U.S.-Mexican policy such as trade or immigration, although Echeverría encouraged Nixon to increase investment in Mexico and Latin America as a curb against the spread of communism. See *Americas Program: The Mexico Project*, by Kate Doyle. (Updated 12 September 2003, Retrieved 22 October 2003.) Available from: http://www.americaspolicy.org/columns/doyle/2003/0309nixon.html

the federal government started to regulate the activity more through treaties, which will eventually limit the states by moving to a single international standard.

While the short-term goals of development are shared between the states and the federal government, already the federal government is developing long-term goals towards more trade treaties that may usher in an era of coercive federalism and increased conflict with the states.

CHAPTER FIVE
SOUTHWEST REGIONAL RELATIONS AND POLICY COORDINATION

INTRODUCTION

This chapter looks at two state-level mechanisms designed to foster good relations between the ten states along the Southwestern border. Officials from four U.S. and six Mexican states form the Border Governors' Conference (BGC) and the Border States Attorneys' General Conference (BSAGC). These two mechanisms are designed to enhance information-sharing and to facilitate policy coordination.[1]

In both the U.S. and Mexican federal systems, only the federal government is authorized to conduct foreign relations. Therefore, neither the U.S. nor the Mexican states have the authority to forge any binding international agreements. But the U.S.-Mexico border has always been an area where responsibility shifts between levels of government. In this atmosphere of ambiguity, out of concern for the increasing number of governing challenges the federal government was not addressing, the states asserted themselves, creating mechanisms for international intergovernmental relations.

But each nation's president endorsed the state-level conferences, indicating federal support for the idea of regional policy coordination. There was some mild concern at the federal levels when the BGC was forming, when state officials made clear

[1] The ten states are: Texas, New Mexico, Arizona, and California in the United States, and Tamaulipas, Nuevo Leon, Coahuila, Chihuahua, Sonora, and Baja California.

their intent to discuss matters of federal jurisdiction. But since then, the two conferences have continued to operate without federal restriction or objection.

The Southwestern U.S. states share general goals with the federal government of harmonious relations with Mexico. But the border states have a much stronger interest in developments in Mexico than does the rest of the nation. When Mexico experiences an economic crisis, it is the border economy that is affected more intensely than the rest of the nation. The nation as a whole experiences the social effects of increased immigration, but the border states' experience is intensified.

State, federal, and international concerns have converged along the U.S.-Mexico border for more than 150 years. And what counts as "the border" depends upon one's geographical viewpoint: in Texas, "the border" means those counties that are edged on one side by the Rio Grande. But in Washington, officials often refer to "the border" and mean those four states that touch Mexico. Differences in perspective mean state and federal officials often find communication on border issues difficult, compounding the reluctance to address an area that historically, has not been a political priority for either level of government.

But as the population of the border region has boomed, it has become more difficult to ignore. The border is home to approximately 12 million people, more than 6.3 on the U.S. side and exceeding 5.5 million in Mexico. The growth rates for U.S. border counties exceed growth rates for the rest of the nation by more than 40 percent in some places.[2]

Lawrence Herzog writes that the border has transformed as the global economy has changed, and there should be a corresponding change in how policy along the border is formed. He writes,

> Not only is the border inhabited by millions of U.S. and Mexican citizens, it is an important source of revenue for both countries. Management decisions regarding the border environment, criminal justice, drug enforcement and boundary surveillance, trade, and transportation,

[2] U.S. Environmental Protection Agency, U.S.-Mexico Environmental Program: Border 2012, Background. (Retrieved 21 October 2003.) Available from: http://www.epa.gov/usmexicoborder/background.htm.

> therefore, must take into account both regional and national interests that, at times, may diverge.[3]

When there is conflict over U.S. policy with Mexico, the states complain more about the effect of the policies rather than the policy itself. In other words, the states do not agitate for or against a particular federal policy as much as they complain about how a current federal policy affects them. For example, with respect to immigration, the Southwestern states and the U.S. federal government have clashed less over setting immigration limits and more over the practical aspects, such as how best to patrol the border – with either increased law enforcement or through militarization – and who is financially responsible for incarcerating criminal aliens and providing social services to illegal immigrants.

A former Texas state official who worked on border issues complains of an ongoing lack of clarity over exactly what federal policy towards Mexico is. He says both the state and federal government are more "comfortable" reacting ad hoc than articulating a proactive vision of policy towards Mexico. Responsibility for the development of the border has been chronically shifted from one level of government to another – the state at times has claimed the border is a federal responsibility, and the federal government has argued social problems along the border are the responsibility of the state or local governments.[4] The "lack of hierarchy" that Keohane and Nye argue applies to policy in general today is an ongoing characteristic of the U.S.-Mexico border.

Despite the lack of formal authority to confer with other nations, the state governors took advantage of the lack of clarity over border responsibility to invite the Mexican governors to join in a forum to discuss issues of common concern, a first for the border region.

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[3] Lawrence A. Herzog, *Where North Meets South: Cities, Space, and Politics on the U.S.-Mexico Border*. (Austin: University of Texas, Center for Mexican American Studies, 1990): xii.

[4] Telephone interview with Fernando Centeno in San Antonio, formerly of the Texas Office of the Secretary of State, 20 October 2003. For more on border issues, see Herzog, *Where North Meets South*; Timothy J. Dunn, *The Militarization of the U.S.-Mexico Border, 1978-1992: Low-Intensity Conflict Doctrine Comes Home*. Austin: University of Texas, Center for Mexican American Studies, 1996.

At the first meeting, only mild concern was expressed by the federal government that state officials were going to discuss matters of federal jurisdiction. But the governors have been sensitive not to tread too obviously on areas of federal authority, to avoid provoking a constitutional challenge or causing a political upset. The governors' meetings have continued without further conflict. And only a few years after the inception of the Border Governors' Conference, federal actors facilitated the organization of the Border States Attorneys' General Conference.

Both of these state-level conferences suggest that when states share general goals with the federal government, even in a loosely-defined policy environment, states are quite free to engage in direct relations with foreign nations.

However, state-level international conferences are one area that in the future could be the target of federal restriction. If the state conferences evolved into a unified voice in protest against federal policy, either the U.S. or Mexican federal government might come to see the bodies as capable of influencing opposition to federal policy. If the state officials were to join forces with citizens' groups or nongovernmental organizations to protest the preemption of any area of state regulatory authority due to an international agreement, the influence of these groups could increase significantly. While these conferences operate without interference now, the future picture could be different as globalization continues to change the nature of intergovernmental relations. Thus it is important to consider how these mechanisms developed, their current role, and the federal response.

Because the state-level relations mechanisms develop in the context of federal-level relations, a sense of the U.S.-Latin American history is necessary to show the political environment in which international intergovernmental relations among the Southwestern states develop. An exhaustive history of the U.S.-Mexico relationship is, sadly, beyond the scope of this project. Therefore this chapter begins with some general historical background on U.S.-Latin American relations, with a spotlight on relations with Mexico, and the story of each mechanism is preceded by a brief overview of the state of U.S.-Mexican relations at that time.

GENERAL HISTORICAL BACKGROUND, 1939-Present

The United States' foreign policy objective during the Cold War was "containment" – preventing the spread of communism from the Soviet Union or China to any other nation. To this end the U.S. policy sought a communist-free Latin America for two reasons: regional security and economics.

Regional Security: In the late 1930s, the rapid surge of Hitler and Mussolini's armies throughout Europe and North Africa made policymakers aware that nations could be threatened by mere proximity to antagonistic or ambitious governments. Defending the hemisphere as a whole from Communist influence was now recognized as the only way to ensure the United States' own safety.

Postwar U.S. policy towards Latin America encouraged the spread of democratic governments and free-market development. But the "loss" of Cuba to the leadership of revolutionary Fidel Castro in 1959 was a shock to the United States. Cuba's case made it feasible to U.S. policymakers that other underdeveloped, poverty-stricken Latin American nations could follow the same path. In the 1970s, the emphasis on supporting democratic governments gave way to the support of any government that declared itself the opponent of communism, regardless of its democratic failings.

Economic Needs: As during a "hot" war, the United States sought to keep open lines to vital natural resources throughout Latin America.

Mexico's Role

War, suspicion, violence, and more war mark the history of U.S.-Mexican relations. But the thread of common needs brought about by proximity ties the two nations together.

Security concerns motivated U.S. relations with Mexico during World War II. The United States bought much of Mexico's strategic minerals to keep Mexico from selling to the Japanese.[5] The United States since WWII has sought to include all of Latin America (except for Cuba) in a hemispheric security arrangement. Although geopolitics characterized U.S. foreign policy during the Cold War, the goal of geopolitical solidarity with Latin America was not met as successfully as U.S. policymakers might have hoped.

Mexico's discovery of major oil resources in 1972 led to increased economic interdependence between the two nations, but not necessarily greater mutual respect. The strategic role of oil in world politics increased Mexico's economic importance to the United States and fueled U.S. anxieties that Mexico would fall under communist influence. While the possibility of such seems unlikely from the post-Cold War standpoint, the fear of a communist influence in Latin America seemed authentic. On this basis, U.S. policymakers justified intervention in several Latin American nations.

For its part, Mexico has struggled to maintain a sense of autonomy from U.S. influence. While the United States' main fear during the Cold War was of the Soviet Union, Mexican society was then, and still is, often divided over "the American peril;" the idea that past territorial aggression on the part of the United States has been replaced by a cultural and economic imperialism.[6] Since the early 1990s, however, economic necessity has driven the Mexican government to embrace at least the economic integration of the two nations; Mexico instigated the creation of the North American Free Trade Agreement in 1993 and lobbied hard for its passage starting in 1990.

An interesting development of Mexican perspectives towards the United States can be seen in the Mexican president's attitudes towards the English language. Pres. Luís Echeverría (1970-76) took pride in the fact he knew nothing of English. Pres. Miguel de la Madrid (1976-82) did not speak English in public but had studied in the United States. Pres. Carlos Salinas de Gortari (1988-94) was a graduate of Harvard University. Pres.

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[5] María Emilia Paz, *Strategy, Security, and Spies: Mexico and the U.S. as Allies in World War II* (Pennsylvania: Pennsylvania University Press, 1997): Chapter 5.
[6] Jorge G. Castañeda, "Mexican Foreign Policy," in *Limits to Friendship: The United States and Mexico* (New York: Random House, 1989): 168.

Ernesto Zedillo (1994-2000) speaks English in public. And his successor, Vicente Fox, has said that all Mexican schoolchildren should learn math – and English.[7]

States in both countries are in the middle of communication and cooperation challenges coming from two directions. States struggle with the intergovernmental tensions that exist between and within levels of government in each nation, and from the other direction, as states develop links with foreign governments, states must understand the functional and cultural differences between the U.S. and foreign systems.

For example, the capacity of U.S. states to act informally is a significant difference in both structure and style between the United States and Mexico. Although Mexico has been undergoing a gradual political decentralization, the Mexican system is still far more centralized and formal than the U.S. system. U.S. states and cities have more autonomy than the Mexican system allows its state or municipal governments. In the U.S. system, different levels of government act without the knowledge of the other levels of government, but even within levels of government, it is normal for one state agency to be oblivious to the activities of another state agency.[8]

Not surprisingly, Mexican federal officials have at times misunderstood how the U.S. system works. Because power in the Mexican federal system is concentrated in the presidency, Mexican officials tend to assume the U.S. system is the same. Not understanding the capacity of U.S. states to act informally, Mexicans as a rule will contact the highest level office first, even if the issue at hand is under the jurisdiction of a lower governmental authority. This assumption of the Mexicans has at times reduced their effectiveness in communicating with U.S. government agents.[9]

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[7] An observation shared by former U.S. Ambassador to Mexico (1981-1986), John Gavin, during a telephone interview from Los Angeles, 8 March 2000.

[8] When the author began interviews for this project, she was surprised to find that officials at one Texas agency who were involved in cultivating direct relations with Mexico had no knowledge of what other agencies with the same goals were doing. Even offices within the same agency with a common need to communicate with Mexico had no knowledge of one another. One individual at the Texas Secretary of State's office designed a "Border Roundtable" to bring together all the agency officials who deal with Mexico, but this individual recently left the office and it remains to be seen if his initiative will survive his departure.

[9] When Mexico protested a Texas state policy board's decision to store nuclear waste near the town of Sierra Blanca, Mexican delegations had difficulty understanding why then-Governor George Bush could not stop the dump. Under Texas law, the policy board was solely responsible

But the learning curve is steep; many at the Mexican federal level now recognize that state and local governments in the United States play a much larger role in the U.S. political process than do the Mexican states in Mexico. One federal official at the Mexican embassy in Washington, who coordinates border affairs, says that local and state governments are the first to recognize social and political needs; thus he feels states are important sources of information. "Exchanging information with (state and locals) helps us to know better what's going on," he says.[10]

THE BORDER GOVERNORS' CONFERENCE 1979/1980

The first formal and institutionalized venue for intergovernmental relations between the ten states along the U.S.-Mexico border was the Border Governors' Conference, which continues today. The conference's first meeting was in June of 1980. On the agenda for the first meeting of state officials: energy, immigration, and drug trafficking, topics of federal jurisdiction in both the United States and Mexico. A brief summary of U.S.-Mexico relations at the time sets the stage for the story of how the BGC developed.

U.S.-Mexico Historical Context, 1972-1980

* *Mixing Oil and Politics* * On the world scene, the Iranian Revolution caused the cessation of all Iranian oil exports by the end of 1978. Over the next two years, petroleum prices rose from thirteen to thirty-four dollars a barrel. Although total global production had fallen only about five percent, panic produced a 150 percent increase in price per barrel. Uncertainty gripped producers. Demand had risen steadily over the past few years. The availability of oil from nations who were not a part of the Organization of Petroleum Exporting Countries (OPEC) was not yet fully known. The conservation

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for the decision, yet Mexico continued to lobby the governor when their efforts would have been better spent directed at the board.

[10] Personal interview with Ricardo Piñeda, Director of Border Cooperation Affairs, Embassy of Mexico, Washington, D.C. 15 November 2000.

movement was not yet visible but would soon gain momentum from higher oil prices and long lines for gasoline.

Mexico was sitting on a great deal of the world's non-OPEC oil. The huge Reforma oil fields were discovered in 1972; Mexico kept information about the discovery largely quiet. The field's output was initially reserved for domestic use, but in 1974, Mexico began exporting limited amounts of oil. Mexico's production increased from 500,000 barrels per day in 1972 to 830,000 in 1976 and 1.9 million in 1980 – "almost a fourfold increase in less than a decade," writes Daniel Yergin.[11] While Mexico previously had been avoided by international lenders, after 1976, the nation borrowed with vigor and was pursued by many a global banker and private investor.

Relations between the two nations appeared to improve when the presidents of the two nations, Jimmy Carter of the United States and Jose Lopez Portillo of Mexico created the U.S.-Mexico Consultative Mechanism in 1977, designed to be a forum for the regular exchange of information between Cabinet-level officials from both nations. The Mechanism met in May of 1977 and May of 1978. According to official literature, in 1979, the two presidents reaffirmed their intent to strengthen the mechanism, but no meetings were held that year. The Mechanism was later restructured under Presidents Lopez Portillo and Ronald Reagan, and renamed the Binational Commission (BNC). The Commission began to meet again in November of 1981, and still meets today.[12]

* *Oil Does Not Equal Respect* * Oil and its resulting wealth and prestige changed Mexico's position on the world political scene. As the owner of its own oil resources, Pres. López Portillo could refuse invitations to join OPEC. In 1979, he presented his own World Energy Plan to the UN General Assembly. The following year, Mexico and Venezuela joined forces to subsidize oil to Caribbean nations, at significant cost to the

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[11] Daniel Yergin, *The Prize: The Epic Quest for Oil, Money & Power* (New York: Simon and Schuster, 1991): 667.

[12] U.S. Department of State, Bureau of Inter-American Affairs, *Fact Sheet: U.S.-Mexico Binational Commission*, (Updated 1 May 1996.) Available from http://www.state.gov/www/regions/wha/ufsbnc.html. See Also U.S. Department of State, *Fact Sheet: Mexico: The Binational Commission*. (Updated 4 September 2001, Retrieved 7 October 2003.) Available from http://www.state.gov/p/wha/rls/fs/2001/fsjulydec/4990.htm

two oil-producing nations, and to ship oil on good terms to Nicaragua as a means of supporting Sandinista revolutionaries.[13]

Oil fueled Mexican growth rates of eight percent through 1981. But rural areas remained stagnant and a great deal of food had to be imported from the United States. Elsewhere in world politics, the Carter administration had approved an embargo of grain sales to the Soviet Union as punishment for its December 1979 invasion of neighboring Afghanistan. As oil prices rose and Mexico still needed to import food, Mexicans found themselves uneasy about the connection between food, politics – and oil. Just at the time Mexico had the means to gain a modicum of independence from the United States in foreign policy, the reality of economic dependence on its neighbor hit hard. There was a nagging feeling in Mexico that the United States wanted its oil and might go so far as to use Mexico's food dependence to get it.[14]

A deterioration of the U.S.-Mexico relationship was fed by such fears and what Mexico perceived as "Washington's refusal to join a host of other industrialized nations in acknowledging Mexico's new importance." When U.S. Pres. Carter arrived in Mexico City in February of 1979, Pres. López Portillo stood before the press corps and gave a speech hinting at a deep anxiety. "Mexico has suddenly found itself the center of American attention – attention that is a surprising mixture of interest, disdain, and fear, much like the recurring vague fears that you yourselves inspire in certain areas of our national subconscious," he said. Pres. Carter did not acknowledge López Portillo's veiled requests for reassurance.[15] And the day Pres. Carter arrived, the U.S. Trade Office in Mexico City closed.

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[13] Alan Riding, *Distant Neighbors: A Portrait of the Mexicans.* (New York: First Vintage Books, 1986): 241.
[14] Riding, p. 282.
[15] Ibid, pp. 465-466.

The Border Governor's Conference

The Border Governor's Conference is an annual working meeting of the governors and their staffs to discuss border policy concerns.

The conference has its roots in the Public Works and Economic Development Act of 1965 (Title V), intended to foster economic development in Appalachia. In 1975, Jim Wright (D-Texas) amended Title V to allow counties along the U.S.-Mexico border to lobby federal authorities with "one voice."[16] President Gerald Ford signed the legislation into law on 31 December 1975. In June of 1976, the four U.S. border governors sent a petition to Commerce Secretary Elliott Richardson declaring their intent to form a joint federal-state commission under the new legislation. The result was the Southwest Border Regional Commission (SWBRC), administered by the Department of Commerce, and co-chaired by a presidential appointee and a rotation of the four U.S. border state governors.[17] The SWBRC was one of eight Title V regional commissions in the United States.[18]

The Commission's purpose was to consider such problems as economic development, immigration, the influx of illegal aliens, overcrowded educational and medical facilities, increasing traffic at international crossings and the flood of narcotics smuggled across the border."[19] Title V legislation did not empower regional authorities to interact with foreign governments, but diffusive border problems begged for the Mexican states' cooperation if the Commission was to meet its goal of border development. Thus the idea of inviting the Mexican border state governors to the conference arose.

The official Border Governors Conference (BGC) history credits Arizona governor Bruce Babbitt for proposing a binational governors' forum while the four U.S.

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[16] "Three Governors Back Border Aid," *The Dallas Morning News*, 21 March 1976.
[17] The four U.S. governors at the time were Dolph Briscoe of Texas, Jerry Apodaca of New Mexico, Raul Castro of Arizona and Edmund G. Brown, Jr., of California.
[18] William Schmitt, *Border Governors Conference – A State Level Foreign Policy Mechanism*, (Washington, D.C.: U.S. Department of State, Foreign Service Institute, 25th Session of the Executive Seminar in National and International Affairs, 1982-83.)
[19] "Three Governors," *Dallas News*.

governors were at a 1979 SWBRC meeting.[20] However, other sources credit Texas Governor William P. "Bill" Clements with the idea of including the Mexicans.

Gov. Clements pursued closer relations with Mexico with more vigor than any previous Texas governor. During his 1978 gubernatorial campaign, Clements emphasized Mexico's importance to Texas and urged the betterment of conditions along the Texas-Mexico border. One of his first acts as governor was to fly to Mexico City to meet with Mexican President José López Portillo. Gov. Clements' background as an oilman raised questions about whether his primary motive was to garner business for his oil-drilling company, SEDCO. He was undeterred by such allegations, and during his first term (1979-1983), he met with his "Mexican counterparts" twenty times.[21]

Gov. Clements "was really the first governor who saw how important Mexico was to Texas economy," a former staff member said. Clements frequently invited Mexican governors to Texas for big meetings and fancy dinners.[22]

Whether it was Clements or Babbitt who suggested including the Mexicans is unclear, but in either case, the other three governors quickly endorsed the idea and for the rest of 1979, possibilities for a binational meeting were discussed.

But even before meetings with the Mexicans began, relations among the four U.S. border governors turned contentious over just how to approach Mexico – and which level of government could best foster international cooperation. Early in 1979, the two most ideologically opposed governors, conservative Texas Gov. Clements and California Gov. Edmund G. "Jerry" Brown, a liberal Democrat, readily agreed the SWBRC should be the venue for the Southwestern states to negotiate with Mexico on energy and border problems, aside from any negotiations by the Carter administration. Gov. Brown exclaimed that when visiting Washington, "I get the idea there is no Southwest."

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[20] *First International Meeting of the Border Governors of the United States and Mexico,* (, Ciudad Juarez, Chihuahua, June 26 and 27, 1980).
[21] E.V. Niemeyer, Jr., "Texas Discovers Its Mexican Neighbors," in *Rio Bravo* II (Austin: Morgan Printing Company, Fall 1992): 78.
[22] Personal interview with Jorge Garces, Austin, Texas, 26 March 1999.

Although the two governors had their political differences, they both envisioned a future common market between the United States, Canada, and Mexico.[23]

But Clements and the Arizona governor, Democrat Bruce Babbitt, clashed on many levels. Gov. Babbitt, at the time also chairman of the SWBRC, took the role of defending the federal government and fellow Democrat, President Jimmy Carter. Clements was so vocal in his disapproval for U.S. policies on drugs, immigration and energy that Arizona governor Bruce Babbitt vowed he would not let the June 1979 SWBRC meeting in Brownsville, Texas turn into "a platform for attacking Carter and putting forth national policy." Arriving in Brownsville, Gov. Babbitt told reporters the U.S. governors' conference should focus on "regional matters, such as…economic development and tourism along the border."[24]

At the conclusion of the meeting, the four governors planned to send the position papers – at least the ones they could agree on – to the U.S. Department of State as background information for international agreements, to act as input from that region of the United States closest to Mexico. Gov. Clements' papers for the meeting proposed a revised *bracero* program to bring "guest" migrant workers from Mexico into the United States, and an exchange of U.S. electricity for Mexican oil and gas.

Gov. Babbitt, upon arriving in Brownsville for the start of the meeting, made it clear he would not support Clements' proposals at the meeting as a basis for national policy or treaty negotiation with Mexico.[25] He characterized Clements' proposal for joint U.S.-Mexican ventures to develop Mexico's oil reserves as "a continuation of the American imperial position."[26] He said the message Clements seemed to be sending Mexico is: "'We'll show you how to get that energy and (you) let us soak up some of your cheap labor,'" Babbitt said. "We've got to be more sophisticated and careful about

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[23] John Geddie, "Clements, Brown agree on Mexican action," *The Dallas Morning News*, 28 February 1979. At this time, Mexico balked at the first mention of a North American common market, "fearing it would lose control of its economy and energy resources." The story of how Mexico came to support NAFTA is in Chapter Five.
[24] Dave Montgomery, "Arizona governor to resist efforts to make conference anti-Carter," *The Dallas Times-Herald* (21 June 1979).
[25] Fred Bonavita, "Border State Governors Disagree on Clements' Key Policy Stands," *The Houston Post* 23 June 1979.
[26] "Clements' Tactics Called 'Imperialist,'" *The Austin Citizen*, 22 June 1979.

recognizing Mexico's interests."[27] He added that Mexican President José Lopez Portillo "doesn't want Mexico to be the gas station for the rest of the world."[28] Instead, Gov. Babbitt proposed the United States make aid available to Mexico for refining its own oil, which could then be exported to the United States.[29]

Arriving in Brownsville later the same day, Gov. Clements told reporters: "Because of the growing economic independence of Mexico, a new relationship with our neighbor to the south is rapidly developing and I think the United States' role in this relationship must begin right here in the Southwest," he told reporters. "Our job and objective is not to usurp the duties and prerogatives of the U.S. State Department or the presidency or the Foreign Office of Mexico, but we are here to speak up and offer Washington the benefit of our experience."[30]

During the SWBRC meeting, Clements demonstrated that his reputation as a tough-talking Texan was well-earned. One Austin reporter wrote, "When the representatives of the other states balked at his statement that his (immigration) proposal should be endorsed, Clements responded by saying Texas has more than half the U.S. border with Mexico. He would work out his own agreement with governments of bordering Mexican states. Then he quickly indicated what he really meant was that it was a matter for continuing and intensive study."[31]

At the meeting's conclusion, the four Southwestern state governors had agreed in principle to study ways to reduce drug trafficking, and to urge the U.S. government adopt a "stable national energy policy (and develop) a program of mutual benefit involving the purchase of Mexican oil and gas." Any mention of "joint ventures" with Mexico had been deleted from Clements' original proposals. In addition, the governors added in a suggestion of Gov. Jerry Brown's, which Gov. Clements supported, that the

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[27] Jim Davis, "Arizona Governor Blasts Clements' views of Mexico," *Corpus Christi Caller*, 22 June 1979.
[28] Fred Bonavita, "Oil Top Issue As Governors Open Meeting," *The Houston Post*, 22 June 1979.
[29] Dave Montgomery, "Squabbles Usher In Start of Border Conference," *The Dallas Times-Herald*, 22 June 1979.
[30] "Rival Bonilla At Meet Is Surprise For Clements," *The San Antonio Light*, 22 June 1979.
[31] Dave McNeely, "'Texas Position' Falls On Deaf Ears," *The Austin American-Statesman*, 23 June 1979.

United States, Mexico, and Canada cooperate in a future North American Common Market.[32] The hope was that by the following year, the Mexican governors would be joining the SWBRC meetings as well.

In early 1980, Gov. Clements – who had already met with several of the governors from the four Mexican states bordering Texas – met again with Gov. Alfonso Martinez Dominguez of Nuevo Leon, and told him of the U.S. governors' desire to meet with the Mexican governors. Gov. Dominguez agreed to act as intermediary between the Mexican border governors and the Mexican president. Without President José Lopez Portillo's permission, the Mexican governors could not participate in an across-the-border forum. In March of 1980, Martinez and Clements met in Monterrey with President Portillo; the three men agreed the conference would take place in early summer, in Juárez, across the Rio Grande from El Paso. The agenda was to comprise the issues already proposed by the U.S. governors: energy, immigration, and drug trafficking. President Lopez formally granted his support, as did U.S. President Jimmy Carter via his special ambassador-at-large to Mexico, Robert Krueger, a Democrat and former U.S. representative from Texas.

This is the same Bob Krueger, readers may recall, who appeared in the previous chapter on Texas' Trade, as the co-chair of the Mexico-Texas Agricultural Exchange Commission in 1984. But at this stage, four years earlier, Krueger is not yet totally supportive of U.S. states developing direct foreign relations. Despite President Carter's approval of the meeting, Amb. Krueger was critical of the meeting for including issues such as drug control, immigration, and pollution, which he said should be discussed by federal officials only. He suggested states could focus on the education of immigrant children and health matters.[33]

Despite Amb. Krueger's objections, the first meeting of the Border Governors' Conference convened in June 1980 in Ciudad Juárez, Chihuahua. The governors presented position papers on agriculture, twin plants (*maquíladoras*), cultural exchanges,

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[32] Anne Marie Kilday, "Clements Gets Governors To Do Little In Meeting," *The Fort Worth Star-Telegram*, 24 June 1979.
[33] Fred Bonavita, "U.S.-Mexico Governors' Meeting Convenes Today Amid Criticism," *The Houston Post*, 26 June 1980.

energy and commerce, tourism, and ecology and pollution.[34] There were some fireworks, mostly involving Governors Babbitt and Clements over Clements' energy and immigration proposals.

While the previous year, Gov. Babbitt of Arizona had also raised objections to the governors discussing issues of federal jurisdiction, this year he seemed to have no problem with it, and objected to Amb. Krueger's remarks. "Border relations are too important to leave to impersonal decisions in Washington and Chapultepec," Babbitt told reporters. "The most significant accomplishment here was that for 100 years we have misunderstood each other and for the first time the six Mexican border governors and the American governors have sat down together. It's the beginning of an important and historical process."[35] Gov. Bruce King of New Mexico agreed it was entirely appropriate for the states to discuss the issues and lobby their federal governments for action "on policies agreed to first at the state level."[36]

Even Gov. Babbitt was more temperate towards Clements' suggestions. And Clements' guest worker plan was much better received at the first BGC meeting than at the previous SWBRC meeting. Conference attendee Leonel Castillo of Houston, former director of the U.S. Immigration and Naturalization Service, praised parts of Clements' proposal and said it was more liberal than President Carter's 1977 proposal, which had been opposed by Mexican-American groups and the U.S. Congress, and consequently scuttled.[37] The ten governors agreed to send their suggestions to their federal governments.

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[34] The Mexican governors were Roberto de la Madrid of Baja California, Samuel Ocaña Garcia of Sonora, Oscar Flores Tapia of Coahuila, Alfonso Martinez Dominguez of Nuevo Leon, Enrique Cardenas Gonzales of Tamaulipas, and Manuel Bernardo Aguirre of Chihuahua. The U.S. governors were William P. Clements of Texas, Bruce King of New Mexico, and Bruce Babbitt of Arizona. Gray Davis represented Gov. Edmund G. Brown of California.
[35] "Krueger Chides Meeting of U.S., Mexican Governors," *The Fort Worth Star-Telegram,* 29 June 1980.
[36] "Krueger Chides Meeting of U.S., Mexican Governors," *The Fort Worth Star-Telegram,* 29 June 1980.
[37] George Kuempel and Stephen Downer, "Governors Hail Meeting," *The Dallas Morning News,* 28 June 1980.

At the conclusion of the meeting, it was clear that no problems, either of state or federal jurisdiction, had been resolved. Clements' response was that setting a precedent of cross-border communication made the meeting itself an accomplishment.

But the SWBRC itself was short-lived. Four months after the June 1980 binational conference, the Reagan administration abolished the Title V regional commissions. Enough funds remained for four more meetings. To handle the monies, the U.S. governors established a non-profit Southwest Border Region Conference, Inc.[38] As these funds dwindled, it was unclear whether or not the governors would willingly pay for future meetings. But some saw the abolishment of the regional border commission as a step backward for U.S.-Mexico relations. Discontinuing the governors' forums would likely inspire more criticism. It was decided the meetings would continue, alternating between a Mexican state and a U.S. state, with the host state responsible for funding that year's meeting.[39]

During the second meeting in October of 1981 in El Paso, Texas, the differences in the U.S. and Mexican federal systems was illustrated by the governors' public comments. The U.S. governors openly argued amongst themselves over Pres. Reagan's proposal to grant "limited legality" to undocumented aliens living and working in the United States, a proposal that eventually became the Immigration Reform and Control Act in 1986, which granted amnesty to about three million immigrants. Republican Clements of Texas initially opposed Pres. Reagan's plan, but came around to support it. As the conference got underway, the other three U.S. governors – Jerry Brown of California, Bruce Babbitt of Arizona, and Bruce King of New Mexico, Democrats all – were vocal in their opposition to the plan and to Clements for supporting it.

Amidst the U.S. governors freely expressing their opinions of President Reagan's immigration plan, one of the Mexican governors, Samuel Ocana A. Garcia of Sonora, was asked his opinion of the Reagan proposal. Ocana's short response illustrates the

[38] Ann Arnold, "Governors OK new Southwest border panel," *The Fort Worth Star-Telegram,* 1 October 1981.
[39] Today, the U.S. states often rely on the private sector to fund the meetings while Mexican hosts are more likely to use public monies.

more submissive relationship of Mexican governors to their federal government: "That's a federal government matter and I'm not at liberty to discuss it," he told reporters.[40]

Gov. Ocana's further remarks at the close of the meeting can be interpreted as critical of the amount of talk generated by the bickering U.S. governors. Gov. Ocana said, "we must not meet next year to address the same problems and find them at the same level as they are today." One Texas reporter characterized Ocana's remarks thus: "it would appear Ocana was telling his fellow governors he's a busy man whose patience and expense account weren't prepared to stand another session of hugs, handshakes…and watching the U.S. governors bicker…He'd like to see the American governors talk to the Mexican governors about the situations at hand and quit playing political one-upmanship with each other."[41]

The Border Governors' Conference Today

The Border Governors' Conference continues today. Just before the 2003 meeting in New Mexico, Gov. Tomás Yarrington of the Mexican state of Tamaulipas wrote a guest editorial for the Albuquerque newspaper. "The Border Governors' Conference does much of its work behind the scenes," he wrote "as it provides the framework for state agencies from all ten states to devise and implement practical cross-border solutions and policy positions on a year-around basis." Gov. Yarrington lists the Conference's recent initiatives: working to maintain the border's maquiladora industry, to develop cross-border public health initiatives and to coordinate environmental policy.[42]

Most of the "behind the scenes" activity Gov. Yarrington referred to is carried out by each governor's representative to the Conference, who attends several conference planning meetings throughout the year.

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[40] Dick Merkel, "Border Chiefs Not Talking on Hard Issues," *The San Antonio Express-News*, 10 October 1981.
[41] Ibid.
[42] Gov. Tomás Yarrington, "Hurdles Await Border Governors," *The Albuquerque Journal*, 7 August 2003. (Retrieved 6 October 2003.) Available from: http://www.abqjournal.com/opinion/guest_columns/guestb08-07-03.htm

The governor's representative works closely with the committee delegates from his or her home state. The committees, now called Working Tables, have evolved into one of the most interesting features of the conference. The Working Tables at the 1998 meeting in Brownsville presented the results from a year of research on Border Crossings, Economic Development, Environment, and Social Development. Governors and senior staff members choose the topics of the Working Tables, according to what issues the governors feel should be addressed.

The delegates to the Working Tables represent the state agencies responsible for implementing policy on the corresponding Working Table topic. For example, Texas volunteered to head the Border Crossings Working Table for the 1999 meeting; thus the delegates researching the topic all year were from the Texas Department of Transportation. The delegate assignments change annually as different states volunteer to host each Working Table. The agency heads are involved because of their expertise, as well as the fact that they will be responsible for implementing any policy changes resulting from the meetings.

Shortly before the annual meeting, the Working Tables meet with the governors' representatives to share their recommendations and initiatives. By the meeting's end, the compiled recommendations of all the Working Tables have become the Joint Declaration signed by all the attending governors. The declaration is in both English and Spanish and copies are sent to each nation's president.

Traditionally, each meeting starts on a Thursday evening and runs through Friday afternoon. While there are a few public events, most sessions are private and restricted to the governors, their representatives, and Working Table delegates. Dinner and lunch are usually "governors only," with even translators barred (according to the 1997 agenda, no "wives, representatives or guests" are invited).

Whether or not the Governors Conference has been responsible for specific policy improvements is difficult to discern. The governors lobbied their respective Congresses to pass NAFTA, and NAFTA passed. The consulates in Hermosillo and Matamoros were kept open; the price of laser visas for Mexican children under age 15 to enter the United States was reduced from $45.00 to $12.00 after the border governors

lobbied U.S. authorities. But despite the governors' support that NAFTA provisions allowing trans-border trucking be implemented, Mexican trucks are still granted only limited access to U.S. soil.

In recent years, the number of recommendations included in the Joint Declaration has been minimized so the dearest topics can be emphasized. The Declarations now serve as a blueprint against which the subsequent year's goals and accomplishments can be measured.

After the first conference, Arizona Gov. Bruce Babbitt said, "The most significant accomplishment here was that for 100 years we have misunderstood each other and for the first time the six Mexican border governors and the American governors have sat down together. It's the beginning of an important and historical process."[43] A 1983 U.S. State Department report praised the conference: "It can count among its accomplishments the creation of an atmosphere of cooperation not visible elsewhere in our relations with Mexico, and a significant raising of public consciousness of problems along the border…"[44]

There are no doubt intangible effects of the border governors feeling free to contact one another directly as the need arises. Arguably, one outcome is the establishment of other venues for intergovernmental relations between the Texas and Mexico. The trickle-down effect of open communication at the top is evident throughout the other policy areas this dissertation examines.

[43] "Krueger Chides Meeting of U.S., Mexican Governors," *The Fort Worth Star-Telegram*, 29 June 1980.
[44] William Schmitt, *Border Governors Conference – A State Level Foreign Policy Mechanism,* (U.S. Department of State, Foreign Service Institute, Executive Seminar in National and International Affairs, 1982-83): Summary page.

State/Federal/International Issues

The Texas-U.S. axis (national causes): was the problem Texas sought to address under state or federal jurisdiction? What was the corresponding federal response: did the federal government support the mechanism, ignore it, or move to restrict the mechanism?

The problems Texas sought to address were both of state jurisdiction – such as the social effects of immigration, like education – and of concurrent state and federal jurisdiction, such as transportation.

The U.S. federal government knew U.S. governors planned to meet with Mexican governors. The first meetings were funded by the U.S. DOC via the Southwest Border Regional Commission funds. The Carter administration approved of the idea even as it objected to the governors' discussing federal issues.

Mexican Pres. Lopez Portillo approved of the meetings – but with strings attached. The Mexican governors were required to attend a briefing with the Mexican president before each BGC meeting. This tradition continued until recently. The current Mexican federal delegate to the meetings says the governors "have a voice now. The governors do not keep their mouths shut."[45]

Federal authorities from each nation were invited to the first meetings, perhaps to quell concerns of a subnational uprising. It is questionable whether or not federal officials' fears were put at ease while listening to Texas Governor Bill Clements enthusiastically propose substantial changes to federal energy and immigration policies. His short-lived threat to negotiate his own agreements with Mexico likely raised some eyebrows.

Many federal officials attended in the early years. Mexican President José Lopez Portillo attended the third meeting. Numerous ambassadors, secretaries of the Treasury, and so on, attended meetings as well.

But ten years after its inception, the number of attendees and the hoopla generated by federal participants seemed out of control. Nearly 1300 people came to a

[45] Personal interview with Enrique Escorza of the *Secretaría de Relaciones Exteriores*, Mexico City, 29 October 2002.

meeting in Tucson, Arizona in the early 1990s. A turning point came in 1995: the scheduled meeting in Chihuahua was canceled when only one U.S. governor planned to attend. It became clear the meetings' appeal had waned as the logistical demands of scheduling – and paying for – the numerous participants overwhelmed the working nature of the meetings. The answer? Reduce the number of delegates to ten per state and eliminate all federal participation.

But it was discovered the Mexican governors were not permitted to sign the Joint Declaration summarizing the meeting unless the document had the approval of an official from the Mexican foreign ministry. So at the 1996 Santa Fe meeting, the only federal representative allowed was from the Mexican foreign affairs ministry, *Secretararío de Relaciones Exteriores* (SRE). Since then, two federal observers are allowed at the planning meetings and the conferences: one from the Mexican SRE and one from the U.S. State Department.[46]

The host state has the right to invite other federal officials, but typically these officials are from regional federal offices such as the International Boundary Water Commission, the Environmental Protection Agency, or the North American Development Bank. Seldom is anyone from Washington or Mexico City invited. The observer status of federal officials is enforced; they are allowed into the private sessions only if needed as a resource on a particular topic. There has never been any federal representation on the BGC committees, even if a committee's purpose is to study an issue of federal responsibility, such as immigration.

One former Texas governor's representative to the BGC says concerns about the constitutionality of state officials discussing federal issues have been raised at times. He says the governors do not necessarily talk publicly about illegal drugs, immigration, or arms smuggling into Mexico, but they will talk about those in private. Generally speaking, the Conference members are careful not to interfere in a federal government responsibility, although the purpose of the body is to represent a regional viewpoint to federal authorities.

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[46] Personal communication from Margie Emmermann, Policy Adviser, Office of the Governor of Arizona, 12 April 1999.

One thing to consider is why the states were starting their own conference around the same time that the U.S. and Mexican governments were beginning regular meetings through the Consultative Mechanism, later the Binational Commission.

The creation of the two mechanisms at nearly the same time indicates mounting concerns between the two countries in need of attention. But the federal mechanism seemed to falter, and did not meet in 1979 and 1980, the two years that the state-level mechanism was developing.

State actors are consistently dissatisfied with the level of attention the federal government gives to border issues. The creation of a regional mechanism to lobby the federal government on U.S.-Mexico and border issues symbolizes that dissatisfaction. Pres. Carter's relationship with Pres. Lopez Portillo dipped after Carter visited Mexico in February of 1979.

Texas Governor Clements, of course, disagreed with almost everything Pres. Carter did, and did not see the necessity of waiting for the federal government to confer with his neighbors to the South. This attitude trickled down to the governor's staff. In a 1980 interview with John Kincaid, a special assistant to Gov. Clements, in charge of relations with Mexico and Latin America, said: "We don't have to ask permission of Washington in order to talk to the Mexican government. We are a sovereign state."[47]

But even Gov. Babbitt moved from defending Carter and the federal government's supremacy in foreign affairs, to declaring that Washington, D.C. was not adequately addressing border concerns, indicating the border governors had little confidence that the federal government shared the same level of interest in the region.

Apparently feeling their interests would not be well-represented by the federal government, state actors pushed the limits on state in foreign affairs, and took the initiative to create a state-level forum for international policy coordination.

[47] John Kincaid, "American Governors in International Affairs," *Publius: The Journal of Federalism* 14 (Fall 1984): 96.

The U.S.–Mexico axis (international causes): what were the international political and economic conditions that contributed to or prevented the state's effort to reach across the Rio Grande?

National security concerns about oil figure heavily in this relationship at this time of worldwide energy crisis. Rather than constraining the state, these conditions could have driven the U.S. governors to seek closer relations with the Mexican governors. Pres. Carter not have close relations with José Lopez Portillo., but Gov. Clements was in a unique position to understand the significance of oil to U.S. national security and how this could affect U.S.-Mexico relations. From 1973-76, he served as Undersecretary of Defense, the No. 2 man in the Department of Defense. He had made his fortune as a Texas oilman. He had a vested interest in accessing Mexican oil, both to supply the United States with oil and to secure opportunities for the Texas oil industry. Higher oil prices allowed Mexico to purchase new oilfield equipment, much of it from Texas suppliers. In this case, Clements' goals coincided with the national needs due to the energy crisis.

The Texas-Mexico axis (state causes): How was the venue created? Did Texas' interest in and method of contact with Mexico differ from the U.S. government's relations with Mexico?

Texas' interest in contact with Mexico in part driven by the oil interests of Gov. Clements, same as the federal government's, as described above, and by a lack of confidence in the federal government's willingness to address burgeoning border issues in energy as well as public security, illegal drugs, and immigration.

Regarding the method of contact, the personal element matters as Gov. Clements and Pres. Lopez Portillo were on very good terms. Gov. Clements was also quite friendly to and inclusive of the governors of the four Mexican states bordering Texas.

Expanding the Southwest Border Regional Commission to include the Mexican governors has had ongoing effects within Mexico. It is arguable that the participation of the Mexican governors in the Border Governors Conference has led the Mexican federal

government to recognize the role their state governments can play in the policy process – within limits. The Mexican federal government is still highly centralized, and power concentrated at the Presidency. Mexican state governments do not have the autonomy enjoyed by U.S. states. The BGC was the first time Mexican states were allowed to participate in a joint U.S.-Mexican forum focusing on state powers and opportunities. The willingness of the federal Mexican authorities to allow the states to represent themselves at the meetings has likely led the way for the states to represent themselves in other areas. As the governors began to act with authority on border issues, opportunities to participate in federal-level border negotiations opened up – for both the U.S. and Mexican states. Whereas U.S. states have for years been invited by the U.S. federal government to participate in border-issue conferences such as the Environmental Protection Agency's Border XXI meetings, Mexican states have only recently been permitted to attend such meetings at the invitation of Mexican federal officials. Beginning in October 2001, Mexican and U.S. states are invited to participate in the U.S.-Mexico Binational Commission meetings.[48] In this way, the U.S. states have influenced Mexican politics by consistently seeking the participation of their neighbor states in border issues.

A U.S. DOS official who has attended the meetings for several years says it is beneficial for state actors to be conferring on common issues, given the complexity of the concerns involved. "We encourage states to work together; only good can come from that," he says. "The states are very pragmatic on trade, health, etcetera. We (DOS) would want to facilitate that, not stand in the way." He says "the states are key players – we have to have them at the table, or things won't work right. We must collaborate."[49]

[48] Texas Secretary of State, *Accomplishments – Executive Summary*. (Retrieved 7 October 2003.) Available from http://www.sos.state.tx.us/border/jdxxaccomplishments.shtml

[49] Personal interview in Washington, D.C. with David Randolph, Coordinator of U.S.-Mexican Affairs, U.S. Dept of State, 13 November 2000.

U.S.-MEXICO BORDER STATES ATTORNEYS GENERAL CONFERENCE

The Border States Attorneys' General Conference (BSAGC) is also a working conference involving the attorneys general from the ten states along the U.S.-Mexico border. The Conference began meeting in 1986.

U.S.-Mexico Historical Context, 1980-1986

* *Oil and Politics* * In 1979, a price hike in oil gave Mexico the means to conduct further exploration. With newfound expertise in the field, Mexico enjoyed helping Cuba, Nicaragua, and Costa Rica search for their own oil. By 1981, Mexico was said to have the world's fifth-largest oil supply and the seventh-largest gas reserves.[50]

To prevent dependence on the U.S. oil market, and thereby retain a sense of autonomy, Mexico President José López Portillo ordered in 1980 "no more than 50 percent of Mexico's crude exports should go to any single client."[51] However, when world oil prices starting dropping in June of 1981, Mexico had little choice but to increase its exports to the United States.

In August of 1981, *Petróleos Mexicanos* (Pemex), Mexico's federal oil agency, signed a long-term contract to supply the U.S. Strategic Petroleum Reserve with 50,000 barrels of oil per day (bpd). Mexico was rapidly losing money as oil prices still fell. To compensate, the nation borrowed from foreign lenders. But suspicions that the peso was overvalued and unstable led to a significant flight of capital. In February 1982, José López Portillo devalued the peso by 40 percent. Another peso devaluation in August was followed by a suspension of principal payments on Mexico's huge foreign debt. That same month, Pemex signed an additional 12-month contract to supply the U.S. reserve with 110,000 bpd. Thus by 1983, half of Mexico's exported oil – 750,000 bpd – was going to the United States, to fund its crucial national security reserve of oil.[52]

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[50] Riding, p. 240.
[51] Riding, p. 241.
[52] Alan Riding, *Distant Neighbors: A Portrait of the Mexicans* (New York: First Vintage Books, 1986): 91 and 486.

The oil dip made two things very clear: the first was oil's huge new role in world finance. By 1982, Mexico had an international debt greater than $84 billion, borrowed against its newfound oil wealth.[53]

The second was the irony that Mexico's oil and gas – its presumed ticket to political independence from the North – had created more economic interdependence between the Mexican and U.S. economies than ever before. This was most readily apparent in the effects of the 1982 peso devaluation on the Southwestern United States. Businesses in the border states felt an immediate impact, as many of their best clients – Mexicans – had no capital for purchases. But exporters of everything from oilfield equipment to light aircraft lost clients. Adding fuel to the fire, so to speak, was the fact that the consequent recession in the United States shrunk markets for Mexico's non-oil exports.

The evidence of the Mexican economic woes in the border states contrasted greatly with the ignorance of interdependence apparent in the U.S. capital. When the Mexican Finance Minister, Jesús Silva Herzog, realized Mexico's inability to pay even the interest on its huge debt, he anxiously flew to Washington on 13 August 1982 to seek help in staving off Mexico's imminent bankruptcy. After explaining his country had run out of foreign exchange, he was told by Treasury Secretary Donald Regan: "Well, that's your problem." Only after Silva Herzog made clear how involved U.S. banks were in Mexico's economic welfare did frantic negotiations to shore up its economy begin. The Southwest's regional interest in the Mexican economic health became the national interest when the interpenetration of U.S. business in Mexico was made clear to federal policymakers. The Reagan administration, somewhat reluctantly, promised an emergency package of aid, including $1 billion in advance payment for oil and other loans.[54] What was called a "rollover" was really a way to keep from saying that Mexico had at least partially defaulted on its loans.[55]

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[53] Daniel Yergin, *The Prize: The Epic Quest for Oil, Money & Power* (New York: Simon and Schuster, 1991): 730.
[54] Riding, p. 487.
[55] Yergin, p. 731.

* *Central America* * In 1981, Jeane Kirkpatrick, Pres. Reagan's ambassador to the United Nations, said that "Central America is the most important place in the world for the United States today." Civil wars in Nicaragua and El Salvador took on global importance as the Reagan administration identified the area "as a fundamental testing ground of national resolve in a worldwide struggle against the forces of communism," writes Peter H. Smith. [56] Secretary of State Alexander Haig explained the United States had to assist the military government in El Salvador because of a "well-orchestrated international Communist campaign designed to transform the Salvadoran crisis from the internal conflict to an increasingly internationalized confrontation…This effort involves close coordination by Moscow, satellite capitals and Havana, with the cooperation of Hanoi and Managua…It is a threat, in our view, not just to the United States but to the West at large."[57]

Washington was not happy when Mexico joined with the French government in August 1981 in supporting the El Salvadorean revolutionary group Farabundo Martí Liberation Front (FMLN). In February 1982, José López Portillo issued a plan to negotiate a settlement in El Salvador, create a nonaggression treaty between the United States and Nicaragua, and to "serve as a bridge" for dialogue to reduce tensions between Cuba and the United States. The Reagan administration dismissed his plan in favor of military solutions.

Another thorn in the Reagan administration's side was Mexican's joining with Venezuela, Colombia, and Panama in on the island of Contadora in January 1983 to craft a peace plan for the Nicaraguan conflict. The Reagan administration worked behind the scenes to prevent adoption of the Contadora peace plan, at the same time increasing military aid to El Salvador. Eventually elements of the Contadora plan were included in a plan developed by Costa Rican President Oscar Arias Sánchez, which in 1987 brought "a measure of peace" to the region. [58] For his efforts, President Arias was awarded the 1987 Nobel Peace Prize.

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[56] Peter H. Smith, *Talons of the Eagle: Dynamics of U.S.-Latin American Relations* (New York: Oxford, 2000): 182.
[57] Ibid, p. 179.
[58] Ibid, p. 215.

* *Grenada* * In 1983, an internal and bloodless coup in the small Caribbean island nation of Grenada turned ugly when disagreement between the two coup leaders led to the murder of one by the other. A plan for the evacuation of some 1,000 U.S. citizens on the islands mushroomed into a full-scale military invasion. On 21 October the Organization of Eastern Caribbean States met without Grenada and agreed to invite friendly governments to intervene in Grenada. The following day, the Caribbean Community voted to suspend Grenada's membership in that organization and passed sanctions against the troubled nation as well. Also on that date, Pres. Reagan approved proceeding with invasion plans.

The next day, Sunday October 23, across the globe in Beirut, a suicide bombing by an Islamic extremist took the lives of 241 U.S. Marines. The tension level in the White House escalated, as did concerns that the popular Middle Eastern terrorist tactic of hostage-taking might now be used in Grenada. On 25 October, 1900 U.S. Marines as well as airborne troops and a small contingent of Caribbeans invaded Grenada. Within a few days, the United States had met its military goals. The casualties: twenty-one Grenadian security forces and twenty-four civilians, twenty-four Cubans, and nineteen U.S. servicemen.

Pres. Reagan explained to his constituents that Grenada was "a Soviet-Cuban colony being readied as a major military bastion to export terror and undermine democracy…We got there just in time." Others saw the situation differently. Speaking at the United Nations Security Council, Mexican ambassador Porfirio Muñoz Ledo rejected the invasion as "a clear violation of international law…totally lacking in justification." The Security Council voted 11-1-3 in favor of a resolution deploring the military action. Pres. Reagan was even criticized by his compatriot, British Prime Minister Margaret Thatcher, who complained that the United States had invaded a member of the British Commonwealth.[59]

[59] Smith, pp. 181-182.

The Border States Attorneys General Conference

The first meeting of the ten attorneys general from the U.S.-Mexico border states took place in Guaymas, Sonora, Mexico on 21 and 22 November 1986. By all accounts it was an informal get-together, with no agenda, more of a cocktail party and photo opportunity than a policy session.

The conference had earlier been proposed by the Mexican Attorney General, Sergio García Ramirez, to U.S. Attorney General Ed Meese, as a way of improving border coordination on criminal justice issues, including drug interdiction.[60] It is likely that Mexico was using part of a sizeable anti-drug grant from the United States to fund the meetings, and that the meetings themselves were a way of showing the United States that Mexico was using the grant constructively.

The Texas attorney general at the time, Jim Mattox, remembers thinking that the Mexican attorneys general "did not have a good understanding of the relationship of the U.S. state attorneys general to the U.S. federal attorney general. Most state attorneys general did not have high levels of criminal jurisdiction at the time," Mr. Mattox said. "The Mexicans thought we did. We were not certain if they wanted to meet with us or with the U.S. Attorney General."[61]

The Mexicans' number one concern was the guns being smuggled from the United States into Mexico. "We were interested in guns to the extent that they destabilized the country (Mexico) and (because) the drug runners were using high-powered weapons," explained Mr. Mattox. The Mexicans' next concern was the "adoption" in the United States of kidnapped babies from Mexico. Of lesser importance to the Mexicans was the issue of illegal drugs, "and their emphasis was always on reducing demand rather than supply," Mattox said. The Mexicans were also interested in missing persons – the Mexican nationals who entered the United States and were never

[60] Telephone interview with Ed Meese from Washington, D.C., 4 April 2000; also in William F. McDonald, *The Changing Boundaries of Law Enforcement: State and Local Law Enforcement, Illegal Immigration, and Transnational Crime Control: Final Report*. (National Institute of Justice, 1999).

[61] Phone interview with Jim Mattox from Austin, Texas, 3 February 2000.

heard from again. For their part, the U.S. attorneys general wanted to talk about money laundering, auto theft, and drug smuggling.

The Mexican attorneys general were interested in learning more about U.S. technology. But there was "great resistance" among U.S. state officials to sharing information on weapons, equipment, anything that could inform drug smugglers about enforcement activities or methods. "Our side viewed them (the Mexicans) as part of the problem," Mr. Mattox explained. But, "we were cautioned not to talk to them about corruption," he remembers, "probably by someone from DOJ (U.S. Department of Justice)."

After a few years of mostly insubstantial, happy-hour-type meetings, the U.S. attorneys general were of a mind to cancel the whole endeavor.

Then a horrific crime illustrated the necessity for cross-border law enforcement cooperation. In 1989, a University of Texas student, Mark Kilroy, was vacationing with friends in the Mexican border city of Matamoros, in Texas' neighboring state of Tamaulipas. During the evening of March 14, he disappeared.

By March 16, four Cameron County deputies and six U.S. Customs agents were on the case. Kilroy's uncle was a Customs agent in Los Angeles. At first, Mark's kidnapping was thought to be a retribution against the Customs agency for a secret operation of Customs agents in Mexico, who were tracking the routes Central Americans used to get through Mexico into the United States. The Mexican government had found out about the secret agents and was angry.[62] But the initial suspicions about who Mark's kidnappers might be soon proved to be wrong.

Kilroy's family searched for him. His father wandered the streets of Matamoros with paper flyers of Mark's photograph. People barely spoke to him. Finally Mr. and Mrs. Kilroy went to see then-Attorney General Mattox at his Austin office. Mattox sent his chief investigator to Matamoros. Then Mattox met with the Tamaulipas state attorney general, who soon fired many of the police who had been on the case. Mexican authorities intensified the search. Weeks later, Mark's body and the bodies of several

[62] Jim Schutze, *Cauldron of Blood: the Matamoros Cult Killings* (New York: Avon Books, 1989): 151-156.

others were found on a farm outside Matamoros. All had been the victims of ritual sacrifice by a devil-worshipping cult involved in drug smuggling. They believed participating in human sacrifice would render them immune to capture and even invisible to law enforcement.

This was the first time officials from both sides of the border had cooperated to solve such a significant crime, says former Attorney General Mattox, and it did not always run smoothly. More than one U.S. law enforcement officer involved in the Kilroy investigation said they came face-to-face with corruption among the Mexican officers. In order to get information on the missing University of Texas student, U.S. officials stressed their humanitarian desire to help Kilroy's family find some peace, and deliberately communicated to Mexican officials that illegal drug or financial activities would be overlooked. "Serious transgressions in that case were ignored," says a federal agent who worked on the case. Because of his willingness to tolerate corruption, "I gained their respect."

Attorney General Mattox says that having met the Mexican authorities through the BSAGC meetings, knowing them on a first-name basis, was vital to the pursuit and eventual conclusion of the case, he said, adding, "They (the Mexican officials) were very responsive to me."

In the past, the kidnapping would not have caught the attention of either a U.S. state or Mexican attorney general. Any problems would have been dealt with through the local police chief – probably the first person the Kilroys contacted.

After this case, the BSAGC meetings became more businesslike and more helpful. Each side seemed better able to communicate their viewpoints and to listen with more understanding, Mr. Mattox said. In June of 1991, Mr. Mattox's successor, Dan Morales, attended the BSAGC meeting in Tijuana. A new resolve seemed evident. The North American Free Trade Agreement was now a political possibility, and Mexican officials were eager to convey that law enforcement in Mexico could be trusted.

At the end of the meeting, the attorneys general signed the "Tijuana Resolution," which recognizes the "new relation" between the two nations, and "the increasing social and economical interchange in the frontiers of both friendly nations…" The Resolution

vowed cooperation in seven areas, including auto theft, money laundering, regulating the adoption of Mexican children, and the need to assist police forces: "to elevate the quality and preparation of those elements in charge of preventing and investigating the crimes."[63] The resolution set the agenda for subsequent meetings, which continue today.

However, local law enforcement says the Kilroy case did little to improve relations along the border, and that few things changed in day-to-day law enforcement transactions. While running for Texas governor in 1990, Mr. Mattox was able to generate some tangible political support for a cross-border system for tracking missing persons; but this support evaporated when Mattox lost to Ann Richards in the Democratic party's gubernatorial primary.

The border attorneys general still meet annually, although the group seems less organized than the Border Governors' Conference. Hosting duties rotate from state to state, and in 2002 and 2003, no meeting was held.

One state official said the meetings help both sides understand the legal and political capacities and limitations of the attorney general agencies on the other side of the border. Prior to the regular meetings, assumptions were made about what each side could do or not do, he says. Each side tended to see the capacities of the other through the lens of their own capabilities; yet the powers of U.S. and Mexican state attorneys general are very different.

On the U.S. side, a state attorney general acts as the state's legal representative, defending the laws of the state from legal challenge. The Texas attorney general responds to cases that originate at the county level. On the Mexican side, the attorney general has a police function as well as a prosecutorial function, and the Mexican state police are part of the state Attorneys General, as the federal police (FJP) are part of the PGR. Mexican attorneys general also handle more criminal cases than do most U.S. attorneys general, although Texas has moved into more criminal law in recent years, including money-laundering and Internet crime.

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[63] Transcript of the XIV U.S.-Mexico Border State Attorneys General Conference, compiled by Roberto San Miguel, and printed by the Texas Office of the Attorney General, 1995.

State/Federal/International Issues

The Texas-U.S. axis (national causes): was the problem Texas sought to address under state or federal jurisdiction? What was the corresponding federal response: did the federal government support the mechanism, ignore it, or move to restrict the mechanism?

The criminal justice problems Texas sought to address are arguably concerns shared by both the state and the federal government.

The U.S. federal government knew of and approved of the creation of the conference, but apparently did not fund the U.S. side of the meetings.

Texas' Mr. Mattox does not remember how he learned the meetings were to begin, but he said he never got nor sought permission from U.S. federal authorities. At some point, questions were raised whether or not the states could carry on such close relations with foreign entities, particularly when it seemed the Mexicans wanted the U.S. officials to enter into cooperative agreements. "We realized they were talking to us as if we were the federal government," Mr. Mattox said. This caused some concern among Texas officials, whether or not they were overstepping their constitutional authority. "Of course, in Texas we took the position we were sovereign over everybody," Mr. Mattox jokes. "We never came to any conclusion (on the constitutional question), we just moved forward anyway." Obviously, the states met no resistance from U.S. officials.

Mr. Mattox said there may have been a U.S. federal representative at the early BSAGC meetings, but to his recollection, federal officials did not have a significant involvement in the process at first.

Today, federal representatives from both sides are invited to make reports and observe the meetings, but the state officials are definitely in charge.

As far as federal officials are concerned, the meetings have not caused any problems between the states and the U.S. federal government. One DOJ official says it's "not a bad idea" to foster relations at the state level. Another official says the Mexicans are pleased that state officials want to communicate with them, and the meetings have opened doors to cooperation on issues such as international prosecutions, child support,

stolen vehicles, and other issues of local interest. The meetings are fine, "as long as they're not interfering with something we (the federal government) do or are being counterproductive," says this federal official.

State officials acknowledge that U.S. federal officials have been generally supportive of the meetings: "They (U.S. feds) give us the room we need provided we don't break international law, and if there's a treaty involved we defer," he says.

At the annual meetings, it is clear how the U.S. and Mexican states enjoy different levels of autonomy. The Mexican state officials are deferent to the Mexican federal officials; while the U.S. federal officials are more deferential to the states, and are respectful of the state's initiatives. This makes things easier for the U.S. states, which one Texas law enforcement official feels is appropriate because, as he explains: "Let's face it, we're doing a lot of their (the federal government's) work."

The U.S.–Mexico axis (international causes): what were the international political and economic conditions that contributed to or prevented the state's effort to reach across the Rio Grande?

It can be argued that the changing nature of national security concerns during these closing years of the Cold War necessitated the involvement of the states in burgeoning criminal justice challenges. As Cold War issues on the international agenda waned, illegal immigration and drug use climbed higher on the U.S. national security agenda. But these issues require a different approach from the military policy of containment. Diffuse in nature and regional in impact, an effective method requires cooperation at all levels of law enforcement. Thus state officials arguably became partners in fighting the new national security threats.

In May of 1977, U.S. Pres. Jimmy Carter and Mexican Pres. José Lopez Portillo had created a binational forum called the U.S.-Mexico Consultative Mechanism. The Mechanism established a means of regular communication between Cabinet-level officials in both nations. In 1981, the Reagan administration renamed it the Binational Commission (BNC). The BNC comprises working groups of officials exchanging information on political, economic, and social matters. It is likely that the idea of a state

attorneys general conference was first broached at a BNC meeting between the U.S. and Mexican federal attorneys general as they discussed criminal justice issues.[64]

The Texas-Mexico axis (state causes): How was the venue created? Did Texas' interest in and method of contact with Mexico differ from the U.S. government's relations with Mexico?

The BSAGC cannot be called a governing mechanism as much as it is a mechanism for facilitating communication, which it seems to accomplish.

Before the mechanism began, Texas was already somewhat active in increasing cooperation with Mexico on border crimes. During Jim Mattox's administration, the Office of the Texas Attorney General had already sponsored cross-border crime law enforcement cooperation seminars.[65]

Because of the creation of the Binational Commission, the method of contact does not differ in this case between the U.S. government and the Texas government. Regular meetings among state officials mirror the cabinet-level meetings among federal officials via the BNC.

Texas and Mexico enjoy the benefits of a mutual relationship that exists independently of U.S.-Mexico ties. A former assistant to Dan Morales told an analyst that Morales had "a close working relationship with Mexican criminal justice officials that is not reflected in the U.S.-Mexican binational relationship on criminal matters." The assistant claimed that, on issues affecting the Texas-Mexico relationship, Mexican officials "prefer to work directly with the Texas government instead of through the U.S. government," as might have been the case in the past.[66]

But at least one Mexican federal authority expressed a slight tinge of disapproval when speaking about the attorneys' conference, saying that state authorities want to handle some issues as if they were merely state or domestic issues, when in fact they are

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[64] *Fact Sheet: U.S.-Mexico Binational Commission*, (Washington, D.C.: U.S. Department of State, 28 June 1993): 459.

[65] Mr. Mattox felt these meetings were more cost-effective than the meetings of the attorneys general.

[66] Interview with Texas Deputy Attorney General Drew Durham, conducted by Jan Gilbreath, and related in her paper, *The Mexico-Texas Relationship: Redefining Regionalism*, paper prepared for *La Nueva Agenda de la Relación* Bilateral Conference (Mexico City, May 19-20, 1995): 17.

federal issues and should be treated as such. "There are procedures and channels to follow. Sometimes they don't pay attention to those," says this official. He complains that at times, his office has not been notified properly about a fugitive exchange. "Texas used to be a country. The Texas Rangers think they own the country and forget that the agencies are there and have a function to do. Sometimes they interfere with the function of federal agencies."[67]

His comments reflect the tradition of federal control characteristic of the Mexican system, and the practice that Mexican state authorities must keep their federal government informed of their activities, more so than U.S. authorities are accustomed to doing.

CONCLUSION

Given the low political priority placed on the U.S.-Mexico border, it is sometimes difficult to prove exactly what the policy goals with respect to this area are. But for purposes of analysis, this project assumes the U.S. border states and the federal government have shared general policy goals with respect to relations with Mexico, in that both levels of government want minimal conflict with Mexico. But during the Cold War, problems with Mexico were often downplayed or ignored. Since the Cold War's end, Mexico rose slightly higher on the U.S. foreign policy agenda, but U.S. policymakers are often still uncomfortable addressing relations with Mexico.

Many of the social concerns along the border are under state jurisdiction, but historically Texas has been slow to address the issues, instead arguing the federal government should act in that area. But as globalization increased the movement of people across borders, and the border population grows, pressure mounts for some level of government to take action. The creation of the Border Governors' Conference shows that in this atmosphere of ambiguity of responsibility for border concerns, and out of frustration with the federal government, state officials initiated a mechanism for regional policy coordination.

[67] Personal interview with Mexican federal agent in San Antonio, Texas, 5 December 2001.

While U.S.-Mexico relations during the Carter administration benefited in the long term from the creation of what became the Binational Commission, short-term relations between the two federal governments were still strained.[68] Texas Gov. Clements, already a wheeler-dealer in Mexico through his oil contacts, represented the state's business sector and its desire to curry relations with Mexico without carrying the responsibility for enforcing national security. The governor's subnational-level priorities, the ability to place economics above security, likely made his overtures quite appealing to Pres. López Portillo.

The three other Southwest states were led by Democrats at the time. Gov. Bruce Babbitt of Arizona kept up the party line the first year by defending Pres. Carter's turf, resisting the idea that it was appropriate for state governments to discuss federal issues. But by the following year, Gov. Babbitt was admittedly pleased to see the states meeting independently with Mexico. This indicates that, as former U.S. House Speaker Tip O'Neill quipped, "all politics is local." Gov. Babbitt's responsiveness to local interests proved stronger than his party affiliation with the President. The U.S. federal government – represented by Special Ambassador to Mexico Robert Krueger – was only mildly concerned about the governors moving into "their turf" of direct relations at first, but did not act to restrict the states.

As the Conference has continued, the governors have been sensitive not to tread too obviously on areas of federal authority and do not discuss federal issues in public, likely more out of deference to the Mexican governors, who take fewer liberties in their more centrally-controlled federal system.

If anything, the U.S. states could likely get away with more opposition than they have tried, without inviting the federal government to curtail them. Texas Gov. Clements' vocal complaints about federal policy – and the lack of a serious federal response – suggests that even now, the states could be much more aggressive in opposing or endorsing federal policy than they currently are. The U.S. Department of State representative who attended the BGC meetings for several years says the states are

[68] Robert Pastor, *Whirlpool: U.S. Foreign Policy Toward Latin America and the Caribbean.* (Princeton: Princeton University Press, 1992): 50-51.

quite respectful of not treading on federal prerogatives, and describes the Joint Declarations as "very mildly-worded. Many governors would like to take a stronger position but they know it is politically sensitive."[69]

The states have no legal authority to confer with foreign nations on any policy issue. But there has always been a lack of clarity of responsibility for border policy. Several factors contribute to the shifting of responsibility for policy in the border: a lack of political clout among border residents who suffer high levels of chronic poverty; physical distance from governing centers in both Austin and Washington, and the complexity of a space where state, federal, and international concerns converge with no clear hierarchy of power.

The lack of a formal role for the states did not prevent the states from acting, rather it gave the states the space to take initiative. After all, lobbying the federal government is an appropriate action for states concerned with the efficacy of domestic policy. Extending this to include the Mexican governors seemed only natural, from the view of state actors.

In this dynamic policy environment, characterized by multiple complex issues and a lack of clarity of responsibility, the state governors and attorneys general were able to assert themselves with only minimal conflict from the federal government, despite the lack of a formal role allowing state actors to confer directly with their foreign counterparts. The open U.S. federal system gives states the freedom to innovate policies to address local needs. If Keohane and Nye are correct about today's foreign policy agenda, then as issues become more complex and the global economy more intertwined, the experience of the border states indicates that lower levels of government have the opportunity to become increasingly assertive, given the openness of the system and the vagueness about who is responsible for policy.

However, a possible outcome of assertive states could be renewed policing by the federal government to prevent the growth of a mechanism whose influence could challenge Washington. As globalization continues to affect policy across the board, then

[69] Personal interview in Washington, D.C. with David Randolph, Coordinator of U.S.-Mexican Affairs, U.S. Dept of State, 13 November 2000.

the states and federal government might find their long-term goals in relations with Mexico to be in conflict. If state actors were to join forces with opposition interest groups, the border officials' mechanisms could evolve into an influential body capable of criticizing the federal government, in which case either the Mexican or U.S. federal government would likely trump the state-level conferences. But there seems to be a great deal of room before that point is likely to be reached.

But for now, given generally common goals and a lack of definition of authority for border development, states have been able to define for themselves how they relate to Mexico, and have been free to cultivate relations directly with their Mexican counterparts. Each of these conferences could be more aggressive in working to coordinate policies and pressuring the federal government than they currently are, but are not likely to increase their activism out of deference to the federal governments in both nations. Whether or not states take that opportunity may well depend on either leadership at the top or the capacity of grassroots groups to organize and pressure state leaders into action.

CHAPTER SIX
THE CONVERGENCE OF JURISDICTIONS ON INTERNATIONAL CRIME: FUGITIVE APPREHENSION AND RECOVERY

"Criminals do not have to have treaties; they just work, very effectively. In all parts of the world, criminals are always ahead." – Attaché, *Procuraduría General de la República.*

INTRODUCTION

As domestic policy has become internationalized, the local practice of criminal justice has changed. For state and local law enforcement, globalization has meant learning to handle local crimes that involve foreign citizens. All levels of government share the goal of enforcing the public safety, but the twist here is that international treaties govern those aspects of local law enforcement involving foreigners, and in this area, by developing an independent role in foreign affairs, state and local law enforcement runs the risk of damaging U.S. foreign relations overall. Even so, the federal government has not actively prevented the states from developing foreign law enforcement contacts, and even have policies in place that tacitly encourage the states to act independently to recover fugitives.

In this case, the states are acting within their traditional jurisdiction, but as the nature of domestic policy has changed, the states' role has expanded to include crimes that involve foreign perpetrators and victims. While the federal government negotiates treaties that are intended to control the behavior of even state and local law enforcement, subnational officials often violate these treaties out of frustration or ignorance. One might expect the federal government to seek to restrict subnational governments in this area, but the sheer number of officials and cases make this unfeasible. Instead, federal

officials rely on state and local law enforcement to meet their public safety goals and hopes that no international incidents result from the actions of state and local officials.

While law enforcement operates within state and national borders, and legal and jurisdictional limitations, technology has created a borderless world for criminals.[1] As the international movement of people and goods increases and accelerates, state and local cops find themselves pursuing international fugitives, tracking global drug crimes, apprehending money launderers, and arresting foreign nationals for anything from petty to significant crimes. Globalization changes the domestic environment; it demands that subnational governments develop new capacities.

States share goals with the federal government to ensure the public safety. Subnational governments and the federal government share concurrent jurisdiction in criminal justice and each level has its own law enforcement apparatus.

To the federal government, the increasing role of state and locals in foreign law enforcement relations is a mixed blessing. Federal agencies cannot possibly handle the sheer volume of cases involving foreign nationals, and need state and local law enforcement to process what really are state and local cases. The federal government does not take over a case even if a foreign national is involved; a local crime remains a local crime. But the states' use of their own international contacts puts federal officials' teeth on edge. Because international criminal justice concerns are governed by treaty, there is potential for the states to violate the treaty in the course of pursuing their own cases. Therefore the increasing involvement of subnational law enforcement in international cases involves a degree of risk to U.S. foreign relations as a whole.

Now, before the effect of globalization on law enforcement has been fully realized, the War on Terror is again changing the demands on law enforcement. During the Cold War, national security was the province of the federal government. The U.S. military, restricted in its domestic role, had sole responsibility for maintaining the integrity of seldom-threatened national borders and for carrying out military action

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[1] William F. McDonald, *State and Local Law Enforcement, Illegal Immigration and Transnational Crime Control, Final Report.* (Washington, D.C.: National Institute of Justice, U.S. Department of Justice, 1999).

overseas.[2] The states shared responsibility with federal law enforcement agencies for protecting public safety at home.

But on the morning of 11 September 2001, the concept that security threats to the United States can be categorized as either "domestic" or "foreign" was destroyed. Since then, state and local law enforcement have been asked to do more to ensure the nation's safety from terrorist threats.

It remains to be seen how fighting terrorism will affect the role of domestic law enforcement. The reevaluation of government functions following the tragedy of September 11th puts renewed emphasis on the importance of interagency cooperation both between federal agencies and among all levels of government.

The changing nature of security threats and more actors in the process means there is an elevated risk of miscommunication and misunderstandings, and the increased likelihood of interagency power struggles. As globalization has brought international overtones to domestic law enforcement concerns, the challenge of intergovernmental coordination is heightened in cases including different nations, different languages and different legal processes.

But as this case study will show, there is a chronic lack of clarity surrounding the international law enforcement role of the states. Because of the legal issues surrounding states and international criminal justice, these roles are likely to remain unclear.

The War on Terror and Shared Goals

While all levels of law enforcement share the same short-term goals – to protect the public safety – the War on Terror already has found some state and local law enforcement at odds with the means adopted by the federal government. One tension here is that fighting terrorism on the domestic front diverts law enforcement resources from local concerns in favor of protecting federally-designated "soft targets" such as

[2] The exception to this rule is the state National Guard troops, which can be under either state or federal control, in either a military or police capacity, and are an understudied phenomena in the study of federalism and law enforcement.

infrastructure. Another is the resistance of many subnational entities to fully implementing the Patriot Act. Others refuse to enforce federal immigration laws.[3]

There are many times when state and local officers will cooperate with federal immigration agents. They will provide support during immigration raids, report an illegal individual after arrest on state criminal charges, or release a convict to immigration authorities for deportation. [4] But illegal presence in the United States is a federal offense, not a state crime, and state and local officers will not arrest for it.[5]

But in April of 2002, the U.S. Department of Justice considered updating a legal opinion to give state and local police departments the authority to arrest for civil immigration violations. The response at the subnational level was overwhelmingly negative. Police objected on two fronts: one, lacking the resources to pursue immigration violators and two, their reluctance to damage relations with immigrant communities, who are often targeted by domestic criminals because of their illegal status. Police chief Ron Louie of Hillsboro, Oregon, said, "We're trying to build bridges with people living in fear. If police officers become agents of the Immigration and Naturalization Service (INS), their ability to deal with issues such as domestic violence and crime prevention will be severely curtailed."[6]

In Putnam County, Tennessee, Sheriff Jerry Abston spoke to the division of responsibilities between federal and subnational law enforcement:
"I wouldn't have the resources to do that…Money's tight in the state, in the counties, too. It's [the INS'] job to take care of the borders, and I just think they need to do it."[7]

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[3] Elaine de Valle, "Immigrant Advocates Blast Ashcroft Plan," *The Miami Herald*. (24 April 2002, Retrieved 19 September 2003). Available from: http://www.miami.com/mld/miami/3130211.htm

[4] The agency previously known as the Immigration and Naturalization Service (INS) is now two agencies in the Department of Homeland Security. The enforcement arm is Immigration and Customs Enforcement; the other is Citizenship and Immigration Services.

[5] "California Police Chiefs Association Letter to the Attorney General," *The National Immigration Forum*, 10 April 2002. (Retrieved 20 September 2003). Available at: http://www.immigrationforum.org/currentissues/articles/041002_calpo.htm

[6] "Helping People Without Papers," *The Portland Oregonian*, 5 April 2002.

[7] "Midstate Authorities Balk at Possibly Enforcing Immigration Laws," *The Tennessean*, 15 April 2002.

Other federal government actions in the war against terrorism could negatively affect the good relations state and local law enforcement are developing with other nations. Federal counterterrorism strategies such as detaining foreign nationals without charges or seeking the death penalty for accused terrorists could hinder progress in matters of local concern like extradition and fugitive recovery.

Thus it is necessary to consider that in the important policy area of law enforcement, the goals of the states and the federal government are the same, but as the security climate changes due to terrorism concerns, the international role that state and local law enforcement are asserting for themselves now could change as federal strategies change. But before the future can be considered, it is important to take a closer look at the current international role of state and local law enforcement and the federal response.

Chapter Overview

This chapter examines how all levels of domestic law enforcement converge on criminal justice relations in general and specifically on an issue with international repercussions, that of the apprehension and recovery of international fugitives. The specific case examined in this chapter involves relations between fugitive recovery officials in Texas and Mexico. True, fugitive apprehension is arguably a greater concern among border states, but even interior U.S. states are realizing the need to learn how to pursue criminal suspects as they flee the United States, and understand how to return a foreign fugitive to another nation. While Texas is the focus here, California has also pioneered the development of international intergovernmental mechanisms for fugitive recovery. Officials in Texas and California increasingly assist other U.S. states with fugitive recovery.

There are many barriers to successful fugitive recovery. The first is that resources cannot be devoted to tracking every fugitive, so only the most violent are actively sought. With respect to the others, officials can only hope that the individual will return to Texas and be discovered during a traffic stop, or apprehended for an additional crime.

This default practice remains the cheapest means of recovering a fugitive, but is the least effective, the most dangerous, and the most frustrating to law enforcement.

During the past twenty years, the gradual improvement in relations between the United States and Mexico has increased the options for law enforcement to apprehend and recover fugitives. There are now three generally reliable means: deportation, extradition, or foreign prosecution. A U.S.-citizen fugitive may be either deported or extradited; a Mexican-citizen fugitive may be either extradited or prosecuted in Mexico.

The first section is a brief overview of the fugitive recovery processes that will be examined in greater detail later in the chapter. The following sections review different facets of how globalization affects the U.S.-Mexican law enforcement relationship. Then the three fugitive recovery methods are examined more closely. The concluding section considers the implications of globalization on U.S.-Texas-Mexico relations in law enforcement in all their complexity.

FUGITIVE RECOVERY PROCESSES IN BRIEF

In Texas, there are two state agencies primarily responsible for pursuing international fugitives. The Texas Department of Criminal Justice (TDCJ) is responsible for overseeing the state's prisons and parolees; TDCJ seeks escaped convicts or violent parole violators. The Texas Office of the Attorney General (OAG) is the state's top civil law agency, but in recent years, the agency has expanded into some areas of criminal law, such as gang prevention, computer crimes, and apprehending child predators. OAG will seek individuals who have not yet been arrested or incarcerated. Local municipal police or county sheriffs may also pursue a fugitive, either with or without the assistance of the state agencies.

If the fugitive is a U.S. citizen, then recovery could be relatively quick. U.S. federal officials have, in recent years, encouraged Mexico to deport U.S. citizens who flee to Mexico. Negotiations at the federal level have opened the door for state and local officials to seek deportation via their own contacts. Thus state officials could recover a

fugitive from a foreign country within a matter of hours, without ever notifying federal officials.

The first step is to locate the fugitive. For an investigator in Texas to locate a single person on the run in Mexico requires skills both diplomatic and technological. The Mexican federal police, now known as the *Agéncia Federal Investigacion* (AFI), will not conduct surveillance on foreigners, and U.S. investigators are prohibited from conducting an independent investigation within Mexico. So state officials rely on a variety of resources: personal contacts in law enforcement, informers – including family members of the suspects, and an array of technological devices. State and local law enforcement can also call upon the services of the U.S. federal government. The U.S. Marshals Service (USMS) and the Federal Bureau of Investigation (FBI) have personnel in Mexico, attached to the U.S. Embassy in Mexico City and at some regional consular offices. U.S. law enforcement cannot perform arrests in another nation, and must always be accompanied by Mexican law enforcement agents when on official business.[8]

As soon as the fugitive is located, the Texas officials will contact the San Antonio branch office of the Mexican federal Attorney General's office, the *Procuraduría General de la República* (PGR). The PGR will ask for a copy of the fugitive's outstanding arrest warrant. Although a U.S. warrant, like a U.S. law enforcement official, has no authority in Mexico, a person who is wanted in the United States is inadmissible to Mexico. Inadmissibility at time of entry is grounds for a non-Mexican citizen to be deported. Lying or using a false name to gain entry is grounds for a person to be excluded from re-entering Mexico.

Once a U.S.-citizen fugitive is apprehended, he or she may agree to voluntarily return to the United States. If the person refuses a voluntary deport, Mexican immigration officials will take the person before an immigration judge, who can order the fugitive's deportation to the United States or exclusion from Mexico.

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[8] While U.S. federal officials must have clearance through the U.S. Ambassador to be in country, there is a lack of clarity about whether or not state and local officials must have embassy clearance before entering a foreign nation. But while embassy clearance may or may not be a technical requirement, the U.S. federal government and the Mexican government prefer subnational government officials obtain clearance, and no U.S. law enforcement has authority to perform an arrest in a foreign nation.

But a Mexican citizen will not be deported, and many Mexican judges will not deport a U.S. citizen of Mexican descent.[9] So state and local law enforcement have two choices to recover a Mexican citizen: they can either initiate an extradition, or they can ask Mexican officials to carry out an international prosecution.[10]

For an extradition, subnational officials must contact the Office of International Affairs (OIA) at the U.S. Department of Justice (U.S. DOJ) in Washington, D.C. The OIA was created in 1979 to handle the increasing numbers of extradition requests to and from the United States.[11] Extraditions are a political and legal procedure governed by international treaty. State and local officials have no authority to carry out an extradition on their own, as confirmed by *Holmes v. Jennison*. Every extradition request is administered by OIA and presented to the foreign government by the U.S. Department of State (U.S. DOS).[12]

On the Mexican side, extraditions are handled by both the Mexican federal Attorney General's office, the *Procuraduría General de la República* (PGR), and the Mexican equivalent of the U.S. Department of State, the *Secretaría de Relaciones Exteriores* (SRE), which makes the final decision on extraditions. The Mexican immigration agency, *Instituto Nacional Migración* (INM), will assume custody of an individual for a deportation.

If an extradition is denied for a Mexican citizen, then Mexico will prosecute the individual in Mexico as if the crime were a Mexican case. This is called an Article IV prosecution, or a foreign prosecution, and is popular with many U.S. state authorities. Each of the four U.S. states bordering Mexico – Texas, New Mexico, Arizona, and

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[9] In 1998, Mexico passed the "No Loss of Nationality" Law, which allows Mexicans to hold dual nationality, but not dual citizenship. A Mexican who becomes a citizen of another nation retains Mexican nationality, and children born outside of Mexico but of Mexican parentage are also considered Mexican nationals. See Mexico Connect, "Mexican Dual Citizenship," (Retrieved 1 October 2003.) Available from http://www.mexconnect.com/mex_/dt/dtdualcitizenship.html.

[10] It is also possible for the United States and Mexico to conduct a third-party extradition involving a citizen of another country.

[11] Ethan A. Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement.* (University Park, PA: Pennsylvania State Press, 1993): 342.

[12] The current U.S.-Mexican extradition treaty has been in force since 1980.

California, as well as Colorado – have state-level offices that handle international prosecutions. Some local jurisdictions pursue international prosecutions as well.

If they prefer, state and local officials in the United States can skip the extradition request and work with Mexican authorities directly on an Article IV prosecution. Since Article IV is a provision of Mexican law, U.S. federal officials need not be a part of that process, and usually are not.

Texas and U.S. federal officials will readily reciprocate. If Mexican authorities report the U.S. location of a Mexican-citizen fugitive from Mexican law, TDCJ, the U.S. Marshals or the Bureau of Immigration and Customs Enforcement (BICE – formerly the Immigration and Naturalization Service) will retrieve the suspect and transport him to the border, where Mexican officials will assume custody.

It is impossible to know exactly how many fugitives from U.S. law are in Mexico. One state officials estimates Texas alone could have several hundred. Due to limited resources, the state actively pursues only the most violent. Since the creation of the fugitive unit in 1993, TDCJ officials have recovered fewer than ten U.S.-citizen fugitives from Mexico. Although the figure seems small, the rate of recapture is significant: every person located in Mexico has been returned to Texas, a record that officials from both sides of the border say testifies to the effectiveness of the intergovernmental cooperation between Texas and Mexico. While many other parole violators are suspected to have fled to Mexico, these ten are thought to be extremely violent and therefore are at the top of the list.

As of late 2003, the state of Texas have listed nine violent fugitives thought to be in Mexico.[13] These nine are long-term fugitives and have yet to be located; one is a prison escapee.

The statistics for the numbers of fugitives recovered by the United States as a whole are more impressive. In 2002, Mexico extradited 25 persons to the United States.

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[13] Six of the fugitives have yet to be arrested and are being sought by the Texas Office of the Attorney General. The other three are being sought by the Texas Department of Criminal Justice: two are prison escapees, one is a parole violator, and the fourth was mistakenly released. Information about the fugitives can be found at the OAG website: http://www.oag.state.tx.us/criminal/article4_wanted/fugitives or at the TDCJ website: http://people.txucom.net/tdcj-iad/

By 3 October 2003, 26 persons were extradited to the United States for the year. By that same date, 202 individuals had been removed or excluded from Mexico and deported to the United States. These figures include fugitives wanted on federal warrants and individuals sought by state and local authorities.

GLOBALIZATION AND CRIME: THE INTERSECTION OF STATE AND LOCAL LAW ENFORCEMENT WITH INTERNATIONAL CRIME

Free Trade and Mexico's Opening

Law enforcement relations between the U.S. and Mexico have often been contentious, reflecting the complicated relations between the neighboring nations. Relations at the state and local levels have been problematic and at times violent. But most criminal justice officials interviewed for this chapter acknowledge that, while still in need of improvement, communication and cooperation between the United States and Mexico on criminal justice issues have progressed recently. Why are relations so improved at this point in time?

Probably the most significant factor leading to increased communication on law enforcement issues is the recent political change in Mexico and the accompanying changes in Mexico's foreign relations. Mexico used to keep to itself, hoping that not interfering in the business of other nations would mean other nations would not intrude on Mexican sovereignty. But this has changed. As one Mexican federal criminal justice official explains: "We used to think in Mexico, (law enforcement) is a matter of sovereignty – what happens inside my country is only of concern to me, I don't need to share it. Then, we saw the world increasing relationships, so-called globalization, and we saw that things cannot happen the way we are used to. We decided to open up and fortify ties" between Mexico and the United States, explains this official.

The perception that international crime is increasing has also forced Mexico to open up. "In law enforcement matters, there is no border," he explains. "On both sides, we find problems are widespreading." A second Mexican official concurs. "Cooperation is the only antidote," to the increase in crime, he says.

As trade in legal goods has increased, trade in illegal goods has risen in tandem. Aside from consuming huge amounts of legitimate products, the United States consumes more drugs than any other nation. The North American Free Trade Agreement (NAFTA) has allowed Mexican organized crime groups to take advantage of increased flows of goods and persons to become part of an increasing network of corruption that originates in Mexico but extends into the United States.[14]

Other forms of crime accompany the drug trade. Money laundering, counterfeiting, credit card fraud, and human smuggling have joined the other usual suspects that have historically characterized the U.S.-Mexico criminal justice relationship, such as auto theft, insurance fraud, gun smuggling and kidnapping. State and local agencies play a part in regulating all these activities; many states now have stronger powers to investigate money laundering than does the federal government.

The Effect of Immigration: The Risk of Improper Arrests

Criminal justice relations at the state and local level have also been affected by increases in immigration. There is no conclusive evidence that foreign-born individuals in the United States are more prone to criminal behavior than are native-born residents. Some studies show that immigrants are less likely to commit crimes than natives and, if incarcerated, are less likely to commit new crimes after release from prison.[15] But it is difficult to accurately determine if there is a link; likely much crime among illegal immigrant populations goes unreported out of fear of deportation.

But as Texas' population has grown, the numbers of foreign-born residents have increased. In the 1990s, Texas' foreign-born population grew by 37 percent. In 1990, the U.S. Census showed Texas with a total population of 16,986,510. Nine percent of that number self-reported as foreign-born, totaling 1,524,436 persons. In 2000, Texas' total

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[14] Louise Shelley, "Corruption and Organized Crime in Mexico in the Post-PRI Transition," *Journal of Contemporary Criminal Justice* 17 (August 2001).

[15] See Carl F. Horowitz, *An Examination of U.S. Immigration Policy and Serious Crime*, Center for Immigration Studies, April 2001. (Retrieved 20 September 2003). Available from http://www.cis.org/articles/2001/crime/toc.html#13, and Matthew T. Lee; Ramiro Martinez Jr.; and Richard Rosenfeld, "Does Immigration Increase Homicide? Negative Evidence From Three Border Cities." *The Sociological Quarterly* 42 (Fall 2001): 559.

population had grown by 22.8 percent, an additional 3.4 million people, to nearly 21 million people; foreign-born residents now compose 13.9 percent of the population.[16]

Statistics showing the number of foreign-born inmates in the Texas prison system are not easy to find. In July of 1997, the total Texas prison population was 136,485; 11,394 were foreign-born inmates, or eight percent, slightly less than the percentage of the Texas foreign-born population as a whole in 1990, which was then nine percent.[17]

Increases in the foreign-born population bring state and local law enforcement directly into the international arena, with the potential to disturb U.S. foreign affairs. The arrest and detention of a foreign national are supposed to be done according to the terms of the Vienna Convention on Consular Relations, an international treaty in force since 1963.[18] More than 160 countries, including the United States and Mexico, are signatories. The Convention requires that foreign nationals, when detained in a foreign nation, be allowed to contact their consular officials for assistance. Some nations require consular notification and some nations give the individual in custody the option to notify, but the individual must still be informed of the right to contact consular officials.

Complications arise when local law enforcement violates the treaty and neglects to inform detainees of their right to consular notification.

Sometimes U.S. state courts have sentenced foreign nationals to death for crimes committed in the United States. This in itself broaches no treaty, but when combined with a failure to inform, has strained U.S. foreign relations with the convict's home nation. On more than one occasion, Texas has executed a Mexican national despite strenuous objections from the Mexican government. In 2002, Mexican President Vicente

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[16] U.S. Census Bureau, *Texas*. (Updated 15 July 2003, Retrieved 21 September 2003.) Available from http://quickfacts.census.gov/qfd/states/48000.html; and Federation for American Immigration Reform, *Immigration in Texas.* (Retrieved 21 September 2003.) Available from http://www.fairus.org/html/042tximpact.html.

[17] Remarks of Catherine McVey of the Texas Department of Criminal Justice, before the House Judiciary Committee 15 July 1997. (Retrieved 20 September 2003). Available from http://www.house.gov/judiciary/6029.htm.

[18] "Vienna Convention on Consular Relations and Optional Protocols," International Law Commission, Available at http://www.un.org/law/ilc/texts/consul.htm. Retrieved 19 September 2003.

Fox even canceled a trip to Texas to protest the state's execution of a Mexican citizen who was not notified of his right to consular access. [19]

Some attorneys have used a failure to inform to seek a judicial remedy, such as a new trial or sentencing hearing. In May of 2002, the Oklahoma Court of Criminal Appeals ordered a resentencing hearing for a Mexican national on death row who was not informed of his right to contact his consul.[20]

In January of 2003, the Mexican government filed a complaint before the International Court of Justice (ICJ) in the Hague, Netherlands, concerning the cases of 54 Mexican nationals sentenced to death in the United States. According to the complaint, none of the fifty-four individuals had been notified of the option to contact consular officials, "who may have been able to prevent the application of the death sentence," according to a statement made by the Mexican Secretary of Foreign Relations. The complaint asks the ICJ to request the United States comply with the Convention, delay any scheduled executions, and review and reconsider the death sentences – all of which would be state decisions, if state prisoners are involved.[21]

In February of 2003, the ICJ decided the United States should take "all measures necessary" to halt the scheduled executions of three of the 54 Mexican nationals until a final decision can be reached. Public hearings in the case are scheduled for December 2003.[22] Two of the three are incarcerated in Texas, the third in Oklahoma; none of the three are currently scheduled for execution.[23] As of October 2003, there are 17 Mexican nationals on Texas' Death Row.[24]

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[19] Pres. Fox was to visit four Texas cities and to meet with U.S. Pres. George W. Bush at his ranch in Crawford, Texas. http://news.bbc.co.uk/2/low/americas/2194566.stm, updated Thursday, 15 August 2002, retrieved 18 August 2003. The Mexican national, Javier Suarez Medina, was convicted of shooting to death Larry Cadena, an undercover Dallas police officer.

[20] http://www.thenewsmexico.com/noticia.asp?id=24759.

[21] *The Government of Mexico Submits to the International Court of Justice in The Hague the Cases of 54 Mexicans Sentenced to Death in the United States,* Mexican Secretariat of Foreign Relations, Press Release No. 006/03, Mexico City 9 January 2003.

[22] *Avena and Other Mexican Nationals (Mexico v. United States of America),* International Court of Justice, Press Release 2003/25, 25 July 2003. Available at http://www.icj-cij.org/icjwww/ipresscom/ipress2003/ipresscom2003-25_mus_20030725.htm, Retrieved 19 September 2003.

[23] *Scheduled Executions,* Texas Department of Criminal Justice. (Updated 12 September 2003; retrieved 19 September 2003). Available from

When a Mexican national is executed in Texas, though, relations between Mexican and Texan law enforcement officials remain cordial. One Texas official says "surprisingly, no, we're not one bit affected by the executions. The Mexicans at the San Antonio office are very professional; they don't take it personally. They know we don't have control over the system." The Mexican justice officials say that because the Mexican foreign ministry, and not the Attorney General, is responsible for granting extraditions, then officially, an execution doesn't intrude on working relationships. "If they (the convicts) break the law and they came (to the United States), they must obey the law here," says one of the Mexican representatives. Another Texas official echoes this statement: "They (the Mexican officials) know the person executed is a criminal."

All the same, one state authority says he has been told that law enforcement representatives should not travel to Mexico or expect to get any assistance from Mexican officials during the two-week window surrounding the execution of a Mexican national by the state of Texas.

Local Jurisdictions and the Death Penalty

Differences in criminal sentencing between the two nations have been the most consistent barrier to the formal transfer of fugitives from Mexico to the United States. The death penalty is a serious point of contention between the two nations. Mexican law does not include capital punishment, even though support for the death penalty among the majority Catholic population in Mexico has recently increased. The terms of the U.S.-Mexican extradition treaty allow Mexico to refuse to extradite even a U.S. citizen, unless assurances are given by the state that the death penalty will not be sought at trial.[25]

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http://www.tdcj.state.tx.us/stat/scheduledexecutions.htm; *Capital Punishment: Current Death Row Population*, Oklahoma Department of Corrections. (Updated 4 August 2003; retrieved 19 September 2003). Available from http://www.doc.state.ok.us/DOCS/CapitalP.HTM;

[24] *Citizenship of Offenders on Death Row*, Texas Department of Criminal Justice, (Updated 18 February 2003; Retrieved 25 September 2003.) Available from http://www.tdcj.state.tx.us/stat/nationalities.htm.

[25] "Appendix C: Extradition Treaty Between the United States of America and the United Mexican States," included in *Criminal Prosecutions Under Article 4 of the Mexican Penal Code:*

However, the prosecution for the state – either a county prosecutor or district attorney – is sovereign in deciding whether or not to seek the death penalty in a criminal trial. The federal government has no influence over a county prosecutor's decision to seek a particular sentence in the state's case. Thus, although disagreements over the death penalty are of huge significance in international relations, the local county prosecutor plays an integral role in this process of international politics.

Capital cases, such as aggravated murder and cop-killings, are the most emotionally charged of crimes. Cases in which feelings already run strong are intensified when the perpetrator manages to escape the country, an extradition must be sought, and a foreign government determines whether or not a trial may proceed.

Many U.S. criminal justice officials see another country's refusal to extradite as interfering with U.S. sovereignty. Yet Mexico has used the power to extradite as a means of asserting its sovereignty. One former federal official explains that a refusal to extradite is "about protecting Mexicans, but really it is about not giving the United States all they want and maintaining Mexican sovereignty. We're the bullies from the North telling them what to do – when they can assert the upper hand, they do. Extradition is one area where they can, and there aren't many."

Because the death penalty is so politically popular in the United States, elected county prosecutors will resist giving death penalty assurances for fear of being perceived by their electorates as soft on crime. In such cases, OIA officials will counsel the county prosecutor at the first stages of the extradition process. If the county prosecutor refused to set aside a death sentence, OIA officials say they would not file an extradition request, and would instead assist the county with a request for a foreign prosecution. However, federal officials say that once the prosecutor understands there will be no return of the fugitive if a death sentence is sought, the prosecutor will usually issue assurances for the sake of returning the fugitive to the United States to stand trial.

Prosecutors around the United States have reluctantly learned how to work with Mexico on death penalty issues, but a new barrier has developed recently. In late 2001,

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A Technical Assistance Manual, The Office of the Attorney General Dan Morales, State of Texas, May 1994.

the Mexican Supreme Court surprised U.S. officials by deciding that Mexico will no longer extradite a suspect who faces a life sentence. U.S. officials see this as further interference with U.S. sovereignty to pursue any sentence deemed appropriate. The decision reflects Mexico's stated values that prison should be a means of rehabilitation, and that both the death penalty and a life sentence reflect the view that rehabilitation of the criminal is not possible.

The new ruling means a U.S. prosecutor who wants to recover a fugitive for trial may not be able to seek either a life sentence or the death penalty. Thus a well-informed criminal fugitive would recognize that an escape into Mexico, while not the reputed panacea of years past, does eliminate certain sentencing options if the absconder is returned to the United States. It remains to be seen if continued objections to the life sentence ban on the part of U.S. prosecutors will result in a change in the Mexican policy, or if the Mexican policy will force a change in U.S. practices.

State and Local Law Enforcement and International Treaties

Treaties and jurisdictional limits are the legal restrictions on subnational governments with respect to international criminal justice issues. Three of the main treaties are the 1) Vienna Convention on consular relations, discussed above, which involves more than 160 nations; 2) treaties governing the extradition process, negotiated between the United States and individual nations, and 3) the Mutual Legal Assistance Treaties in Criminal Matters (MLAT), discussed below.

If state and local law enforcement fail to follow the procedures outlined by these treaties, the U.S. federal government could be held responsible by other nations for the failures of state and local law enforcement. So the possibility of a treaty violation is one source of anxiety for the federal government. U.S. DOJ has made regular efforts to educate state and local law enforcement on the importance of following Vienna Convention procedures, but there are still failures on the part of state and local law enforcement to follow consular notification procedures.

A fairly recent development is the use of MLAT, negotiated between the United States and individual nations by attorneys representing both OIA and U.S. Department of State.[26]

Most state and local officials interviewed for this project were likely to have heard of the Vienna convention, but some were not aware of the existence of a Mutual Legal Assistance Treaty between the United States and Mexico.

The goal of an MLAT is "to improve the effectiveness of judicial assistance and to regularize and facilitate its procedures."[27]

When a U.S. official from any level of government asks any Mexican official for help obtaining information, such as birth certificates or proof of automobile ownership, those requests are supposed to follow the procedures outlined by the MLAT. The terms of the treaty designate the U.S. Department of Justice and the Mexican *Procuraduría General de la República* (PGR) as the points-of-contact through which all requests for information should be processed.

But time-consuming formal processes are exactly what Texas officials see as a hindrance to effective action, especially when the location of a wanted criminal in Mexico has been confirmed. If the formal process were followed, a request for information would have to run its course from Austin to Washington to Mexico City, giving the fugitive ample time to change locations. So subnational government officials prefer calling a foreign contact directly for expedient assistance.

DOJ officials say they need the states to act on their own initiative rather than deluge the D.C. office with requests for assistance. One official explains that if OIA got

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[26] Ethan Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement.* (University Park: Pennsylvania State Press, 1993): 342-343.

[27] U.S. Department of State, *Bureau of Consular Affairs, Mutual Legal Assistance in Criminal Matters Treaties (MLATs) and Other Agreements.* (Retrieved 2 October 2003.) Available from: http://travel.state.gov/mlat.html. The United States has bilateral Mutual Legal Assistance Treaties (MLAT) currently in force with: Anguilla, Antigua/Barbuda, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Brazil, British Virgin Islands, Canada, Cayman Islands, Cyprus, Czech Republic, Dominica, Egypt, Estonia, Greece, Grenada, Hong Kong, Hungary, Israel, Italy, Jamaica, Korea (South), Latvia, Lithuania, Luxembourg, Mexico, Montserrat, Morocco, Netherlands, Panama, Philippines, Poland, Romania, St. Kitts-Nevis, St. Lucia, St. Vincent, Spain, Switzerland, Thailand, Trinidad, Turkey, Turks and Caicos Islands, Ukraine, United Kingdom, Uruguay.

a phone call every time one of the states needed legal information from Mexico, then OIA would be deluged, constantly writing, translating, and sending letters, "and for something that is not our case." Federal officials feel it is "better all around" if states take the initiative. The only caveat: state and local officials should call OIA if there is some question whether a state's action will violate another nation's sovereignty. Officials say checking with OIA can prevent problems from developing in U.S. foreign relations; foreign officials will complain to DOJ or to the State Department if there is a violation of sovereignty or unilateral action taken by U.S. government at any level.

The volume of U.S.-Mexico cases is such that even the centrally-controlled Mexican system will, at times, delegate responsibility. Sometimes Mexican officials from the regional PGR offices will contact the PGR attaché at the Mexican embassy in DC – following the preferred formal procedure – and they will be told, "'do it yourself, we are busy,'" explains a former Mexican federal official.

One Mexican official suggests there should be a phone number that U.S. county authorities could call to get information on how to handle situations involving Mexican nationals. Currently, some U.S. officials will call the nearest Mexican consulate. A local cop on the U.S. side of the border says the Mexican consulate is a good tool for law enforcement, but only if local officials understand what the consulate is and what it can do, and too often they do not.

But with the exception of extraditions, the fugitive recovery processes examined in this chapter are not governed by treaty and therefore are not legally binding. No U.S. state has any formal authority to liaison with Mexico. Although deportations are carried out according to Mexican law, there is an informality about the process on the U.S. side.

If state and local entities were to try to write out procedures for exchanging fugitives, for example, the language would have to be noncommittal and not include any promises, as a treaty would.

The lack of written directives and clear procedures for states to follow elicits complaints from some. A retired federal official who was stationed along the U.S.-Mexico border expresses frustration with how to get things done along the border. He says there is a "mission to do something, but no tools." One local cop complains, "That's

the problem with law enforcement – there are no written laws on how to do things with Mexico one way or the other." Instead, there are "unwritten rules" worked out by law enforcement agents through their daily practice and proximity. But the unwritten rules don't necessarily make life easier, he says.

But the lack of written rules gives the states more freedom to pursue relations directly with foreign governments. One state fugitive investigator says, "There is no need for (written procedures). It's just one law enforcement agency helping another, the way it's been working in the U.S. for years, now expanded to a foreign country."

U.S.-MEXICAN CRIMINAL JUSTICE RELATIONS: A CONVERGENCE OF CONCERNS

"During the Cold War, we were just neighbors. Now, we recognize how important it is to be together." – Mexican Procuraduría General de la República Official.

Partners in Crime: Drugs and Corruption

Traffic in illegal drugs is second only to immigration as the most significant issues in U.S.-Mexico relations. The drug trade boomed in the 1970s, leading to changes in U.S. drug laws and creating an apparatus for interdiction. The U.S. Drug Enforcement Agency (DEA) was created in 1973 by consolidating the narcotics divisions previously housed in the U.S. Department of Justice, U.S. Customs, and the Food and Drug Administration.[28] Increased efforts towards law enforcement cooperation with Mexico at the state level have followed this mushrooming federal law enforcement presence on the U.S.-Mexican border.

Starting in 1977, during the presidencies of Jimmy Carter and José López Portillo, federal officials from each nation began to meet regularly through the mechanism of the Binational Commission. Drug interdiction was put on the agenda then and has remained there since. After the Cold War's end, communism fell on the United

[28] The FDA is part of the U.S. Department of Health and Human Services. Nadelmann, p. 140.

States' national security agenda and some argued that illegal drug traffic was now the nation's number one national security concern.[29]

Yet while the institutional mechanisms promoting policy coordination are on the increase, the corrupting influence of the drug trade has hindered cooperation. A local cop on the Texas border says law enforcement cooperation along the U.S.-Mexico border was better twenty years ago, because there was less drug corruption among officials then.

But corruption is far from just a local border problem. In 1997, Mexico's "Drug Czar" Jesús Gutierrez Rebollo, a former four star general and the Mexican official invested with the most responsibility for combating the illegal drug trade, met with U.S. Drug Czar Gen. Barry McCaffrey in the United States. Gen. McCaffrey praised Gen. Rebollo for his cooperation in public and disclosed sensitive intelligence information to him in private. Upon returning to Mexico, Gen. Rebollo was arrested and jailed in Mexico on charges of collusion with known drug dealers. Needless to say, the news was not well received by Gen. McCaffrey.[30]

Gen. Rebollo's arrest was far from the first drug-related disruption to U.S.-Mexican law enforcement relations. Twelve years earlier, the United States confronted Mexican corruption when U.S. DEA agent Enrique "Kiki" Camarena and his pilot were kidnapped, tortured and killed. Law enforcement officials on both sides of the border describe Agent Camarena's murder as the most significant event to date in U.S.-Mexican criminal justice relations.

Agent Camarena was kidnapped from the parking lot near the DEA office in Guadalajara, Mexico on 7 February 1985. After his disappearance, the DEA temporarily shut down its Mexican offices in Guadalajara, Culiacan, and Jalisco.
U.S. agents in Mexico, still searching for Kiki, were urged to lie low. The DEA sent out teletype messages telling other U.S. officials not to go to Mexico for any reason, not

[29] Comments by Dianne Feinstein during the Senate debate on U.S. aid to Mexico, C-SPAN, 20 March 1997.
[30] See *El Toro's Timeline of Rotten Mexican Bureaucrats, Gullible U.S. Policymakers, the Profits, Joys, and Embarrassments of Narco-Corruption, and the Long, Slow March to Reform,* http://lonestar.texas.net/~wombat/corruptime.html, (Retrieved 18 August 2003).

even on holiday. Agents received death threats from known leaders of Mexican drug organizations, who were offering to pay $10,000 for the death of each U.S. agent.

The United States put considerable pressure on Mexico to be accountable for Camarena's disappearance. Eventually, Camarena and his pilot were found; their bodies had been dug up from wherever they had originally been buried and left on the side of a Mexican road.

Today, representatives of the Mexican Attorney General's office stationed in the United States say Camarena's murder was a shock to the system in Mexico. The event revealed unmistakably to Mexicans how much corruption was rife throughout the Mexican police force. Camarena's murder has never been officially solved. No one knows why Agent Camarena was killed, but "Camarena knew too much," says one PGR official.

Actors in both countries describe Camarena's death as the turning point in U.S.-Mexican law enforcement relations. "At that time, each country was reluctant and distrustful," says a Mexican official. Getting past the distrust was slow.

But in the years following Agent Camarena's murder, law enforcement in both countries realized they did not have the knowledge or familiarity with one another's procedures necessary to share information legally and diplomatically. Since then, Mexico has been more willing to establish international instruments via treaties and accords, says one PGR official. "If we're going to (work) together, we (realized we) need to exchange information and establish trust," he says.

Thus the two nations reached an agreement to increase the foreign law enforcement presence in each nation. The PGR opened four regional offices in the United States in 1992. The offices in Los Angeles and San Antonio feature an attaché and an investigator, and there are one-person offices in both San Diego and El Paso. At the same time, U.S. DOJ legal attachés were added to the consulates in Guadalajara and Monterrey.

The regional PGR offices have been crucial to the development of good relations with the U.S. states. Before the offices opened, there was only isolated communication

between Mexican authorities and local and state agencies. On the whole, "not too many people had knowledge of one another," says a PGR official.

Thus the PGR representatives in the United States write a lot of letters telling U.S. state and local law enforcement about the preferred procedures to follow when processing Mexican criminal suspects, and how the regional offices are willing to assist with apprehending or prosecuting fugitives in Mexico, tracking down stolen automobiles, assisting those detained in Mexico on weapons charges, and, perhaps most dear to the Mexicans, confirming the identity of suspects so the correct person is arrested and no civil rights violations occur. "Getting to know people creates confidence," says one PGR official.

As of 2003, the numbers of U.S. law enforcement within Mexico far outnumbers the presence of Mexican law enforcement in the United States. The United States is represented in Mexico by FBI Legal Attachés in Mexico City, Guadalajara, Hermosillo, Monterrey, and Tijuana.[31] The DEA has agents stationed in those locations in addition to Ciudad Juárez, Mazatlan, and Merida.[32] The U.S. Marshals Service has agents stationed in Mexico City at the U.S. Embassy, along with agents from U.S. Customs; Immigration and Customs Enforcement; the Bureau of Alcohol, Tobacco, and Firearms; the Coast Guard; the Internal Revenue Service; and the Secret Service.

In the United States, the PGR has an office in the Mexican Embassy in Washington, Washington, D.C. and the four regional offices, with fewer than twenty total employees, including office assistants. Mexico is limited more by economics than politics, says one PGR representative. The cost to run the San Antonio office alone is more than $50,000 a month, what with rent, insurance, cars, phones, and so forth. "How do we justify this expense when we have a lot of needs in Mexico?" he asks.

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[31] U.S. Dept. of Justice, *Legats.* (Retrieved 20 September 2003). Available from http://www.fbi.gov/contact/legat/legat.htm.

[32] U.S. Dept. of Justice, *DEA Office Locations.* (Retrieved 20 September 2003) Available from http://www.usdoj.gov/dea/agency/domestic.htm.

Navigating Corruption

"Money is a corrupting thing. High morale in a group can make a difference. But morale is low in local police in Mexico." – Country Attaché, U.S. Department of Justice.

The corrupting influence of the illegal drug trade has compromised Mexican law enforcement. Drug dealers will augment low police salaries in exchange for protection.[33] A former U.S. federal official who worked along the U.S. side of the border explains that an institutionalized system has evolved where all levels of Mexican law enforcement get a little "extra compensation," something those in the United States do not understand. He explains how it works: if, for example, a Mexican customs inspector gets a bribe of $100.00, he gives his boss at least half of that; the boss keeps $30.00 of that amount, and in turn gives his boss $20.00.

This former official says a willingness to overlook some corruption is necessary to get the information needed for a particular case. The key to dealing with corruption in Mexico, says this retired official, is to be aware what interests a corrupt official is protecting. "You're a problem if you're a threat to their livelihood," he says. A savvy U.S. agent can even use a corrupt Mexican cop's greed to get information and assistance. He recalls some U.S. agents would make a show of inviting a Mexican official to dinner, increasing that official's prestige. U.S. agents would even share strategic information that a corrupt official could use for his financial gain. "You have to separate your (immediate) goal from dealing with crooks," he says. He adds that the border state governors and attorneys general could bring more attention to corruption if they chose.

U.S. officials express frustration that a byproduct of a corrupt system in Mexico is the slow pace at which Mexican investigations of cases involving a U.S. fugitive often proceed – although this can be explained by the tendency of law enforcement agencies worldwide to prioritize their own cases ahead of those originating elsewhere. But with drug money flowing to cooperative officials, incentives for investigating other offenses are lowered, complain U.S. officials. "They don't earn bribes helping to investigate a

[33] Several U.S. officials said that state and local law enforcement in Mexico are reputedly the most corrupt because they are less regulated than the federal Mexican police.

murder," especially one that took place in the United States, says a local Texas border cop.

But this same cop says some Mexican officials admire the more professional police forces north of the border and would like to see their own forces improve. "Mexican cops are a little bit jealous of us, that we can live the way we live without taking bribes," he says.

One top Texas official was happy to announce he had never bribed anyone in Mexico for information or assistance. "We have no money anyway (at this state agency)," he adds.

Current Mexican President Vicente Fox has made professionalization of the police in Mexico at least a rhetorical priority, and has visited the U.S.-Mexican border to discourage bribery at border crossings. Several agencies have been reorganized. Fox's approach acknowledges that an inefficient, unprofessional system has bred corruption among officers. Even Mexican citizens seldom trust the police. Polls show that three-quarters of crime in Mexico City goes unreported.[34]

In 2002, Mexico's Attorney General, Rafael Macedo de la Concha, admitted his office was still permeated by corruption, despite two years of effort to cleanse it. "Corruption, as well as impunity, continues to be present, although certainly on a much smaller scale than when we arrived here," he told reporters. He said that since President Fox had assumed the presidency, more than 800 public servants had been tried for corruption. He assured the press his office was handling "responsibly" the constant charges of human rights violations by PGR agents.[35] Pres. Fox created a Special Prosecutor's Office on human rights in the PGR, and a National Human Rights Commission to investigate crimes committed by public servants against student protesters in the 1960s and 1970s.[36]

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[34] "About 75% of Mexicans distrust justice system," *The News Mexico,* 17 October 2002. Online news publication was at www.thenewsmexico.com but the site is not currently in operation.
[35] "Atty General's Office Still 'Infiltrated' by Corruption," *The News Mexico*, 13 August 2002. Previously available at www.thenewsmexico.com.
[36] Association for the Prevention of Torture, International Seminar: Truth Commissions: Torture, Reparation, and Prevention, July 18-19, 2002, "Informational Document on the Mexican

But some U.S. officials will admit that corruption is not only a Mexican problem. A Texan who investigates auto theft tells of problems with corruption on the U.S. side of the border as well. "I think we (U.S. officials) are too quick to point out the difficulties in Mexico and fail to realize they (the Mexicans) encounter the same problems with us. We too have corruption. We also have a failure, on some occasions, to follow the law – state, federal, and specifically international law."

A Texas official who works with Mexican officials says that while he has never experienced corruption among the Mexican law enforcement he works with, officials in the United States have betrayed him. Once he was about to capture a fugitive, only to learn that local law enforcement had alerted the fugitive to run.

And among U.S. federal officials, there is a sense at times that Mexican corruption has tainted law enforcement officers on the U.S. side of the border. The suspicion is, that local officials will be lulled into tolerating mild corruption in their ranks, because it seems insignificant compared to what they see and hear about just across the border in Mexico.

Mexican Concerns: Civil Rights and Guns

Mexican officials, for their part, perceive that U.S. law enforcement sometimes do not apply professed U.S. standards for civil liberties and criminal protections to Mexicans held in custody in the United States. Mexican officials want the civil rights of prisoners protected from violation by what they see as overzealous U.S. law enforcement. Their main concern is that Mexican citizens are should be prosecuted properly, without constitutional violations or violations of the Vienna convention.

The levels of concern for civil rights of prisoners is noticeably different between the two nations: among Mexican officials interviewed for this project it was a consistent theme, but civil rights were scarcely mentioned by U.S. officials at any level.

Context," Available at: http://www.apt.ch/americas/mexico/mex1eng.htm, July 2002; Retrieved 18 August 2003.

Mexican federal officials stationed in Texas say U.S. officials do not respond well to the subject about civil rights. U.S. officials seem to see such concerns as protecting criminals at best, and as hypocrisy at worst. Even a sympathetic Texas official described the Mexican view on civil rights as "somewhat hypocritical," because, arguably, prisoners in the United States are offered more civil rights protections than they might receive in Mexico. "But they want us to apply our own (U.S.) standards to their guys," the official explains.

Another concern for Mexican law enforcement is the differing attitudes towards guns between the two countries. Part of the folklore of the Texas-Mexico relationship includes tales of running guns into Mexico for political purposes or, more recently, to assist drug traffickers. Since the days of the Mexican Revolution, Mexico has been sensitive to guns entering the country from the United States. Thus anyone entering Mexico with a gun or ammunition is immediately arrested. The problems arise when those arrested are border residents who have merely forgotten to remove gun equipment or shell casings from their cars before crossing into Mexico to go shopping or to lunch.

After several U.S. citizens were arrested for apparently innocent transgressions of the no-gun law, Mexico changed its laws to relax the punishment for a first-time gun offense. These changes, aimed at preventing the incarceration of forgetful hunters, "show we can cooperate," says one Mexican PGR official.

By summer of 2000, prominent signs warning of certain arrest for carrying guns and ammunition into Mexico were posted on the U.S. side of all border crossings into Mexico. The new signs have resulted in fewer apprehensions of U.S. travelers with arms in Mexico, says a Mexican federal official. However, one Texas official complains that the signs are inadequate. The signs should read "mandatory jail time in Mexico," but they do not, he says, adding that the signs would have been better if state officials had been allowed to design the signs, rather than the U.S. federal government.

But a problem for U.S. officials is that the gun ban also applies to U.S. law enforcement. Mexico has consistently refused to allow U.S. agents stationed in Mexico to bear arms, without going through a lengthy process to obtain a temporary carry permit. Thus all FBI agents, Secret Service agents, U.S. Marshals and DEA agents in

Mexico are, officially, unarmed. The United States has consistently pressured Mexico to change this policy, but to no avail.

FUGITIVE APPREHENSION: A CONVERGENCE OF JURISDICTIONS

"Diplomats want to do things diplomatically; politicians want the numbers; but fugitive people just want the job done." – Texas Department of Criminal Justice Investigator

Fugitives as Symbols of Frustration in Both Directions: Denying Extraditions and Performing Kidnappings

On Mexico's part, distrust of U.S. law enforcement has run deep throughout history. Chronic mistreatment of Mexican nationals at the hands of Texas law enforcement has left Mexican officials feeling that Texans were more interested in scapegoating any available Mexican rather than finding the guilty party. At the highest levels, Mexican officials were perpetually uneasy in the face of the United States' overwhelming power and influence in the region.

Although an extradition treaty was signed by the United States and Mexico in 1978, in practice Mexico, as well as other countries, uses extradition to express frustration with the asymmetrical power relationships between the United States and the rest of the world. Refusing to return a fugitive is one of the few ways another nation can cause the United States discomfort. In years past, anti-American sentiment has been strongest among officials at SRE, the Mexican State Department, where final responsibility for extradition decisions rests.

Thus for decades Mexico would not extradite Mexican citizens, balked at returning U.S. citizens, and was almost certain to refuse to hand over U.S. citizens of Mexican descent. For decades, Mexico's official reluctance to return fugitives from U.S. law gave the nation a reputation as a haven for criminals, leaving U.S. law enforcement exceedingly frustrated.

In the view of U.S. law enforcement, Mexico's refusal to extradite is a means of protecting criminals, and worthy only of contempt. The U.S.-Mexican border, for them, can be like a wall behind which suspects could hide in safety.

A Texas cop estimates that of 250 open homicide cases in his border county, 60 percent involve Mexican citizens. "No one understands how hard it is living in a border town and being a police officer," he says. "The river divides two cities," he says, but it also divides two countries, making a cop's job all the more difficult. "Criminals can just go back to Mexico. Narcotics offenses, rapes, robberies – they go unarrested, not unsolved."

At times, such frustration with Mexico's official non-extradition policy has led unscrupulous individuals to justify recovering fugitives illegally, by going into Mexico and bringing a suspect back to the United States in the trunk of a car. The academic term for this practice is irregular rendition, but state officials generally are not familiar with that term and just call it kidnapping. It is sometimes called "blackbagging," referring to the black bag put over a suspect's head; or, more derisively, a "Mexican extradition," – because Mexican citizens are the most difficult to recover through formal channels, the person grabbed is most likely to be a Mexican citizen.

A former Texas Ranger says, that in his day, kidnappings were uncommon because good relations among law enforcement officers along the border then made such vigilantism unnecessary. "It was easier to have Mexican authorities bring suspects here than bring them across the border (by kidnapping)," he says. But his experience was in the days prior to the explosion in illegal drug traffic.

Today, it is difficult to determine how common a practice "black-bagging" is. Not surprisingly, no one keeps statistics on the practice. Most officials are reluctant to talk about it. Officially, only bounty hunters hired by the families of crime victims would be the ones to engage in the practice. But an active-duty policeman along the border admits to having brought suspects across in the trunk of his car. "Some stuff we just needed," he explains. "It doesn't help cooperation, but (the return of the fugitive) is not going to get done otherwise."

A former state official tacitly admits black-bagging occurs when he says it is "effective, but (doesn't) promote the respect nations are supposed to have." And a current representative of the Mexican Federal Attorney General's office says that in his experience, such kidnappings were somewhat frequent even in the mid-1990s, and are still going on today. In the fall of 2001, authorities in one Texas county had a Mexican citizen in custody who claimed to have been brought across the border against his will.

As recently as Fall of 2002, rumor had it that law enforcement authorities from a U.S. state had entered into Mexico and "persuaded" two fugitives into returning to the United States. While in reality, a voluntary deport may involve a fair amount of persuasion, the assumption is that a voluntary deport is carried out by Mexican authorities who will inform the suspect of his or her legal rights. But if subnational officers from the United States enter Mexico for the purposes of "persuading" a fugitive's return, presumably Mexican law enforcement is not involved and the fugitive remains uninformed of available legal options.

The worst-case scenario, in the view of U.S. federal officials, would be if a Mexican national were persuaded by state or local agents to return to the United States, only to receive a death or life sentence. The likely result would be significant damage to U.S.-Mexico cooperation in all areas, due to an illegal resolution of a single local case.

OIA representatives obviously frown on such independent action, which one official wryly termed "excess enthusiasm." OIA sees the vigilantism of "black-bagging" as so damaging to U.S.-Mexico relations that the United States will extradite to Mexico any known bounty hunters who have kidnapped a suspect. A Mexican official says that prosecuting bounty hunters in Mexico has helped cut down on kidnappings. Others say U.S. judges could help by being more alert to finding out how a defendant got to the courtroom.

OIA authorities said they doubt a state authority would carry out a blatant kidnapping, but admit there may be cases of collusion or tacit support on the part of state officials who know a kidnap is being planned, and do nothing to stop it. One official expressed concern for the safety of subnational officials, who by entering Mexico for a

law enforcement purpose are in violation of Mexican immigration law and could themselves be arrested.

U.S. officials also express intense frustration that suspects who can afford it can pay for their freedom. One official source says that when a suspect is apprehended in Mexico, the first thing the suspect does is tell law enforcement who he's paying off for protection. "It's so fucked up over there, you have no idea," says the source. "It's so nasty and corrupt, it's scary."

But just as it is possible for a suspect to bribe his way out of custody, it is possible to buy someone's capture. While officially, U.S. law enforcement will not pay to get a suspect out of Mexico, unofficially, it happens. "There's money out there that will bring them back," a source says, implying that U.S. prosecutors and families of crime victims supply the funds.

Once a fugitive is in Mexican custody, those with resources can mount a legal challenge to a return, much to the frustration of Mexican authorities who might rather see the suspect extradited. A PGR official who works on extraditions sighs, "If they have money to get a fancy lawyer, it takes years to get rid of them."

The advantage to having friends in Mexican law enforcement is that sometimes, friendly Mexican law enforcement have physically pushed suspects across the border into the waiting arms of grateful U.S. agents. But this attempt to cut corners presents its own dangers. PGR authorities say it is a crime to push a person across the border with no immigration hearing, for the fugitive in question could end up suing the Mexican government. A U.S. federal official stationed in Mexico says, "In Mexico, personal relationships are very important. There's a saying in Mexico: 'To friends anything is possible. To enemies – show them the law.' But U.S. officials can get Mexicans in trouble by pressuring friendships," for favors such as an illegal return of a suspect.

The most notorious case of kidnapping a suspect involved U.S. federal agents. In 1990, the Mexican doctor involved in the torture and murder of DEA Agent Camarena was kidnapped by bounty hunters and brought to the United States, where DEA agents arrested him. Dr. Humberto Alvarez-Machain was held in custody from April 1990 to December 1992 on charges of participating in Camarena's murder. The doctor's

abduction caused a serious rift between the United States and Mexico. At one point, the PGR office in San Antonio closed for a day because of tensions surrounding the doctor's kidnapping.

Ultimately, Dr. Alvarez-Machain was acquitted of charges due to insufficient evidence. But first, he sought his release on the grounds that his arrest violated terms of the U.S.-Mexican extradition treaty. Although two lower courts agreed, the U.S. Supreme Court ruled his arrest was not in violation of the extradition treaty, and that "a U.S. court retained its power to try a person for a crime even where the person was brought within the court's jurisdiction by forcible abduction." The Court acknowledged the abduction "may be in violation of general international law principles," and suggested Dr. Alvarez-Machain should seek a civil remedy.[37]

The Supreme Court's decision was interpreted in Mexico as an approval of kidnapping as a method of return. In response, the Mexican government became the first to impose the written rules on the conduct of U.S. DEA agents while in Mexico. The rules limited the number of DEA agents allowed in Mexico and restricted where they could live, required they have written permission from the Mexican government while traveling, revoked their diplomatic immunity from prosecution, and required that intelligence information be shared with Mexican authorities. According to a U.S. federal official, the Supreme Court decision was one reason why Mexico did not extradite anyone again until 1996.[38]

Dr. Alvarez-Machain returned to Mexico, where he has not been charged. While Agent Camarena's killing has not been officially resolved, Mexico has convicted several members of the drug ring allegedly involved in his murder on other charges, including leader Rafael Caro-Quintero, now serving a forty-year sentence in Mexico.[39] Caro-

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[37] *Alvarez-Machain II*, 504 U.S. at 670 (1992); See American Society of International Law, *International Law in Brief*, 6 June 2003 (Retrieved 20 September 2003). Available from http://www.asil.org/ilib/ilib0610.htm#j01.

[38] *1990-1994*.U.S. Drug Enforcement Agency. (Retrieved 1 October 2003.) Available from: http://www.usdoj.gov/dea/pubs/history/deahistory_05.htm

[39] "Beyond Indeterminancy and Self-Contradiction in Law: Transnational Abductions and Treaty Interpretation in U.S. v. Machain," *European Journal of International Law*, (Updated 14 August 1999; Retrieved 21 September 2003). Available from http://www.ejil.org/journal/Vol6/No1/art1-01.html.

Quintero is one of thirteen Mexican drug traffickers indicted in the United States, whom the U.S. DEA is still waiting for Mexico to extradite to the United States.[40]

The Early Days of Fugitive Recovery: Reciprocal Friendships

"How well you know someone can get stuff done." – Former Texas Ranger

The early days of fugitive apprehension between the United States and Mexico relied on the personal relationships forged by state and local law enforcement in Texas with their Mexican counterparts. The primary state actors involved in recovering fugitives then were the Texas Rangers, a law enforcement division of the Texas Department of Public Safety.

Although historically, the Rangers as a whole had a reputation for discriminatory and often violent behavior towards Mexicans, individual Rangers were able to cultivate mutually helpful relationships with Mexican officers across the border.[41] One former Ranger, who served from 1949 to 1979 and retired with the rank of captain, was full of stories about how he shared information and exchanged fugitives with the Mexican police he knew then. The relationships he had were informal, beneficial to both sides, and not in any way impeded by the bigger issues of U.S.-Mexican relations such as the death penalty or extradition politics.

He relates how suspected criminals were exchanged back then:

> We had friends on the border. We'd tell them, 'we want this guy who's over there in Mexico.' They'd say, 'But y'all will give him the electric chair.' We'd say, 'Yep, we prob'ly will.' They wouldn't hand him over, but they'd say, 'Well, we'll let you know when he's coming back over to Texas.' They'd call on the phone or meet us on the border (to tell when the fugitive had crossed back to Texas). That was years ago – extradition didn't mean too much one way or the other then. Sometimes

[40] *Extraditable Mexican Traffickers, September 1999.* U.S. Department of Justice, U.S. Drug Enforcement Agency. (Retrieved 21 September 2003.) Available from www.ialeia.org/99011.pdf.

[41] See Walter Prescott Webb, *The Texas Rangers: A Century of Frontier Defense* (Austin: University of Texas Press, 1935) and Arnoldo de Leon, They Called Them Greasers: Anglo Attitudes toward Mexicans in Texas, 1821-1900 (Austin: University of Texas Press, 1983).

> they'd say, 'We got him, he'll be in that adobe hut in Big Bend (National Park) at 10 pm.' We'd go there, and he'd be sitting in that adobe shack at Boquillas, and no one else was around. They were giving him to us.

The Texans would return the favor. When the Ranger found someone who was wanted in Mexico, he would call his Mexican law enforcement contacts to come meet him and the suspect at the border. His philosophy of returning a Mexican fugitive was simple: "If he was wanted over there, well, we didn't want him over here."

It would take about a year of lunch invitations, cups of coffee, and just chats to cultivate a good relationship, he says. Whenever the Rangers apprehended a Mexican for a minor offense in Texas, the Captain saw an opportunity to build goodwill with the Mexican officers: rather than incarcerate him, the Rangers would take him to the border and hand him over, in a completely informal deportation process.

From these overtures, the Rangers and Mexican police began to cooperate on apprehending smugglers and tracking down fugitives on either side. Sometimes, the Rangers would even be invited to go into Mexico to assist the Mexican federal police, the *federales*, in hunting down a suspect. Once when a body washed up on the south side of the river, the Captain was invited to go over to obtain fingerprints – he used a children's molding clay to take the impression. Knowing that carrying guns into Mexico was forbidden, the Texans were sure to leave behind – or at least to carefully conceal – their weapons before crossing the bridge.

After business was over, the Texans and the Mexicans would go to lunch or to an American movie, something the Mexicans always looked forward to, the Ranger says with a smile.

The Captain used the discrepancy in resources between the Texas and Mexico law enforcement agencies as an opportunity for relationship building. Mexican officers were always short of ammunition. "You could tell they had maybe only two or three bullets in their guns," he says, clearly concerned for the safety of his friends. So an exchange of goods evolved. "They'd bring fruit, maybe a *serape* (woven blanket), and we'd give them ammunition, kind of a switch." When asked how the state agency viewed these donations, he said, "We didn't tell our superiors. They didn't ask. I think

maybe they thought we were" giving goods away, but it never caused a problem, he says.

However, the relationships were not completely trouble-free. Differences in attitude about law enforcement concerned him. "In Mexico, they just think different" about law enforcement, he says. Officers were clearly underpaid, underequipped, and not well trained. Plus, while fluctuations in international politics were never an issue then, local politics often interfered with relationship building. "Back in El Paso, when there was a change in the local police in Juárez (across the river from El Paso), they'd find a lot of the previous officers, out in the back, shot dead." Such corruption made it difficult to know whom to turn to for help. Once the Ranger was tipped off by an informant he trusted that a load of drugs was coming into West Texas. He regrets that his efforts to have the drugs apprehended likely resulted in the murder of the informant; information got through to the wrong people. "Sometimes it's just too hard to explain things that happen," he concludes.

Fugitive Recovery Today: Deportations

"It's a trust relationship. They call for assistance, we call them; it's mutually beneficial. There are no hidden agendas – we all want to get the bad guys locked up."—Texas Department of Criminal Justice official, speaking of Mexican law enforcement officials.

The focus of this section is on relations between Texas and Mexico, but the findings here can be generalized to other states because the less formal methods of return are in accord with Mexican law and therefore can be requested by any U.S. law enforcement official. Also, the U.S. federal government has for some time now urged other nations to deport or expel U.S. citizens who have gone to another country for the purpose of eluding U.S. law.

Of course, personal relationships still matter today, as they did in decades past. In the border states, state and local law enforcement are more likely than federal authorities to have personal contacts who are willing to help. But fugitive recovery practices are

becoming more routine and therefore, theoretically, less dependent on personal relationships.

The system in theory is quite simple: Texas Department of Criminal Justice or the Office of the Attorney General will locate the suspect, either through the agency's own contacts or with help from U.S. federal agents stationed in Mexico. Then state officials notify the PGR office in San Antonio and request Mexican agents go to the known location to apprehend the suspect and initiate deportation proceedings.

The system in practice is more complicated. Because there are so many parole violators and resources are limited, state officials actively pursue only those offenders with the most violent criminal histories.

In 1993, after a series of high profile and disturbing crimes by Texas convicts on parole, then-Governor Ann Richards created the Governor's Fugitive Investigation Squad. Prior to this unit's creation, there was no mechanism for actively tracking dangerous parole violators. Law enforcement counted on a violent offender being pulled over by traffic cops, or, as occurred in 1993, the offender would be pursued only after committing other serious violent crimes. The creation of the fugitive unit meant manpower could be devoted exclusively to active pursuit of violent parolees. As one official explained: "There is a big difference between the warrant servers, who will go do the 'knock and talk' (knock on doors and see if the fugitive is at that address) and investigators who pro-actively track down a fugitive."

Although the TDCJ fugitive unit and the PGR office in San Antonio each opened around the same time, relations between the two offices did not begin until around 1997, when officials from the two offices met at an annual conference of the National Association of Fugitive Investigators. That meeting was followed by invitations to lunch and the relationship-building process began. The outcome of this cooperation between investigators was the recovery of a fugitive from Texas law who had been hiding in Mexico for 38 years. The fugitive was recovered in a matter of months after the two lawmen – one Mexican, one Texan – began to share information.

Federal officials at the Office of International Affairs at the Department of Justice said the Mexican federal government has disapproved of quick deports of U.S. citizens in the past, but are grateful these expulsions are becoming more frequent.

The numbers of deportations from the United States back to Mexico are much higher than the numbers of extraditions in the same direction. From September 1997 to December 2001, the PGR regional office, with the assistance of U.S. authorities, deported 102 fugitives from Mexican law from the United States back to Mexico. In the same period, 22 were extradited from the United States back to Mexico; that amounts to almost five deportations for every one extradition.

According to the U.S. Department of State, 160 U.S. citizens were deported from Mexico to the United States in 2001, and by 3 October 2003, 202 persons removed or excluded from Mexico and deported to the United States.

The expenses involved in transporting a Texas prisoner to and fro are paid for by the state agency issuing the arrest warrant. TDCJ is required by law to take bids from all interested prisoner transportation entities, either from private prisoner transportation companies or the U.S. Marshals, who charge state and local law enforcement for prisoner transport. The state then chooses the lowest bid.

On the whole, Texas officials roundly praise Mexican officials for their help and cooperation in returning U.S.-citizen fugitives. “I can’t say enough good about the Mexicans,” says a high-ranking state official. “They’ve been real helpful to us. We’re dealing with some real badasses. (These fugitives) have a long criminal history. The Mexicans don’t want them over there either.”

Another state law enforcement official explains that the cooperation existing now “would have been impossible before, but we have the Mexican AG office (in San Antonio), and have friends now.”

State/Federal/International Issues

The Texas-U.S. axis (national causes): was the problem Texas sought to address under state or federal jurisdiction? What was the corresponding federal response: did the federal government support the mechanism, ignore it, or move to restrict the mechanism?

It is within the state's traditional jurisdiction to pursue a fugitive from state law. However, when that fugitive crosses an international boundary, the federal government should step in. But as state officials have been able to cultivate their own criminal justice contacts in other nations, the states have been able to act directly without involving federal officials.

The federal government is often unaware when state criminal justice officials confer directly with foreign actors to recover a fugitive. If a successful recovery is made through informal contacts, OIA will likely never know of the episode. Only if there is no progress on the case within Mexico will state officials turn to OIA to begin formal extradition proceedings.

But the Office of International Relations has actively encouraged other nations to deport rather than extradite fugitives, particularly if they are U.S. citizens. "Voluntary deportation of U.S. citizens not facing a death penalty won't ruffle any feathers," says a DOJ official stationed in Mexico City.

Although both levels of law enforcement share the goal of recovering fugitives, each level sees their own concerns. Where subnational actors focus on their particular interests, federal officials view U.S.-Mexico relations through a wide-angle lens. When subnational actors pursue their own cases, there is always a risk of a mistake through ignorance or misunderstanding. Says one U.S. Department of State official, "My concern is that the formal structure for extradition or deportation is threatened."

But federal officials recognize the states can accomplish much by conferring directly with Mexican agents. An OIA official says: "We do not disapprove of state authorities developing productive law enforcement relations with Mexican authorities or having direct contact with the PGR representatives in San Antonio. On sensitive matters,

we just want them to consult with us. We want to ensure that they don't do things that are going to damage law enforcement cooperation for everyone in future cases."

The above statement, from a personal interview, contradicts the official OIA paperwork for fugitive extraditions. The paperwork directs state and local law enforcement to contact OIA – and only OIA – about recovering a fugitive, and not to contact foreign authorities directly. The extradition papers read:

> Direct contacts by a federal or state prosecutor, investigator, or other police authority…located in the country where the fugitive is believed to be located may violate foreign law, create problems with respect to securing the return of the fugitive, and even damage U.S. law enforcement relations with that country.[42]

But in practice, TDCJ and OAG authorities will not call OIA first, but will call the PGR representative in San Antonio. State officials strongly prefer to request the Mexicans deport the absconder rather than initiate the time-consuming extradition process.

At the subnational level, there is a consistent theme of frustration with federal procedures. One Texas county official says the difference between following the formal, federal route and relying on personal relationships is like night and day. To get information on a criminal suspect out of Mexico City, he could contact the DOJ legal attaché stationed at the U.S. Embassy in Mexico City, but if he does this, "it never gets done right," he says, *sotto voce*. Or he could send a formal request for help to Interpol in Washington, which then goes to Interpol in Mexico City, and takes too long. "You'll see (the requested information) six months down the road if you're lucky," this county cop says. "But I deal directly with the Mexicans, and before long, I have the information. It's just law enforcement to law enforcement. It's a matter of reciprocity." This official has heard no complaints about this informal way of getting things done, but acknowledges that he may "step on the toes of the Legat (the DOJ Legal Attaché). It's a little territorial – like 'this is my bone and no one's going to get my bone.' They say we'll get (the

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[42] Request for Extradition (Washington, D.C.: Office of International Affairs, U.S. Department of Justice).

information) tomorrow – which never comes. But I have rapport with individuals and I get it now."

Although the federal government has been encouraging foreign governments to increase deports of U.S. citizens, it has not been thoroughly communicated to subnational law enforcement that deportations, in most cases, would not meet with the federal government's disapproval. State officials are still uncertain that using their own contacts to recover fugitives would not disturb the federal government. One state official said, of deports: "We consider it back-door stuff. Department of State probably wouldn't be very happy. We're probably doing something wrong. But we're used to getting things done quickly."

An FBI agent wishes there were a way the states' individual contacts could be more beneficial. "If it were done in a more controlled way, we would probably remove more U.S. fugitives from Mexico; we'd have more people to go around. But most people being sought (by the states) face a life or death sentence. The people the states put their resources towards finding are icky guys. No one gets excited about the guy doing wire fraud, but about triple homicides. When they are removed, the Mexicans look at those closely, because of the seriousness and visibility of the case."

The U.S.–Mexico axis (international causes): what were the international political and economic conditions that contributed to or prevented the state's effort to reach across the Rio Grande?

Federal officials say that Texas has benefited from hard-fought improvements in law enforcement relations between the U.S. and Mexican federal governments. An OIA official says: "Aside from their own efforts, Texas authorities are no doubt benefiting from the federal government's work with Mexican authorities to expand deportations. The change in Mexico and expansion of deportations is a manifestation of better trust and cooperation that we have been cultivating for years with our counterparts in the Mexican government."

The Texas-Mexico axis (state causes): How was the venue created? Did Texas' interest in and method of contact with Mexico differ from the U.S. government's relations with Mexico?

For decades, Texas officials have taken advantage of the opportunity to cultivate direct contacts within Mexican law enforcement, benefiting from proximity and mutual need. The federal government's decision to allow the Mexican Attorney General to open the PGR regional office in San Antonio has facilitated the development of those relationships, as has the federal government's encouragement that Mexico deport U.S.-citizen fugitives. So in the case of deportations, Texas method of contact with Mexico took place within a framework put in place by the federal government.

While the method seems largely successful, and state officials acknowledge that progress is being made, they still often feel frustrated in both directions, towards Mexico and towards Washington, D.C.

TDCJ officials are grateful for the productive relations they have with the PGR, and could not be happier that the PGR has a Texas office. Says one state investigator:

> (Since) we have a good rapport with the PGR office in San Antonio, we're going to go straight to them. They'd do the same for me. We both say, 'help me with this guy.' OIA wants us to do the paperwork, and yes, the paperwork needs to be in order, but if you can just have someone grab the guy (and deport him) without going through all that nonsense (extradition), then you're better off.

But other officials are uncertain how to establish working relationships with their Mexican counterparts. One local homicide detective in central Texas longs for productive contacts in Mexico, but says he does not even know where to begin to find help. "If I could just get a phone number, somewhere," he laments. "But I have no idea even how to find a phone number to call." He hopes for a future where law enforcement within the United States will have a directory of municipal and state police stations in Mexico – and he would be happy with a number just for the office building, as if wanting a name is too much to hope for.

Mexican officials are sometimes troubled by the informal style employed by officials in the United States. Then Mexican way is still more formal than the U.S. way,

because the Mexican political system is more centralized than the U.S. system. Texas officials will telephone the San Antonio branch office of the PGR with a request for assistance, and are surprised to learn that the office would prefer to receive a written request, sent through the formal diplomatic channels via central offices in Washington and Mexico City. Urgent phone calls result in actions, but PGR authorities still want the request to be submitted later in writing. The PGR branch offices are required to submit monthly reports to Mexico City, and written requests from Texas officials help justify the steep expenses of running the office. But Texas officials do not quite know how to respond to this, says one PGR official. It is "difficult" to get the necessary formal requests for assistance letters from state agencies, he says. "They never want to write anything."

EXTRADITIONS

"We (the state of Texas) have a moral obligation not to be an exporter of crime."
– Texas Department of Criminal Justice Official

Treaties and Practices

An extradition is the surrender of a criminal suspect by one authority to the custody of the authority with the jurisdiction to try the criminal's charge. Within the United States, extraditions can take place between the states. International extraditions are governed by treaties negotiated between the United States and the individual nations.

The current extradition treaty between the United States and Mexico was negotiated in 1979, and replaced the previous 1899 treaty and its additional conventions from 1925 and 1939. The 1979 treaty provides a long list of extraditable offenses, ranging from crimes against persons such as murder, rape, and malicious injury to hijacking, fraud, embezzlement, and counterfeiting. Neither country is obligated to extradite, so the surrender of a fugitive is viewed as an act of goodwill by the receiving nation.

Mexico has historically been reluctant to extradite to the United States. U.S. officials will give many reasons for this, including Mexican opposition to the death penalty, the nation's need to protect Mexican sovereignty, or just a rare opportunity for Mexico to annoy the United States. Understanding the logic behind Mexico's extradition patterns has been a source of frustration for Texas officials. Even U.S. authorities, who meet regularly with Mexican officials to discuss law enforcement matters, seem confounded by the air of mystery surrounding Mexican extradition practices. Mexico says it will extradite Mexican nationals under "exceptional circumstances," such as for particularly heinous crimes; OIA officials would like to know what the exceptional circumstances are but say there is "no hope" of getting such a definition from Mexico.

DOJ officials who have served as Legal Attachés (known as Legats) at the U.S. Embassy in Mexico City agree that Mexican judges can be quixotic when reviewing extradition petitions, but some see more practical obstacles. A former Legat says that U.S. officials could do a better job of giving Mexican officials the data they need to find a fugitive. "Half the time (U.S. officials) don't want to give information to the Mexicans because they don't trust them," says this official. "Then they complain that the Mexicans are no help."

Another Legat explains that differences in procedures, especially in how criminal evidence is collected and presented, account for some extradition denials. Mexico expects statements directly from witnesses, while the U.S. method is to take an affidavit from the investigator. Also, the Mexican extradition judge wants to know that all the evidence has been properly translated and checked by official sources. "(Judges) have a checklist; if it (the U.S. extradition package) doesn't match, they are likely to deny," says the official. "We need to see what the problem is, rather than wait for an unfavorable decision."

In the past several years, there has been slow improvement in returns. Mexico began extraditing Mexican-citizen fugitives for the first time in 1996, after a slow recovery from the Machain kidnapping; but only eight Mexican citizens were handed over to the United States in the five years that followed.

Starting in 1996, Mexico increased the number of U.S. citizens and third-country nationals it extradited; from 1996 through 2000, an average of 12 a year from Mexico to the United States, while the United States sent an average of 15 persons per year to Mexico.

However, in 2001, the first year of the Fox administration in Mexico, 14 Mexicans were found to be extraditable.

The United States will send its own citizens to other nations for trial. From 1990-99, the United States sent 1500 people to other countries; 200 of those extradited were U.S. citizens.

The Extradition Process

Unlike deportations, extraditions are one area of international law enforcement in which state and local authorities have to follow official procedures. State and local governments cannot file extradition requests independently. All extradition requests must go through the Office of International Affairs (OIA) at the Department of Justice in Washington D.C.

Texas officials will file an extradition request whenever they know a fugitive is out of the country, but have been unable to recover the fugitive quickly through their informal contacts. If Mexican authorities approve the extradition request, the suspect can be taken into custody for 60 days on a provisional arrest warrant. The 60 days allows the U.S. jurisdiction to finish assembling the evidence against the suspect.

While OIA officials say they have no problem with subnational officials using their own contacts to seek a fugitive's deportation, they expect state and county officials to respect other nations' extradition practices, and to realize that the OIA officials have more experience in dealing with foreign nations efficiently and diplomatically.

Compiling the extradition paperwork is the complete responsibility of the county attorney or state official with jurisdiction in the case, which has to pay for the entire case to be translated. But after completing the paperwork, including translations, the

extradition package is sent to the OIA, and U.S. federal officials handle the case after that.

Ultimately, the Mexican Foreign Minister, the *Secretaria de Relaciones Exteriores* (SRE) is responsible for ruling on extraditions. This puts the Mexican foreign secretary in a very political position that the U.S. Secretary of State does not experience, because extraditions in the United States are handled administratively by OIA. President Fox's first foreign minister, Jorge Castañeda, received death threats in conjunction with extradition decisions he made while in office.

State/Federal/International Issues

This section explicates the state's role in an existing international mechanism rather than a state-generated venue. So the standard axis questions do not apply. However, the three axes can be examined to reveal some significant intergovernmental tensions exacerbated by the internationalization of the domestic criminal justice arena:

Texas–U.S. Tensions: State officials say communicating with federal officials on the extradition paperwork is less than satisfactory. More than one official complains of having to redo extradition paperwork because OIA lost the original petitions. "They must have a big turnover rate in D.C.," growls one state official. Another recalls that the arrest request for TDCJ's one outstanding fugitive, José Salaz, was dropped because OIA did not finish the paperwork in time. An OIA official responds that if any paperwork was dropped, it must have been because the Texas agency did not get the paperwork to OIA in time.

One of these same state officials calls extradition "a nightmare procedure," and much prefers the informal method of receiving fugitives via deportation. When Mexican immigration performs a quick deportation, "we don't have to mess with the politics of the State Department." This official could recall only one fugitive returned through the extradition process during his 14-year tenure. Extradition is "just a worthless system," he

says. He says that even the DOJ Legal Attaché in Mexico City has lost paperwork. "Drives us crazy."

Another Texas official concurs and would rather work independently than through OIA. "Often, DOJ hasn't finished the paperwork and we already have him back" through a quick deport, the official says.

A local policeman also complains about the lack of federal response. He tells of repeatedly calling OIA and continually getting recorded messages rather than live individuals. He finally reached a person who promised to help, but that official has yet to follow through.

In 2002, the Inspector General of the U.S. Department of Justice reviewed the extradition practices of the Office of International Affairs. The final report found that "OIA's effectiveness in processing and managing an extradition request was inconsistent…OIA did not review cases to determine if follow-up action was needed…to close cases in a timely manner." The report recommended that OIA improve its case management strategies and to improve coordination with the FBI, U.S. Marshals, and U.S. immigration authorities to identify fugitives. No mention is made in the conclusion of improving relations with state and local authorities.[43]

There is also some tension between state and federal officials over when to request an extradition. These tensions may ease if Mexico continues to increase extraditions of Mexican citizens. But for now, the state-level perception is that OIA continually requests extraditions, even in cases where Mexico is unlikely to extradite, to try to force Mexico to define what it considers to be extraditable circumstances. An OIA authority denies that they push Mexico on extraditions just to make a statement. Rather, federal cases often have multiple defendants, and involve sensitive information, thus making those cases more appropriate for an extradition rather than a foreign prosecution.

However, this OIA official admits the office will request extradition even when doubtful to get the suspect into custody on a provisional arrest warrant. If Mexico

[43] U.S. Department of Justice, Office of the Inspector General, *Review of the Office of International Affairs' Role in the International Extradition of Fugitives*. Report No. I-2002-008 (March 2002): vi, 35.

refuses an extradition request, the suspect remains in custody, and the case automatically becomes a Mexican prosecution.

U.S.–Mexico Tensions: The Mexican Supreme Court's 2001 decision barring extradition in cases that face a life-in-prison sentence surprised officials in the United States and they are working to find a way around this new limitation. Mexican law allows a 40-year maximum sentence in all but a few circumstances, but will also allow consecutive sentences. In order to extradite, Mexico wants U.S. officials to give assurances that the individual in question will not serve longer than 40 years.[44]

But each U.S. state is sovereign in setting its own criminal laws, so sentences vary from state to state. Some U.S. states, such as California and Florida, have a sentence of life without parole, so in those states, "life" means the natural life of the convict. Prosecutors in those states are struggling to find a way to balance Mexico's restrictions on extraditions against the political pressures from their electorates.

The decision has certainly increased the workload of the DOJ legal attaché in Mexico City, who must learn what each states' "life" sentence really means in order to assist with extradition requests.

For their part, Mexican PGR officials also complain about the extradition paperwork. They say that U.S. officials will sometimes give them extradition requests at the last minute. The U.S.-Mexican extradition treaty says notice should be given 60 days in advance. But the San Antonio PGR office was once notified they had one day to make arrangements to remove a Mexican fugitive from the United States, and the office had to scramble to meet the deadline.

In a more positive light, the contrast in resources between the two nations has proven to be, at times, an opportunity to improve relations. A PGR official recalls a Mexican citizen in Omaha, Nebraska, who was to be extradited. The airfare to return him to Mexico was pricey. The U.S. Marshals escorted the suspect from Omaha to San

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[44] The Associated Press, "Mexico Limits Extradition," *The New York Times International.* 4 October 2001. (Retrieved 1 October 2003.) Available from http://www.nytimes.com/2001/10/04/international/americas/04MEXI.html?ex=1065153600&en=dca615a74dc7b2cf&ei=5070.

Antonio, and paid the way. Then the PGR took him from San Antonio to Mexico City. "That's proof of a good relationship," says the PGR representative. "This country (the United States) has money, which sometimes we don't have."

Texas–Mexico tensions: At the county level, there are perennial tensions over Mexico's reluctance to extradite fugitives who could face a death sentence.

Texas officials are hoping that Mexico's recent ban on extraditions in cases where a life sentence is possible will not be a problem. Since the Court's decision, Texas state authorities have been trying to explain to Mexican officials that in Texas, a "life" sentence doesn't mean "life." A convict in Texas will serve 30-40 years before becoming eligible for parole. Since this does not exceed Mexico's maximum sentence of 40 years, the Mexican life sentence ban should not necessarily affect Texas.

INTERNATIONAL PROSECUTIONS

"Mexico doesn't want to be seen as a safe haven for criminals. They don't like this idea that if you run across the border, you'll be safe." – Texas official, Office of the Attorney General

Extradite or Prosecute

If Mexico refuses to extradite a Mexican national back to the United States to be tried for a crime committed in the United States, then what recourse do U.S. and Mexican officials have, once the suspect has crossed the international border? U.S. authorities can request that the Mexican attorney general prosecute the suspect, as if the crime had been committed in Mexico.[45]

A general principle of international politics is *aut dedere, aut iudicare* (extradite or prosecute), which means that a nation refusing to extradite a fugitive should prosecute

[45] Technically, a U.S. citizen could be prosecuted under the Article IV provision if the victim was a Mexican national. But the official U.S. position is to always seek extradition of a U.S. national.

the individual within its own borders and under its own laws.[46] In the Mexican penal code, this principle is codified as Article IV, and is the default procedure that ensues after an extradition is denied.[47]

While U.S. and Mexican federal prosecutors tussle over the Mexican standards for extradition, subnational governments in the United States are free to pursue international prosecutions directly with Mexican authorities. An Article IV prosecution is a provision of domestic Mexican law and is not a part of any international treaty. There is no U.S. law involved, save for the fact that the crime committed in the United States must also be a crime in Mexico. U.S. federal authorities do not have to be – and usually are not – involved in Article IV cases.

Article IV was written into the Mexican Federal Penal Code in 1931, but such a provision has existed in Mexican law since 1871. But nearly 100 years passed before the provision began to be regularly utilized by authorities in the United States.

It is not clear when the U.S. federal government became aware that Mexico would prosecute a crime committed in the United States. The provision may have been utilized by the U.S. Department of Justice in 1976 during Operation Janus, when the U.S. federal government encouraged Mexican law enforcement to prosecute individuals who had violated U.S. drug laws. The program had the support of the Mexican federal attorney general at the time, but was ended after a few years and deemed a failure.[48]

So it seems the states, and not the U.S. federal government, were the first to take advantage of the provision. The first recorded use of the Article IV provision in U.S.-Mexico relations is on 19 May 1981, when the California Department of Justice (CALDOJ) filed a request for an Article IV prosecution. Ruben Landa, a CALDOJ

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[46] McDonald.

[47] The English translation of Article IV reads: "Crimes committed in a foreign territory by a Mexican against a Mexican or against a foreigner, or by a foreigner against a Mexican, will be punished in the Republic of Mexico, in accordance with federal law, if the following requirements are met: That the accused be in the Republic of Mexico; That the prisoner has not been definitively tried in the country where he committed the crime, and; That the infraction with which he is charged be a crime both in the country where it was committed and in the Republic of Mexico." From Yuri Calderon, Paco Felici and Elizabeth T. Buhmann, *Criminal Prosecutions Under Article IV of the Mexican Penal Code*: *A Technical Assistance Manual of the International Prosecutions Unit* (Austin, TX: Office of the Attorney General, 1994): 21.

[48] McDonald, p. 78.

special agent who traveled frequently to Mexico to exchange information and pursue cases, is credited with "discovering" the Article IV provision when he learned about it from a Mexican prosecutor.[49] CALDOJ opened an international prosecutions unit, and today, the Los Angeles and San Diego police departments and county prosecutors each have an international prosecutions office as well.

Mexican officials from the Mexican federal attorney general's office say their records show the United States began filing requests for Article IV prosecutions in 1985. This discrepancy in dates could be due to a change in how cases were filed: a California official says the first cases were filed with the PGR's regional office in Tijuana, Baja California; and later began to be filed with other state offices of the PGR. The PGR's central office for handling Article IV requests did not open in Mexico City until 1993.

But it seems local law enforcement officials along the border have been aware for some time that Mexico would prosecute a crime committed north of the border. A Texas policeman in a border county says as long ago as the 1970s, he had crossed the border to testify in a case, and had taken recovered drugs to Mexico as evidence for cases, while working in cooperation with the U.S. Drug Enforcement Agency. But this cop was unfamiliar with the term "Article IV;" he knew the procedure by the Spanish phrase *"crimen contra extranjeros,"* or "crimes against foreigners," the phrase often used in Mexico to describe the Article IV procedure.

But in Texas, the official story is that the Texas Attorney General's office first learned about Article IV prosecutions from California officials during annual meetings of the Border States Attorneys General Conference.

The Texas Attorney General opened its International Prosecutions Unit (IPU) in 1994. The Texas unit has helped with Article IV prosecutions originating in Arkansas, Oklahoma, Tennessee, and Virginia. While most Texas county officials file requests through the OAG's unit, the Dallas County Sheriff's Department also files Article IV requests with the Mexican government. The Austin Police Department has hopes of filing Article IV requests independently. Most of these cases involve Mexicans, living in Texas, who have been murdered by other Mexican citizens.

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[49] Ibid, p. 80.

On 19 August 1993, the PGR opened a unit in Mexico City to handle Article IV requests. Mexicans say the office was opened in order to comply with the extradition treaty, which demands prosecution in cases where extradition is denied. ***La Unidad Especializada para la Atención de Delitos Cometidos en Territorio Extranjero*** (Overseas Crimes Unit) is a part of ***la Oficina de Asuntos Legales Internacionales*** (Foreign Legal Affairs Office). For the first several years, there was only one person assigned to the office to process Article IV requests. For a time, judicial police were assigned to the unit to investigate cases, but these were rescinded in 1997. From 1997-2002, the unit did not have its own investigators and had to rely on any available federal police or Interpol agents.

Starting in 2002, the Mexican federal police began once again to assist with investigations, and a PGR official says the result is a three-week turnaround on new cases.

When the office first opened, there were 101 requests filed by U.S. authorities. Fifty-five of these have resulted in a conviction. As of 31 October 2002, the Mexican office had a total of 418 open cases.

No information is available on what it costs the Mexican government to carry out an Article IV case; the international affairs office budget covers extraditions as well as foreign prosecutions and does not calculate expenses separately.

A Success Story?

Before states began to use the Article IV provision, cases involving perpetrators in Mexico would just stay inactive at the district attorney's office in the county where the crime took place. When Texas first opened its International Prosecutions Unit, the main challenge for the director of the IPU was to convince Texas law enforcement at the local level that it was possible to mount a case against a criminal who was still in Mexico. The then-director says county attorneys had a lot of distrust born of the perception that Mexico systematically protects criminals. "We had to tell them that this can be done, when things like this had not been done (in Texas) yet. The district

attorneys were impressed that Mexico wanted to try to find people." He says the first case to be successfully prosecuted in Mexico in the 1990s gave credibility to the process.

But still, the success rate for Article IV cases can seem disappointing. As of 2003, the Texas IPU has 65 open cases in various stages of the prosecution process. All of these cases involve Mexican citizens on the run from U.S. law (U.S. citizens would be deported or extradited but usually not prosecuted). In the nine years since the office opened, 19 cases have been resolved: the suspect was either sentenced; tried and convicted; released; or the case was closed for some other reason.[50]

The former IPU director admits it is a "challenge to mix reality with politics. You may file 30 cases and get 2 resolutions." He admits the rate of resolutions of cases looks small compared to the number of outstanding cases. "People say that's a bad track record, but compare it to local statistics anywhere for robberies and arrest ratios," he says. "It's no reflection on Mexican willingness to help. The perception of Mexico as having no (police) authority is breaking down. There is more openness now. I never saw a bad actor in Mexico. The fight against crime is not one we're ever going to win, but it's not one we're going to not fight."

The current director of the Texas IPU says an international prosecution is the method most likely to bring satisfaction to the parties affected by the crime, and a way around the frustrations of extradition politics. "It's an opportunity to be proactive," he says. "We can reach across the border, we can tell the victim's family, 'we're not just sitting here.'" He says an Article IV prosecution is the most effective way to achieve closure to cases. He feels that given Mexico's inconsistent record with extraditions, Article IV prosecutions should be pursued at the outset, rather than as a second choice. Families of the victims in the United States will often tell state officials they want the suspect prosecuted in Mexico. Life in a Mexican prison is infamous for its hardships, and there is no parole.

The Texas government also saves money when Mexico performs an international prosecution. Depending on the complexity of the case and the amount of documentation

[50] In two cases, suspects were arrested upon returning to Texas. One went before a jury and was acquitted because the state's main witness had died. One committed suicide while in custody. Both count as closed cases now.

and translation needed, an Article IV case file can cost $10,000-20,000 to complete. But this is far less than a local trial, says the Texas IPU director. A capital murder case can cost a half a million or more, plus appeals, plus $15,000 or more a year to incarcerate the convicted party. “We save money by not trying him here,” the Texas official says.

The Article IV Process

The PGR office in Mexico City prefers to have Article IV requests presented in person, so whenever possible, the director of the state unit, along with the lead investigator from the county with jurisdiction in the case, will travel to Mexico City to present the case to Mexican officials. The Article IV case file must include the arrest warrant, proof of the suspect’s identity and Mexican citizenship – preferably in the form of a Mexican birth certificate – as well as photographic evidence from the crime scene and witness statements. All the paperwork must have been translated into Spanish. The Texas IPU director is fluent in Spanish and can translate, if necessary, for the county investigators when they meet with Mexican officials.

PGR personnel will review the case and discuss it with the Texans. If the case is accepted, the PGR will request a judge review the evidence and issue an arrest warrant for the suspect. Thereafter the case is carried out as if it were a Mexican case. The suspect is tried in a Mexican court and, if convicted, serves time in a Mexican jail – all for a crime committed in the United States.

The Texas IPU most frequently requests Mexico prosecute homicide cases. The office has also filed Article IV requests for cases of vehicular manslaughter and sexual assaults of children, but has yet to pursue fraud, drug cases or auto thefts, although all would qualify. Homicides, however, are the top priority and, given limited resources, “we have more than enough of them to deal with,” says the official in charge of the Texas International Prosecutions Unit.

Texas prosecutors – like Texas fugitive investigators – also express frustration with the difficulties of locating suspects once they enter Mexico. The PGR wants Texas

officials to tell them where to find the suspect. “It’s a constant argument we have,” says the director of the Texas Unit.

> We give (the PGR) a starting point of an address – but after that, we need them to follow up and find out where he is from that point on. They say: ‘we looked at that address and he wasn’t there – where else do we look?’ We don’t have people there. They say they don’t have the manpower. But we can’t send investigators there without their knowledge. An Article IV is like saying, we want you to handle this, so then we can’t say, ‘you’re not doing a good enough job, so we’re sending our person to investigate.’

In some cases, the address a source will give state officials is vague; in some more remote parts of Mexico, there are no street addresses. Officials will be told the person might be found at *“dirección conocido,”* which means: the local postmaster will know the address.

Sometimes, an international case is hampered when mistakes are made at the local level within the United States. Cases involving foreign nationals need to be investigated differently from domestic cases, explains the Texas unit director. Local police investigating the crime need to know to look for immigration papers, or a birth certificate proving nationality, or letters with an address to where the suspect might flee; even evidence of money wired to another country can be crucial in tracking a fugitive to another country.

And local law enforcement in the United States may not realize the importance of getting a Mexican national’s full name. Most Mexicans adapt to U.S. ways and use only one first name and one last name, but in Mexican custom, most individuals have two first and two last names. If the suspect’s full name is not sent to the border, the suspect may be able to leave the United States with impunity.

State/Federal/International Issues

The Texas-U.S. axis (national causes): was the problem Texas sought to address under state or federal jurisdiction? What was the corresponding federal response: did the federal government support the mechanism, ignore it, or move to restrict the mechanism?

Prosecuting a state criminal is within the state's criminal justice authority. Because Mexican law provides for international prosecutions, the state is able to confer with Mexico on these cases.

It is not clear if the U.S. federal government was aware of or utilized the Article IV option before the states began pursuing international prosecutions in Mexico. Despite the presence of the Article IV provision in Mexican law, current research indicates that California was the first to regularly request international prosecutions, not the federal government.

A Texas official says he was "somewhat aghast" to find that the U.S. Department of Justice, with its resources, had not regularly pursued international prosecutions in the past, especially given that a prosecution within Mexico was virtually the only avenue for justice before Mexico began to extradite more reliably in 1996.

Even now, federal officials are generally not involved in Article IV prosecutions, unless the case began as an extradition request and was denied. Article IV prosecutions are mainly the purview of state and local authorities, and these jurisdictions carry complete financial responsibility for pursuing the cases, receiving no financial help from the federal government.

While the goals of an extradition and a foreign prosecution are the same – the apprehension and punishment of the guilty – state officials prefer foreign prosecutions, while federal officials see extradition as superior. One OIA official puts it bluntly: "If the crime is done here (in the United States), and the victims and the evidence are here, and the investigation is done here, then it makes sense to prosecute here. Article IV is a second-best means." Extraditions are perceived as more desirable because faith in the U.S. criminal justice system is much stronger than in the Mexican system.

And local government officials, like federal officials, tend to favor extradition over international prosecutions, and resent Mexico's limitations on extraditions. Because of the political pressure to win convictions, elected county officials prefer to extradite a criminal rather than relinquish him to a criminal justice system perceived as inferior. However, heinous crimes such as murder, while extraditable, are the type of crimes for which prosecutors are most likely to want to seek the death penalty or a life sentence. In those cases, prosecutors must provide the Mexican government with assurances that neither of these sentences will be imposed in order to extradite – or be satisfied with a Mexican prosecution.

The involvement of the state or local authorities in international prosecutions is not seen by OIA as having foreign policy implications. Extradition is handing a man over to a foreign government; it is an exercise of foreign policy and must be carried out between federal governments. But international prosecutions are a function of Mexican law, and therefore not a matter of U.S. foreign policy. OIA officials say they have "no problem" with states initiating Article IV requests directly with Mexico. "It is not foreign policy, what the states are doing," says one federal official. "It's not what we would see as encroaching."

While the topic of deportations can make federal officials uneasy, the states' pursuit of international prosecutions is seen as an additional resource for protecting the public safety. "The more law enforcement on the books, the better," says one OIA official.

The Texas-Mexico axis (state causes): How was the venue created? Did Texas' interest in and method of contact with Mexico differ from the U.S. government's relations with Mexico?

The practice of Article IV prosecutions, while not a perfect system, is evolving into an effective mechanism for achieving justice in cases of cross-border crime.

At least one Texas official sees Article IV prosecutions as a way for Mexico to improve the bad impressions that so many U.S. law enforcement hold. says the director

of the Texas prosecutions unit. “They are as anxious to get criminals off the streets as we are,” he says. “It’s a win-win situation. The counties save money; Mexico takes a lawless individual off the streets and shores up the world’s perception of it.”

While institutionalization of the Article IV provision seems progressive, there are still frustrations with the method. Because Mexican police have their own cases to pursue, it can seem to officials in the United States that foreign prosecutions are a low priority to Mexican prosecutors. Officials at the U.S. DOJ say that Article IV prosecutions are “a nice idea” that can work when Mexico allocates enough resources to it; “the problem is, they don’t have the resources,” a federal official says. Mexico has a good conviction rate once a suspect is in custody, but there is a huge backlog, adds another.

The U.S.–Mexico axis (international causes): what were the international political and economic conditions that contributed to or prevented the state’s effort to reach across the Rio Grande?

Public safety is the concern here, for domestic law enforcement in both nations. The Article IV provision in Mexican law gives Mexico a measure of autonomy from the United States. It allows Mexico to prosecute a criminal without having to extradite, thus protecting a Mexican national from the U.S. death penalty. “Mexicans still see the traditional role of the (government) as the paternal protector of all its children,” says a U.S. diplomat in Mexico City. Article IV gives Mexico a way around extraditing to the United States, but allows the nation to prosecute a criminal suspect rather than letting him or her roam free. Without the provision in Mexican law, neither Texas nor any other U.S. states would have developed the capacity to work with Mexico on international prosecutions.

CONCLUDING SECTION

COMMUNICATION: OPTIONS AND CHALLENGES

The nature of security threats to the United States have moved from Soviet communism to global terrorism. The fact that terrorism is a proven domestic threat means that concern for public safety and national security have converged, just as other domestic policy areas have melded into foreign policy. The trend is for international crime to increase, and as it does, subnational actors will become even more active internationally. Now that the federal government has asked state and local law enforcement to do more to protect homeland security, state and local law enforcement must become more aware of international politics and the potential threats to the United States.

But the Texas-Mexico case reveals three areas that merit serious consideration. The first is the international treaties governing law enforcement and their relevance to state and local law enforcement. The second is intergovernmental communication. The third is sensitivity to Mexican concerns.

Considering Treaties

The three main treaties that govern U.S.-Mexican criminal justice relations are: the extradition treaty, the Vienna Convention on Consular Relations, and the Mutual Legal Assistance for Criminal Matters Treaty (MLAT). Treaties are intended to be the way the federal government controls the behavior of subnational law enforcement officials.

The only thing totally clear in the area of U.S. states and international relations is that the U.S. Constitution prohibits state and local governments from negotiating treaties. But state and local law enforcement are still bound by the treaties, and the federal government could be held responsible for treaty violations. This being the case, one would think the federal government would take extra steps to make sure state and local officials understand how the treaties apply to them. But there are still mistakes made at the subnational level.

Extradition: Of the three treaties, state and local authorities have the most knowledge of the U.S.-Mexico extradition treaty because there is no way for an

extradition to be carried out through informal channels. But frustration with the extradition process is so high that subnational authorities will exhaust all possible informal means to recover a fugitive through their own contacts – sometimes even through illegal kidnapping – before turning to extradition as a last resort.

But Mexican officials see that not every U.S. jurisdiction understands the extradition procedures. Often the regional PGR offices will receive extradition requests that are in error. "We're shocked at their ignorance," he says. Counties will even confuse state-to-state extraditions with international extraditions. He says state officials often "don't know about or want to hear about" international conventions and treaties.

Officials at the Office of International Affairs at the U.S. Department of Justice confirm that subnational authorities are often unsure how to pursue cases involving foreign nationals.

Vienna Convention on Consular Relations: There is particular concern that local police, who are usually the first to be in contact with foreign nationals in a criminal incident, have the least knowledge of how to process foreign nationals according to the Vienna Convention. Violations of the treaty by subnational law enforcement have resulted in action brought against the United States by Mexico in the International Court of Justice. Treaty violations occur when subnational law enforcement fails to notify a foreign detainee of the right to seek assistance from consular officials stationed in the United States. In some cases, local officials are unaware of the treaty's stipulations; in others, detainees fail to identify themselves as foreign nationals, and local officials are held responsible.

Mexican officials seem to see the treaties and diplomatic protocols as a safeguard against an improper arrest or a death sentence for a Mexican citizen, and are dismayed that some district attorneys and even U.S. Attorneys still do not know how to arrest a foreign national. "Some of the locals are not trained that whenever we face a situation with Mexican nationals or U.S. nationals in a (criminal) incident, there are proper channels to follow to avoid problems in the future," says a Mexican official.

Whose responsibility is it to ensure that all levels of government are aware of international protocols? The U.S. federal government presents training seminars through

such venues as the National Association of District Attorneys, the National Fraternal Order of Police, and the National Association of Attorneys General. At these types of meetings, DOJ personnel will address attendees on how they can best address international crime issues and maintain good relations with foreign authorities. OIA says they have good relations with state attorneys general, and encourage them to call D.C. for advice.

In addition to the training sessions provided by federal authorities, there are some statewide seminars as well. At a Border Law Enforcement Conference held in 2002 in San Antonio, Texas, the Texas Attorney General included short sessions and distributed copies of its own handbook on consular notification procedures.[51]

The Mutual Legal Assistance Treaty on Criminal Matters: Few subnational officials interviewed by this project were aware of the existence of the MLAT, which lays out formal channels that should be followed for purposes of exchanging information necessary for criminal cases.

The MLAT is not entirely clear on whether or not subnational officials are prevented from sharing information informally. It indicates that other means of obtaining assistance are allowed, as long as they are consistent with the nation's own laws.

The treaty does allow each nation's central authority to refer a request on to another competent authority – but in most cases, the "other authorities" would be the state and local governments, who are already handling requests directly, rather than proceeding through formal channels.

Mexican officials acknowledge that MLAT "shortcuts" will inevitably happen but feel some procedures should still be followed out of respect for the legal framework of the treaty. And at least one Mexican expressed concerns that the state and local officials may be overstepping their authority. He says Texans need to understand that some issues are "best handled by the federal government. Proper procedures need to be followed." All the same, they will provide information to state and local authorities;

[51] Office of the Texas Attorney General John Cornyn, *Magistrate's Guide to the Vienna Convention on Consular Notifications,* Foreign Prosecutions Unit, January 2000. Available at www.oag.state.tx.us.

Mexican authorities recognize that formality takes time, and in law enforcement, time is not always available.

While the Mexican officials raise concerns about abiding by the MLAT, U.S. federal officials are outright approving when the states share information directly with Mexican authorities. One OIA official says it is not a treaty violation for states to do things informally. "It is one means to assist foreign authorities. It's a good way of getting things done that can't get done otherwise. If it is legal (in the other country) and fine with both countries' federal officials, then states and locals can get things done informally if they can. We encourage that." He says it is "impractical" for OIA to handle MLAT requests all the time. "In reality, we couldn't handle the volume," he says. Even if only California and Texas matters came through their office, that would still be too much for the federal office to handle.

Considering Treaties: Treaties are the only formal means of control the federal government has over the behavior of state and local law enforcement. Should subnational governments have more of a role in treaty negotiations? If the extradition process is obeyed but avoided, if the Vienna Convention is often violated, and if the MLAT if not even known about, then there seems to be something lacking in the treaty process. Subnational governments are constitutionally prohibited from forming their own treaties, but not from participating in federal treaty negotiations. Fairness would dictate that all parties involved in an agreement should take part, at least to a degree, in structuring the agreement. If all parties are not included on the basis of fairness, then perhaps they should be included in the process just as a practical matter, so there is more knowledge of the treaty's terms at the lower levels of government.

Considering Intergovernmental Communication

Even though the federal government has encouraged other nations to return U.S. citizen-fugitives through deportation, and Texas state officials have for years sought to recover fugitives from Mexico through their own contacts, there apparently is little clear communication between the two levels of government on this issue.

A TDCJ official says that no federal official has ever communicated to him that it is permissible for his agency to be recovering state fugitives through deportation. At times he has wondered if his state agency has been "on thin ice" by conferring directly with Mexican agents. "But we've been doing it for years, and it has not become an issue," he says. He knows the U.S. Marshals are recovering federal fugitives through deportation, but says federal officials "surely don't encourage the states to do it."

Mexican authorities are in a unique position to see the frequent lack of communication that takes place both between and within levels of government in the United States. Mexican officials stationed in the United States have frequent contact with U.S. law enforcement at all levels to exchange information on investigations and requests for assistance.

Mexican officials are surprised at how U.S. agencies do not share information easily with them. This is "a real problem," says one official. "If they (U.S. agencies) would just share when they get the request, it should solve international problems." He says some requested information arrives months or even years later. Another says it is "kind of hard" to get information from U.S. agencies, that they have to know people first, and know who has what information available and might be willing to share it.

But it is also confusing to Mexican officials to see how little communication there is between levels of government in the United States. Mexicans see the interagency frictions that exist at the federal level – how some U.S. federal agencies are reluctant to work with other federal agencies. Mexican officials also see the oddity that some U.S. law enforcement agencies have access to information that other agencies do not. The FBI and INS use different fingerprinting systems, and the INS does not retain their information. When it comes to fugitive apprehension, each agency puts their resources towards finding their own fugitives, not another agency's fugitives.

Several Mexican officials commented on ways that federal agents clash with local police, or how local prosecutors do not like having federal prosecutors involved in a case.

The Mexicans' mission in the United States can suffer because of intergovernmental miscommunication. Sometimes the PGR will request that federal immigration officials hold an inmate in the Texas prison system, only to find out the person has been released or even already deported. Once the PGR office alerted U.S. law enforcement of an arrest of a U.S. citizen in Mexico, but U.S. officials did not respond.

Aside from what the Mexican agents see, even relations between state and local government agencies can be contentious. State and county criminal justice officials have been at odds for years because of overcrowding in Texas prisons. Those inmates the state does not have room to house are sent to county jails. County jails are not fond of this practice, although some have managed to turn their extra space into a revenue-generator by charging the state for housing TDCJ inmates. But sometimes, county officials will not arrest state parole violators, because of the expense involved in detaining them in overcrowded county jails. Once a county jail flatly refused to hold a prison escapee for a TDCJ investigator.

Friction between the FBI and state law enforcement has a long history. The Federal Bureau of Investigation (FBI) is the nation's premier federal domestic law enforcement agency. The retired Texas Ranger interviewed for this project says that in the past, federal intelligence officers treated state police with contempt. He says FBI agents would show up to the scene of an investigation, but would not share information with the state or local police. Eventually things improved, he says. What changed? "Hoover died," the Ranger says abruptly, referring to J. Edgar Hoover, a former director of the FBI. But even now, the Ranger says, the federal government could do more to promote better relations between levels of law enforcement.

Opinions among state and local law enforcement towards the FBI are mixed. A local border policeman was assigned to work a particular case with an FBI agent. The cop "couldn't work with" him. The agent was too rigid, too concerned with going by the book and worst of all, unwilling to overlook a little corruption to get the information

they needed for their case, says the cop. A top state official refers to FBI agents as "accountants with guns," because many FBI agents reputedly have business degrees rather than law enforcement backgrounds. But state investigators are grateful for the FBI presence in Mexico. "It helps to have an agent in their town who can go talk with the locals," says one.

But state officials say international intergovernmental relations are furthered when selected law enforcement officers from all over the world gather at the annual FBI training academy, held in Langley, Virginia. When one state official went through the training, law enforcement agents from 43 other countries also took the course. The personal contacts made are priceless, says the official. Another TDCJ official established a lasting friendship with an officer in Guanajuato, Mexico, while going through the training academy.

Even while federal officials are not entirely comfortable with direct state-foreign relations, an FBI agent admits "we speak with two voices," in that the FBI training academy encourages relationship-building between state and foreign officials.

Texas officials do have good words to say about law enforcement task forces funded by the federal government and administered by the FBI. Task force members come from the FBI, the U.S. Marshals Service, the DEA, TDCJ, and area municipal police and county sheriffs departments. Dallas hosts an FBI Violent Crimes Joint Task Force and a U.S. DOJ "Safe Streets" task force. There are other task forces for drug interdiction, money laundering, gang activity, and an impromptu force can be set up for tracking a prison escapee.

The task forces are "the way to go," says one high-ranking Texas law enforcement official. "I wouldn't be able to do what I do without them. It's the mechanism for getting agencies to work together." He explains that while each law enforcement agency has different reasons for wanting to take a criminal down, the goal is the same. "It's really a small community (of law enforcement people) that work on all these cases," says the official.

The main benefit of the task forces is the open sharing of information and pooling of resources. The task forces allow state agencies access to FBI technology,

increased security clearances, federal vehicles, and federal overtime pay for the state agents assigned to the force. The task force concept has increased cooperation between law enforcement agencies at all levels of government, one state official says. Prior to the task forces, "the feds would take but not give information. Now, we're equal partners." After a mission is completed, the task force will hold a joint press conference with all member agencies represented.

Two local cops interviewed for this project have suggested a task force of Mexican and U.S. law enforcement would be fruitful.

But there are some critics of the task forces. An Austin criminal defense attorney complains that federally-funded task forces are composed of unelected officials and have no accountability. "They should be answerable to civilian governments and they're not," he says.

Some of what the Mexicans perceive as intergovernmental friction may be attributed to the different capabilities of different levels of government. A federal official in Texas says that state and local officials are better with street crime, because they have more officers on the street, and can arrest people for lesser offenses, like jaywalking or traffic violations, which can lead to discovering more significant criminal activity. The U.S. Marshals have sheriff powers and can arrest for those lesser offenses, as local law enforcement can, but the FBI cannot.

Sometimes the different levels of law enforcement, even while sharing goals, can find themselves at cross-purposes.

Federal agencies have developed projects that negatively affected state law enforcement efforts. Operation Casablanca was a federal money-laundering project conducted in 1998. U.S. federal agents arrested many Mexicans during the operation, and that had repercussions in Texas, where it "killed years of work," says a former state official. "We were going to have a (law enforcement) conference, but (couldn't) call that week to Mexico City to get anything," because relations were damaged by the federal government's actions.

This state official recalls the frustration he felt that state law enforcement is not included in regular meetings of federal U.S. and Mexican officials. He says federal

officials do not understand how the big picture of U.S.-Mexico relations affects states. "D.C. doesn't really know what's going on here," he says. "People in D.C. don't understand how to relate to the border."

On the U.S. side, a DOJ official admits he sees more tension between federal agencies than between the federal and state governments. But he expresses appreciation for what the states do: "If states are doing something that's working, we don't mind. We each do our own things." He says state and local authorities have better local contacts and may be able to act more quickly, whereas federal agents must maintain higher-level relations, carry the authority of the national interest, and remember the "diplomatic big picture." But he concludes that all levels of law enforcement "are important. We need to recognize each role and not complain at one another."

The attitudes of federal officials can make a difference to the levels of cooperation that exist between different levels of law enforcement. Along the U.S. borders, federal officials have many opportunities to work alongside state and local officials. One federal official, now at the U.S. embassy in Mexico City, was previously stationed at a U.S. consulate along the Mexico border. He tells how his predecessor at the consulate tried to control state and local officials, insisting that all state and local officials in the region come to him to get clearance whenever they needed to cross into Mexico. State and local authorities responded with resentment. They felt the federal official had no jurisdiction over them, and kept information from him. The official now in Mexico City agreed with the state and local officials. The lesson he learned by observing his controlling predecessor was, "Federal agents who insist on following the letter of the law will be shut out" by state and local agents. Upon assuming the position at the consulate, this official told state and local agents, "I am here to support you. What can I provide to you?" He asked to be kept informed of illegal activity in his jurisdiction, and he was kept in the loop. "Keep your friends close, and your enemies closer," he concludes.

Sometimes frequency of contact among certain officials on both sides of the border can lead to a successful relationship. When this has happened, the federal

government's response was to reproduce the local success in a larger context, with mixed results.

One example is the Border Liaison Mechanism. In the mid-1990s, U.S. and Mexican federal officials stationed in the San Diego area developed very friendly working relationships; there were high levels of trust between the U.S. Attorney and the Mexican Consul General. An informal information-sharing mechanism developed between the two offices. In 1997, U.S. Department of State officials from Washington developed the Border Liaison Mechanism (BLM), inspired by the good relations exhibited in San Diego. Today, Border Liaison Mechanisms exist in Tijuana/San Diego, Tijuana/Calexico, Nogales/Hermosillo, Ciudad Juárez/El Paso, Laredo/Nuevo Laredo, Matamoros/McAllen, and Matamoros/Brownsville. The goal of the mechanism is to "address a wide array of topics, from the civil rights of U.S. and Mexican citizens, ways of enhancing law enforcement cooperation in cases of auto theft and other transborder crime, and child custody issues."[52]

But relations among officials are not always as naturally harmonious as in the San Diego case. A federal official expresses concern that the federal government would take a local instance of cooperation, and then expect those same good relations could be replicated all along the border. "We encourage state-to-state level relations, but it's one thing to dictate policy, another to dictate relationships. We can't do that from here (Washington)."

Considering Communication: The numbers of subnational law enforcement officials are far too numerous for the federal government to monitor, but there is still a surprising lack of communication between the levels of government on the parameters of states' international roles. Many state and local officials say the federal government should promote international informal relationships, but in a way that allows each jurisdiction the freedom to respond to unique circumstances and accommodate personalities.

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[52] Office of National Drug Control Strategy, *An Overview of Federal Drug Control Programs on the Southwest Border.* (Retrieved 3 October 2003). Available from: http://www.ncjrs.org/ondcppubs/publications/enforce/border/state.html

Considering Diplomacy

Several U.S. officials stationed at the U.S. Embassy in Mexico City say that it was not until moving to Mexico City that they realized the importance of U.S. politics to Mexican politics and society. Everything that happens in Mexico is seen in the context of its relationship to the United States. Says one U.S. official: "When talking with Mexicans on (law enforcement) issues, you get a verbal dissertation on the history of the two countries, the UN Convention on Migrants,[53] how migrants need to be free to flow, etc, deaths on the border because of where the INS is forcing them (to cross into the United States) – they see everything as a U.S.-Mexico issue."

The sense of pressure on Mexican officials is palpable: on the one hand, they are painfully aware of how far Mexican law enforcement needs to progress beyond corruption. They know the United States is willing to help, but the help is not easily accepted because of the sometimes intense resentment of the United States within Mexican politics.

Says a U.S. official at the U.S. Embassy: "Most Mexican law enforcement officials are careful not to be perceived as our lackeys. Most want to help. But U.S. officials see law enforcement issues before we see sovereignty issues. But when a Mexican authority pushes someone over the bridge, the heat gets on that person who helped the United States."

Mexican officials acknowledge that interaction with the United States has improved Mexican criminal procedures: in 1997, Mexico passed an organized crime law patterned after the United States government's Racketeering Influenced Corrupt Organizations Act. Prior to the law's passage, evidence gleaned from electronic surveillance or gathered through undercover methods was not admissible in a Mexican court. "This is a positive outcome of how we have been influenced by the United States," he says.

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[53] The United Nations Convention on Migrants' Rights was adopted by the General Assembly at its 45th session on 18 December 1990 (A/RES/45/158) and entered into force on 1 July 2003..A primary goal of the treaty is to ensure equality of treatment for migrants and nationals. Twenty-three nations, including Mexico, have ratified the Treaty; the United States has not. (Retrieved 5 October 2003.) Available from: http://www.unesco.org/most/migration/convention/

But Mexican authorities working in the United States feel they are still struggling to overcome the impression that Mexico is "a haven for criminals," one Mexican official says. "Many still have the old mentality that we're going to protect criminals and so they won't give us information. But we have to prove to them that we can bring them back. The only way is to show (U.S. officials) we mean business and like to work with them."

PGR representatives say they still encounter attitudes of distrust, mostly among local officials, particularly along the border where officers know their counterparts and can exchange information themselves, without involving higher-ups. "We need to work on the local level," says the former director of the San Antonio PGR office, "where the attitude, particularly in West Texas, is that 'we want to do it ourselves.' Those attitudes are not harmful if there is a good example (of cooperation) operating at the top." But sometimes, Mexican officials find out that fugitives or stolen vehicles have been returned "improperly," which he blames on the attitude of state officials that they can "do things on their own."

The irony of September 11th is that the terrorist attacks on the United States have increased the need for international coordination at all levels, even as it has heightened political tensions between the United States and Mexico at the top.

Considering Diplomacy: Generally speaking, good working relationships between Mexican officials and their U.S. counterparts remain good even amidst higher-level differences. But the risk remains that state and local officials, acting on their own interests, out of ignorance or frustration with formal channels, could seriously offend Mexico and tie up extraditions and deportations to the United States across the board. This could be circumvented if a higher value were put on understanding Mexico, starting at the top. OIA officials in Washington are certainly excellent diplomats towards Mexican officials, but this is not visible to officials at the lower levels of government within the United States.

Conclusion: The Need for Trust and Clarity

Because law enforcement handles threats to the public safety, the challenge to communicate effectively in this area is charged with an urgency that other issue-areas do not carry. While the general goals of state and federal law enforcement are the same, each level of law enforcement has its own specific goals and means of achieving them.

As criminal justice concerns have expanded to include international developments, state and local governments have found it in their interests to cultivate good relations with Mexican agents out of necessity. State and local officials have been assertive in developing their own relations with their foreign counterparts, although claiming this freedom could carry significant costs to U.S. law enforcement overall if misused by individual officials.

Federal officials interviewed for this project acknowledge they need subnational law enforcement to take the initiative and handle local matters directly with the appropriate foreign officials. After all, states are pursuing cases within their jurisdiction. But there is a significant level of discomfort with the lack of control the federal government has over state and local law enforcement, and the many grey areas as to the extent to which state and local law enforcement can be internationally active. International treaties are supposed to be the means by which the subnational role is restricted, but the current treaties seem to have a stunning lack of relevance to the daily operation of international law enforcement at the subnational levels. While ambiguity plays a role in the lack of federal restriction, a more significant reason is that the federal government lacks the resources to handle the growing numbers of state and local criminal justice cases involving foreign nationals.

Why then, are federal officials not more explicit in communicating to subnational officials that they are free to cultivate direct relations?

Part of the lack of explicit communication is due to legal issues. If federal officials encouraged states to act independently, the federal government could be held responsible for treaty violations by state and local officials. So legally, a lack of clarity benefits federal officials, who seem to count on ambiguity acting as a restraint on state and local officials, in the absence of respect for or knowledge of treaties.

Subnational governments also benefit from a lack of explicit rules that allow freedom of action. "It is easier to beg forgiveness than to ask permission," says one federal official. So in practical terms, a lack of clarity benefits subnational governments by giving them room to maneuver, who can claim either ignorance of international procedures or an urgent need for assistance.

But the most significant barrier to communication is the lack of trust that runs both ways. Many federal officials feel that even if the federal government laid out explicit rules, state and local officials would still find a way to stretch or even ignore the rules. For their part, state and local officials often resent what they feel are impositions by a distant federal government ignorant of local concerns; more rules would just increase that resentment.

In the long term, it is possible the federal government will seek to assert greater control over law enforcement. Fighting terrorism is already increasing the role of state and local law enforcement even as it is causing intergovernmental conflict.

Because the federal government cannot or will not monitor state and local agents, the federal government could put more resources to communicating with state and local officials. A way needs to be found for state and local officials to be more aware of treaty negotiations that may affect the pursuit criminal investigations.

Perhaps a system of regional liaisons could be developed for purposes of keeping subnational governments informed as to the priorities of DOS, DOJ, and Department of Homeland Security and the procedures for handling international cases in general and Mexican cases specifically. And at the subnational level, the possibility exists for creative new forms of governance to emerge as governments construct regional cooperative anti-terror strategies and mechanisms.

Not talking about issues raised by the increasing role of U.S. states in foreign affairs is not going to put anyone's mind at ease. More communication is essential. Subnational law enforcement needs to understand that treaties are supposed to set the limits of what they can do through their own international contacts. And state and locals officials need to understand that following good diplomatic procedures is, in the long run, in their interest, to keep the channels of cooperation open for others working on

similar cases. Ultimately, understanding diplomatic procedures is the remedy for the frustrations state and local law enforcement so often experience on international cases. But federal officials should be communicating this message more coherently and consistently with state and local law enforcement.

The short-term goals of federal law enforcement and subnational law enforcement with respect to violent crime will stay the same. The question becomes what role future presidential administrations see for state and local law enforcement in fighting the War on Terror. The diffuse nature of the threats would seem to require the inclusion of all levels of law enforcement in fighting terrorism, as the Bush administration is seeking. But whether or not increased intergovernmental conflict results depends on the role the federal government wants state and local law enforcement to play. The strategies employed by the federal government could either curtail the pursuit of international role of state and local officials or increase conflict, as has happened over the PATRIOT Act and the question of immigration enforcement. How well-defined each level of government's role is could determine how effectively they communicate and work together, but the legal ambiguities in this area prevent the subnational role from being more clearly defined.

CHAPTER SEVEN
INTERNATIONAL CHILD SUPPORT:
THE STATES LEAD, THE FEDERAL GOVERNMENT FOLLOWS

INTRODUCTION

This chapter examines how the U.S. federal government and U.S. state governments converge on the issue of international child support enforcement. The story of how Texas established ties with Mexico and other nations to enforce child support orders is a chapter in the larger story of how globalization has changed families.

How does a state agency ensure that a negligent parent residing in another country pays child support? This was the question Texas state officials found themselves asking as the number of cases involving nonpayment of child support by parents in foreign nations grew. Family law – which includes marriage, divorce, and child support – has traditionally been the jurisdiction of the states. But as U.S. society has become more internationalized, state officials have found themselves with growing numbers of child support cases in which at least one party, either parent or child, resides in a foreign nation.

The story of how Texas came to be a leader in international child support enforcement involves several state officials carefully treading through legal, constitutional, and humanitarian concerns, in order to meet the needs of children around the world. Texas blazed the trail using tools the federal government supplied; once Texas built the trail, the federal government followed the state's lead and finally empowered all the states to handle international cases on their own.

The twist to the story is the difference in approach between the federal government and the states over this issue. The official in charge of the Texas office has frequently locked horns with the federal government over how international child

support cases should be handled, even while federal officials have consistently looked to him for assistance in developing their nascent program.

The state office that handles international child support cases is the Texas Office of International Coordination, opened in 1993 as part of the Child Support Division of the Texas Office of the Attorney General (OAG). At the federal level, the main entity involved is the Office of Child Support Enforcement (OCSE), part of the U.S. Department of Health and Human Services (DHHS).

In 1996, OCSE, along with the U.S. Department of State (DOS) began negotiating reciprocal child support arrangements with foreign nations, enlarging the federal government's regulation of family law, traditionally a state-level responsibility.

Also in 1996, the federal government explicitly granted all U.S. states the authority to negotiate international arrangements for purposes of collecting child support payments. But Texas and other U.S. states had for years been trying to find ways to pursue international child support cases, knowing they were treading on shaky constitutional ground. What follows is the story of how Texas became involved in international child support enforcement, illustrating how the states' autonomy to respond to specific local needs results in policy innovation that can serve as a model for federal action. And in this case, the federal government has adapted the states' policy innovation and, if it is implemented nation by nation, the will gradually preempt the states from negotiating their own arrangements.

How Can a State Work an International Case?

Texas was an unlikely state to become a policy leader in, of all things, international child support enforcement. Texas consistently ranks lower than many other U.S. states in social spending.[1] But in this case, a combination of a growing social need

[1] In 1997, Texas ranked 44th among all states in state and local government spending per capita, 39th in social services and housing expenditures per capita, 47th in transportation, and 24th in education expenditures per capita. "Texas Expenditures at a Glance," *Texas State and Local Spending: A Comparison With Other States for 1997* (College Station: Texas Agricultural Extension Service, The Texas A&M University System, 1998). (Retrieved 29 October 2003.) Available from communityeconomics.tamu.edu/Taxpapers/ TX_State_Local_Spending.pdf.

and caring state officials transformed Texas into a leader. While California has also established links with other nations on child support issues, Texas was the first state to open an office exclusively to handle international child support cases, in the Office of the Attorney General (OAG).[2] And the head of the Texas office, Gary Caswell, acts as an adviser to the federal government in this area, traveling frequently throughout the world to negotiate arrangements for the transfer of child support payments between U.S. states and other nations.

The development of an apparatus to enforce child support orders also reflects society's changes. The nationwide system has evolved as society has recognized that government has a valid role in enforcing legal orders, even in what are often considered private family matters. Child support today is a government program that ensures a non-government benefit goes from the noncustodial parent to the custodial parent.

Family law is traditionally the purview of the states, so in the past support programs and enforcement levels varied from state to state. But as U.S. society has grown more mobile, the federal government has gradually become more involved in regulating issues of family support. In 1950, the National Conference of Commissioners on Uniform State Laws (NCCUSL) developed the Uniform Reciprocal Enforcement of Support Act (URESA), to standardize methods for handling a growing number of cases where child support payments needed to flow between parents and children living in different U.S. states. The intent behind standardized methods was to try to ensure a "deadbeat" parent could not escape family financial support obligations by moving to another state.

In 1968, a revision of the support act (RURESA) expanded the definition of a "state" to include foreign jurisdictions with "substantially similar" procedures for enforcing child support orders. Technically, this opened the door to states treating

[2] Child support is one policy area where Texas is active but so are the majority of other states. Without further state-by-state research, it is difficult to get a complete story of intergovernmental relations between the states and the federal government on the issue of international child support. But the federal official in charge of child support confirms that Texas has been a leader in developing reliable methods of conferring with other nations and justifying the development of independent state-foreign relations for purposes of child support enforcement.

foreign nations as if they were other U.S. states for purposes of child support enforcement.

But in those days, the Texas child support program was in the state's welfare department, and lacked legal enforcement mechanisms and resources to determine the status of another nation's legal system. Very few civil lawsuits to force payment were filed then, because the delinquent amounts were seldom significant enough to attract the interest of private lawyers.

But by 1970, eleven percent of all U.S. families with children were single-parent households. This number would only grow in the future – by 1998, 28 percent of all U.S. families with children were headed by single parents, comprising about 14 million single-parent families.[3]

In 1974, in hopes that increasing child support payments by noncustodial parents would reduce the amount the government was spending on welfare, the U.S. Congress passed Title IV-D of the Social Security Act. Title IV-D mandated all U.S. states open a child support enforcement agency adhering to federal standards, in order to qualify for federal funding for welfare programs such as Aid to Families with Dependent Children (AFDC). Each state was required by federal law to enforce existing court orders, to assist in establishing paternity, and to cooperate with other states on interstate cases.

Title IV-D marked a significant increase in the U.S. federal government's involvement in family law, and created an apparatus for enforcing court-ordered financial support. "It was a huge step to change the law," says Tom Laramey, formerly an attorney with the Texas Office of the Attorney General. "But politically, (child support enforcement) appeals to all sides. Conservatives say we're saving taxpayer money by reducing welfare; liberals say we're helping the welfare mommas."

In Texas, child support enforcement now became part of the Attorney General's office. But in the 1980s, even domestic child support cases were not a priority issue. Mr. Laramey admits that Texas had a nationwide reputation for lax enforcement. "I'm sure we were as bad as there was, if not a little bit worse. But no state gave priority to out-of-

[3] Almanac of Policy Issues, *Child Support*. (Updated 1 April 2001, Retrieved 22 October 2003.) Available from: http://www.policyalmanac.org/social_welfare/child_support.shtml

state cases." Most states, says Laramey, would send a case off to wherever the negligent parent was thought to be, so the other state would have to locate the parent.

While the interstate cases were put in the mail, the international cases sat in the office and gathered dust. Some district attorneys and county clerks in Texas handled a case here and there, but most cases languished. Mr. Laramey and other OAG officials were uncertain what to do with the growing stack of international cases. They were still unsure if pursuing foreign cases was legal, according to either U.S. constitutional law or Texas state law.

The challenge was how a U.S. state court could legally recognize a court order issued by a foreign jurisdiction, and how a U.S. state court could issue an order that would be enforced in another country. Both of these issues needed to be resolved in a way that would satisfy judges in both U.S. courts and foreign courts, in order to circumvent a legal challenge to the state's authority by a negligent parent in an international case.

State officials reasoned that if a foreign court issues an order in a substantially similar manner as would a U.S. court – if due process were followed – then why shouldn't a U.S. court be able to recognize the order as valid and take steps to enforce it? If a U.S. court could not recognize a child support order issued by a foreign court, then the U.S. court would have to redo all the work of the foreign court. State officials felt it did not make sense to duplicate the work of another court, even if that court were in another country. But the trick was how to determine if another nation's legal system was in accord with the U.S. system, as far as following due process. Did the other nation's court follow processes that were in harmony with the U.S. notions of fairness and justice? This was the essential question to be answered.

Mr. Laramey knew the 1968 RURESA language said a U.S. state could treat a foreign nation with a substantially similar legal process as if it were another U.S. state, for purposes of child support collection. In the early 1980s, Texas Attorney General Mark White had declared that the legal systems in Germany and England were similar enough to Texas' to ensure reciprocity on child support cases, consistent with Texas law. As a way around possible legal restrictions, Texas and another nation would each

declare the intent to reciprocate with one another. This was known as a "parallel unilateral policy declaration," or PUPD. Because a PUPD is not a binding international agreement, it was argued by some state and federal officials that a PUPD did not qualify as an international compact and therefore did not put the states in danger of a constitutional violation.[4]

But the creative use of mutual declarations of intent apparently did not result in a sustained effort to recover child support obligations in foreign cases.

In 1984, Mr. Laramey remembers trying to learn all he could about the Mexican legal system to determine if Mexico could enforce a U.S. court order in the same manner as a U.S. court would. The need in Texas was to find a way to handle cases that involved one party in Mexico and one in Texas. His goal was to get his boss, Attorney General Jim Mattox, enough information to issue a declaration that Mexico had a substantially similar legal system, and that Texas state lawyers could then legally pursue cases involving a party in Mexico. He hired a Mexican attorney to research this, but he was not a significant help. Given the cases were not a high priority, and the reality of limited resources, Mr. Laramey never got his declaration issued.

Finding a Basis for State Involvement

Then came a change in administration at the OAG. Under Attorney General Dan Morales, who served from 1991 to 1999, child support cases were given more priority, even as the U.S. Congress passed the 1992 Child Support Recovery Act (CSRA), on the basis of its power to regulate interstate commerce. The Act was intended to prevent a noncustodial parent from moving to another state to avoid being under the jurisdiction of the original court, and criminalized failure to pay child support to a child living in another U.S. state.[5]

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[4] Gary Caswell, "International Child Support – 1999," *Family Law Quarterly* 32 (Fall 1998): 531.

[5] Because the CSRA federalized family law, an area traditionally under state jurisdiction, there was some question as to the constitutionality of the law, but as of 1998, nine circuit courts found the law to be constitutional because the Commerce Clause allows Congress to regulate interstate commerce, including child support payments that move from state to state. See Caswell (1998): 534.

In the early 1990s, Gary Caswell was working in the child support section of the Texas Attorney General's office. He had inherited all the international cases that had been sitting, untouched, in the OAG. By 1994, Texas had 134 active cases involving 11 foreign nations.[6]

Mr. Caswell and Cecilia Burke, then the director of the OAG'S child support enforcement division, made a presentation in 1991 to the Border States Attorneys General conference to raise awareness of the need to find a way to handle child support cases with Mexico, where the need was most critical. Ms. Burke recalls that at the time, some states were able to resolve a few cases here and there, but most were not putting resources in that direction, partly because of the lack of clarity on how far the states could get involved in international cases.[7]

Mr. Caswell proposed to the Texas attorney general that the state could be appropriately involved in international child support cases on two bases. One was the traditional authority of states to handle all family law matters, implying that the lack of federal involvement meant the state, by default, could negotiate international cases in the absence of a federal law. The second basis, Caswell argued enthusiastically, was comity, the historical practice of recognizing the laws and legal orders of another nation, evolved through international commercial relations.

For the next few years, Mr. Caswell researched issues and court cases and sought to find a way to build on the willingness of other nations to cooperate. He relied on the Uniform Enforcement of Foreign Judgments Act (UEFJA), developed by NCCUSL in 1964, which is not about child support, but allows U.S. courts to recognize foreign monetary judgments. Mr. Caswell reasoned that if U.S. courts could recognize a foreign monetary order for purposes of commerce, on the basis of comity, then a U.S. court should be able to treat a foreign order for child support as valid in the United States on the same basis.

Mr. Caswell's goal was to find a line of reasoning that would convince a foreign judge that it was appropriate for the state of Texas to be in a foreign court seeking

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[6] Germany, 55 cases; Canada, 35; Sweden, 12; Poland, 11; Mexico, 8; England, 6; Slovakia, 3; and one each with France, Australia, Russia, and Ireland.

[7] Personal interview with Cecilia Burke in Austin, Texas, 7 August 2000.

enforcement of a court order. He had no doubt that attorneys defending child support obligors would challenge in court the legal basis for the prosecuting court to recognize a foreign order. Some attorneys raised questions about currency conversion and the financial basis for determining support amounts, given the disparity in incomes between the United States and most other nations. Mr. Caswell's logic had to be convincing to judges to keep cases moving forward, resulting in renewed payments.

Another of Mr. Caswell's goals was to put procedures in place that would obviate the need for a court in one country to redo an order that was fairly issued in another country. If due process were followed in the other nation, Mr. Caswell reasoned, and the defendant had notice of the hearing and proceedings, the opportunity to be heard, the right to confront and cross-examine and so on, then a Texas court should recognize a foreign order and vice versa. However, if a foreign court would not recognize an order from a U.S. court, Mr. Caswell still wanted the foreign court to issue its own order that payments be sent.

Mr. Caswell presented his case for using comity as a basis of state action on international cases to the National Child Support Enforcement Association (NCSEA), a private, non-profit professional association for those working on child support issues in the United States. Professionals in other states were uncertain at first, but soon came to see comity as a reasonable basis for states to confer with other nations with less fear of a charge of constitutional infringement.

Soon Mr. Caswell began traveling to other nations to discuss pending cases and how to handle them. Mr. Caswell's travel is funded in part by the NCSEA, and by the federal Office of Child Support Enforcement. Most federal systems, like the United States, have restrictions on substates' capability to sign compacts or agreements with foreign nations. Mr. Caswell's office uses the term "arrangements" to describe the methods of communication agreed upon by Texas and a foreign nation.

Soon, other nations began to agree to work with Texas. By the year 2000, Texas had arrangements worked out with eight Canadian provinces, Austria, Australia, the Czech Republic, Germany, Hungary, Mexico, Norway, Poland, Sweden, and the United

Kingdom.[8] Mr. Caswell has also negotiated with other countries, including Estonia and Japan.

All parties to the Texas arrangements are aware that no legal consideration supports the arrangements and the parties have no recourse to hold each other responsible. The parties are involved "because we think it's a good idea," Mr. Caswell says.[9]

The Texas Process of Establishing a Relationship with a Foreign Nation

Cooperative policies between the state of Texas and a foreign nation begin with an exchange of letters between appropriate agencies, followed by a discussion of relevant laws, procedures and policies. Mr. Caswell and his staff compare the foreign nation's laws and procedures with Texas law and practice. The foreign nation's laws must be substantially similar to Texas law in order to meet the definition of a "state" in the Texas Family Code.[10] The foreign country's laws and processes must meet Texas standards of "due process and fair play.[11]

Once it is clear the foreign nation's laws and concepts of justice are similar and that the foreign agency will provide reciprocal services to Texans, an opinion letter and policy declaration supporting the recognition and enforcement of the foreign jurisdiction's child support orders is sent to the country's Foreign Support Enforcement

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[8] Administration for Children and Families, Office of Child Support Enforcement, *Texas State Profile.* (Updated 2 September 2003, Retrieved 29 September 2003.) Available from: http://ocse3.acf.dhhs.gov/ext/irg/sps/report.cfm?State=TX&CFID=48711&CFTOKEN=91638468#3

[9] Personal interview with Gary Caswell in San Antonio, 24 July 2000.

[10] "'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes: (A) an Indian tribe; and (B) a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act." *Texas Family Code*, Section 159.101 (19). (Retrieved 28 September 2003). Available From http://www.capitol.state.tx.us/statutes/fa/fa0015900.html#fa002.159.101

[11] The foreign courts must have *in personam* and *in rem* jurisdiction over the parties in the suit; ensure fair notice of the proceedings, an opportunity to respond, and the process by which the foreign support orders are obtained "cannot be offensive to Texas public policy." Gary Caswell, *Memo on International Reciprocity* (Austin: Office of the Attorney General, December 1996).

Agency, to its embassy in Washington, D.C., and if applicable, to the nation's consulate in Texas.

Finally, Texas and the foreign nation exchange authenticated copies of relevant foreign law and an outline of procedures, translated if necessary.[12] For non-English-speaking countries, the agencies work together to develop bilingual forms for distribution to agency personnel.[13]

The arrangements involve establishing an office to serve as a central point of contact, standardized forms, similar court procedures, and a system for transferring money from Texas to the receiving nation or vice versa.

Some challenges arise in the process. All support payments are sent first to the OAG in Austin and then forwarded to the custodial parent. But when checks started going from Austin to custodial parents in foreign nations, the payments were returned due to insufficient postage. For a time, Mr. Caswell's office had to hand process all foreign mail while a reliable system to send money overseas was in development.

Federal Involvement in Family Law Increases

In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which expanded federal government involvement in family law in general and specifically in international child support. The bill required all U.S. states to adopt the provisions of the Uniform Interstate Family Support Act (UIFSA), which had passed in 1992. The states had to adopt the standard procedures by 1 April 1998, as a condition of receiving federal funding.

The Act defined a "state" to include foreign jurisdictions with laws or provisions similar to the procedures laid out by UIFSA. Therefore, U.S. states can use the same procedures with qualifying foreign entities, as the U.S. states would follow with a sister U.S. state. Passage of this legislation gave explicit approval to the states for contacting foreign nations for purposes of negotiating reciprocal child support arrangements.

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[12] The relevant laws include statutes on declarations, age of emancipation, statutes of limitations, presumptions, etc.

[13] Forms include Transmittal/Acknowledgement, Locate Data Sheet, Registration Statement, Petition, General Testimony, Statement of Arrears, Parentage Acknowledgment, and Affidavit or Direct Payments and Facts of Possession.

PRWORA also authorized the U.S. federal government to declare a qualifying nation as a Foreign Reciprocating Country (FRC). The FRC must maintain certain laws and procedures common to U.S. support enforcement agencies, such as the establishment of paternity and support orders; collection and distribution of support payments to the initiating court; the presence of a central authority through which all contacts are initiated and supervised; and services must be provided free of charge to U.S. applicants. In addition, some jurisdictions are required to provide other services, such as locating persons named in the support suit.

The federal reciprocal status certifies that the responding nation's forms and procedures are substantially the same as the United States,' thus settling that question the states had been struggling to determine years earlier. The FRC status is negotiated by authorities in DHHS and DOS. In the absence of a declaration of federal reciprocal status, the states are able to continue to negotiate their own arrangements with foreign jurisdictions, until such time as those countries are given federal reciprocal status and all state arrangements are preempted by the federal designation.

Although the United States has met with officials from more than 30 nations to discuss child support matters, since 1997, only nine nations have been designated FRC. Meanwhile, the states have forged more reciprocal agreements independently of the federal government. While not every U.S. state has an arrangement with the following nations, there are state-level arrangements with Germany, Hungary, Mexico, Finland, Switzerland, Fiji, Micronesia, Denmark, Jamaica, the British Virgin Islands, and South Africa, among others. Many states had arrangements with the nine nations that have now been preempted by federal agreements: Australia, most Canadian provinces, the Czech Republic, Ireland, the Netherlands, Norway, Poland, Portugal, and the Slovak Republic.[14]

After PRWORA passed, the Texas Legislature amended the Texas Family Code in 1997 to give the Texas child support enforcement office the authority to enter into

[14] U.S. Department of State, *International Child Support Enforcement Abroad.* (Retrieved 29 September 2003.) Available from: http://travel.state.gov/child_support.html#agreements

reciprocal arrangements, finally erasing all doubt as to whether or not state law permits the negotiations Mr. Caswell has been pursuing for years.[15]

The Federal Foreign Reciprocal Status Process

The federal Office of Child Support Enforcement (OCSE) acknowledges that the states were the first to develop a working system for handling cases with similar legal systems. But according to OCSE, "the consistency and effectiveness of procedures and the extension of the arrangements to other countries presented serious problems for the states and for the other countries involved or to become involved." Therefore, Congress authorized the U.S. Departments of State and Health and Human Services to work together to negotiate bilateral support enforcement agreements. "Under this legislation, the federal government is developing a unitary, national system that will help ensure that parents cannot evade their support obligations by leaving the United States or by coming to the United States."[16]

Steven Grant of the OCSE says that state arrangements on the basis of comity work well, but might not be sufficient to handle messy cases or unforeseen complications. The FRC status gives uniform coverage to all the many U.S. jurisdictions and cannot be revoked unilaterally, he explains.[17]

To earn the reciprocal status from the U.S. federal government, another country is required to have an office serving as a central point of contact for child support actions. The foreign nation must enforce the child support obligation and send the payment to the requesting nation, whether there is an existing order or not; if no order exists, the nation must obtain an equivalent; the country will use its own laws and legal procedures to enforce a foreign order; and the nation will assist in determining paternity and will enforce orders concerning children born out of wedlock as well as in wedlock.

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[15] *Texas Family Code* Section 231.2(d)(1)(A) (1997).
[16] *The United States and International Child Support Enforcement: Where We Were; How We Got Here; and Where We Are Going*. (Washington, D.C.:U.S. Central Authority for International Child Support, U.S. Department of Health and Human Services, June 2000): 4.
[17] Personal interview with Steven Grant, Office of Child Support Enforcement, U.S. Department of Health and Human Services in Washington, D.C., 7 November 2000.

The federal government wants other nations to ensure that U.S. citizens will not be charged for court costs in another nation. Cases of a foreign origin are processed in the United States at no cost to the applicant. But many countries often have a means test for legal aid, which U.S. citizens fail because of higher incomes. The U.S. federal government's desire for free court costs has been a barrier to the successful resolution of negotiations with countries such as Mexico and France.

In theory, the Federal Reciprocating Country status should make it easier for U.S. states to communicate effectively with the designated nations. The reciprocal status allows a U.S. state to treat a foreign nation as if it were another U.S. state, for the purposes of child support enforcement. Federal agreements stipulate the forms and protocols to be followed.

In practice, the reciprocal status declaration is extremely brief – a paragraph on a piece of paper signed by the Secretary of State and a corresponding foreign official. No practical directions or guidelines are given on how to pursue a foreign child support case.

State/Federal/International Issues

The Texas-U.S. axis (national causes): was the problem Texas sought to address under state or federal jurisdiction? What was the corresponding federal response: did the federal government support the mechanism, ignore it, or move to restrict the mechanism?

The problem Texas officials sought to address was nonpayment of child support, traditionally a state-level issue, but enforcing court-ordered child support payments is now a goal shared by both the federal government and the states. The states were the first to recognize that more and more child support cases involved individuals residing in foreign nations, and the first to establish a rationale for states to handle those cases without inciting a legal challenge. The federal government has begun to exercise its own power to make international reciprocal arrangements, but the states are still free to negotiate with foreign nations with which the federal government has yet to make an arrangement.

By the mid-1990s, the federal government knew that Texas was seeking an international cooperative mechanism for child support enforcement. By that point, the U.S. Office of Child Support Enforcement, along with the private National Child Support Enforcement Association, was helping to fund Mr. Caswell's international travel, and he was acting as a consultant to OCSE.

The relationship between the federal government and the state on this issue is complicated. With respect to domestic cases, the federal role has been to act to harmonize procedures across the states so that interstate cases can be handled more easily. Technically the 1968 federal child support legislation (RURESA) put in place a mechanism for states to confer with foreign nations with substantially similar legal procedures, but Texas officials were still uncertain as to whether or not they could act without violating federal or state law, and lacked the resources to determine which nations had substantially similar legal processes. But in the early 1990s, Mr. Caswell developed the concept of comity as an appropriate basis for states to work international cases with reciprocating nations. Then in 1996, after many states were already negotiating their own arrangements, Congress authorized the states to negotiate in the absence of federal action.

Even though the states now have clarity that they can legally pursue international child support arrangements, all is not harmonious between the states and the federal government.

The federal government will grant reciprocal status only to nations that meet all the federal requirements for total reciprocity, including no-cost legal services to all U.S. applicants.

Mr. Caswell disagrees with the federal approach. The federal viewpoint, according to Mr. Caswell, is to not reciprocate with nations that will not cooperate according to the U.S. standard. Mr. Caswell is willing to work with another nation on the basis of comity rather than reciprocity. Comity exists when the two entities (Texas and the foreign nation) recognize each other's court orders on the basis of friendship, knowing that the two entities are working to provide services to one another. Due legal process is followed according to each nation's basic ideas of fairness and justice.

Mr. Caswell sees two separate issues: will the foreign agency reciprocate is one issue. Is the child being helped, is the more important issue. He envisions that even nations with differing legal systems could cooperate on child support enforcement on the basis of comity or friendship, even when a more formal reciprocal arrangement may be unobtainable.

Before the PRWORA legislation, Mr. Caswell had some questions about the constitutionality of the states making their own arrangements. But now that states have congressional permission to do so, he would prefer to see the states make their arrangements without preemption by federal agreements. Overall, the federal reciprocity agreements have no positive effect, he says.

Mr. Caswell's complaints about the federal government's priorities seem to be validated by an anecdote about the thoroughness of federal efforts. After U.S. officials granted reciprocal status to Poland, OCSE called Mr. Caswell, asking him where to send child support payments so the custodial parent in Poland would receive it. Federal officials did not know this crucial information about how to get the money to Poland, even though the U.S. federal government negotiated an agreement with Poland. Needless to say, Mr. Caswell knew where to send the money. In Washington, Mr. Grant of OCSE says the agreements are meant to be lasting, so no phone numbers are included in the text – the reason why the Washington office did not know where to send the money.

Tom Laramey, who worked with the Texas OAG from 1983-1993, does not think too highly of the federal government's role in social services. The money and the rules come from the federal level, he says, but the responsibility for implementation is at the state level. "They (federal officials) want to control it all, but they don't want the responsibility," says Mr. Laramey. "Federalism is the perfect system for it. If it goes wrong, the state and locals get the blame."[18]

Mr. Laramey wonders why in 1983, he was spending state agency funds trying to figure out whether or not Mexico's legal system was substantially similar to the U.S. legal system. "Why wasn't Department of State out there working out how Mexican law

[18] Personal interview with Tom Laramey in Austin, Texas, 11 August 2000.

was similar?" he asks. "(Department of) State could have figured it out, that Mexico does or does not have similar laws."

Ms. Burke, who worked at OAG after Mr. Laramey did, concurs. "The states had to go out on their own and do this because Department of State never did (anything)," she says.

Today, federal officials acknowledge that the current federal approach builds on the framework established by the states. Stephen Grant of the OCSE says Mr. Caswell's role in moving the United States forward on international child support issues has been crucial. He refers to Mr. Caswell as a "partner" in creating the forms the federal office now uses. He says there is "no tension" between the states and the federal government, and acknowledges that states do some things better than the federal government do, such as locating negligent parents.[19]

But the federal involvement in negotiations is justified, Mr. Grant says, because a federal agreement will prevent defense attorneys in other nations from challenging the legitimacy of a state attorney general handling a case in a foreign court. Also, states might not always be aware of the larger issues going on between the United States and other countries. For example, the United States and other nations have sometimes reached an impasse in negotiations because of unresolved cases of parental kidnappings and thornier custody issues.

For example, for some time, the U.S. DOS would not negotiate with Sweden because of a case involving charges of parental kidnapping. Mr. Caswell says DOS did not want him to negotiate with Sweden – but Texas now has a completed arrangement for child support with Sweden. Apparently the federal government changed their position on the prohibition on negotiations with Sweden after Mr. Caswell lobbied.

[19] Grant interview.

The Texas-Mexico axis (state causes): How was the venue created? Did Texas' interest in and method of contact with Mexico differ from the U.S. government's relations with Mexico?

Texas' approach differs from the federal approach. Texas, as well as other U.S. states, is willing to work another nation's cases on the basis of comity, or friendship, while the federal government wants to ensure a more formal standard of reciprocity. The federal government also insists that other nations adopt U.S. standards on two points: paternity and court costs.

Federal negotiations with Mexico have failed on these two points. Mexican law requires a child's mother to be present to establish paternity. A U.S. court can order a blood test for a DNA match for paternity, and neither parent needs to be in court.

Mr. Caswell says that in 90 percent of international cases, parentage is already established, so a dispute involving ten percent of cases prevents an agreement that would benefit the other 90 percent. He also says the federal government is not successfully negotiating with the nations with which Texas has the most cases, such as Germany and Mexico. He has complained that the federal negotiators do not give other nations sufficient notice of the arrival of U.S. federal negotiators, and he suggests that the federal negotiators do not always follow the protocols of the other nation.[20]

The director of the Mexican child support enforcement office in the Mexican State Department confirms Mr. Caswell's complaint. Attorney Rosa Isela Guerrero of the Mexican Department of State (SRE) says that Mexico requires a formal petition to begin negotiations with the U.S. government on the issue, but as of 2002, had yet to receive a formal petition despite the fact that U.S. negotiators had visited their office. Meanwhile, the Mexican office has completed arrangements with all but two U.S. states.[21]

At the state level, relations between Texas and Mexico are progressing. Although child support enforcement matters are handled through the Mexican federal government,

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[20] Caswell (1998): 544.

[21] Personal interview in Mexico City with Rosa Isela Guerrero of the *Oficina de Derecho de Familia, Secretaría de Relaciones Exteriores*, 30 October 2002. As of 2002, Mexico has arrangements with all U.S. states but Georgia and Florida.

Mr. Caswell obtained written authority from the Mexican Ministry of Foreign Relations that the Mexican states can communicate directly with the U.S. border states on other family law matters. Mexicans call it "reciprocal arrangements." The Texans call it "arrangements." The OAG has also developed a Texas-Mexico cooperative program called "*Niños Primeros,*" or "Children First." The training conference brings together Texas and Mexican officials involved in family issues.

Texas' arrangements with Mexico is not a binding international agreement but a "good faith policy arrangement made within the laws of both countries," Mr. Caswell says. Each party uses its own laws and procedures to help a child in another country and to recover whatever support is recoverable.

The U.S.–Mexico axis (international causes): what were the international political and economic conditions that contributed to or prevented the state's effort to reach across the Rio Grande?

The international political and economic conditions that pressed the state into action were the increasing numbers of international child support cases. "The border is so artificial," says Cecilia Burke, formerly Mr. Caswell's coworker at the Texas Office of the Attorney General. "People freely go back and forth, are in business together, have friends, have sex, and so on."[22]

Most of the child support cases between Texas and Mexico involve married couples who have separated; the father is in the United States working, the mother is in Mexico, and he is not sending child support back home. There are a few cases of U.S. citizens living in Mexico and refusing to pay support to the custodial parent in the United States. Sometimes Mexican men come to Texas to work and start new families. The Mexican consuls in Texas try to encourage these men to remember their obligations to their families still in Mexico. The consuls are aware of the patterns that migrants will follow – how individuals from certain parts of Mexico will settle in certain areas of Texas – so the consuls are able to assist in locating delinquent parents.

[22] Burke interview.

The main contentious issue between the two nations is the differing legal systems and practices – which is still an issue at the federal level, preventing the conclusion of negotiations on the reciprocal status agreement, even while the states are able to continue to process cases with Mexico on the basis of comity.

CONCLUSION

Many concerns converge in this area. Family law is traditionally a state-level responsibility. But domestic social changes led to a need to standardize procedures across the nation, and the federal role increased with passage of the IV-D Social Security legislation in 1974. The federal government has used its constitutional authorization to regulate commerce to justify its movement into child support enforcement. In the ensuing years, the number of single-parent families within U.S. borders increased, and the increased travel associated with globalization raised the numbers of international cases.

Texas struggled to find a way to legally work international cases. Although other agencies were already developing capacities to act informally in other policy areas, the fact that child support cases would be heard in foreign courts meant the OAG had to have a sound legal basis for pursuing cases overseas. Eventually Mr. Caswell developed the argument that comity, a concept historically a part of international commercial law, was a basis for states to work international cases without constitutional infractions. As it turns out, the federal government had already put the framework for states to confer with other nations in place but had not communicated to the states that they were wholly permitted to develop relations directly with other nations – or which nations had substantially similar legal systems to the U.S. system – until 1996, with the passage of the PRWORA legislation. A document tracing the history of international child support enforcement, issued by the U.S. Department of Health and Human Services in 2000, explains that even though the U.S. Constitution prohibits states from entering into treaties with foreign nations, “the consent of Congress is not required for interstate

agreements that fall outside the scope of the Compact Clause."[23] But this apparently was not clear to Texas officials at the time they were struggling to find a way to respond to the increasing number of international cases.

When compared to the other case studies in this dissertation, child support goes in a different direction. In the areas of relations, trade, and criminal justice, the states can be thought of as moving into areas of federal responsibility as they create international mechanisms to confer directly with other nations, in effect forming their own foreign relations. But in child support, Congress has federalized family law policy, even while states were trying to find a way to handle growing numbers of international cases. Then in 1996, Congress authorized the federal agencies to negotiate Foreign Reciprocating Status with other nations, and any successfully-negotiated federal agreements will eventually preempt state arrangements.

This case is consistent with the others in that the autonomy of the states to innovate policy leads to the creation of international arrangements. This case also shows the lack of clear communication between the federal government and the states as to what role they could play in international affairs. Not until after states had developed their own means of handling international cases did the federal government authorize the states to do so.

This case differs from the others in that more federal funding is involved in this policy area than in the others. Whereas very little federal funding is involved in all three of the previous case-study areas, the states receive matching federal funds for providing Title IV-D services such as establishing paternity.

The short-term goals of each level of government in this area are the same – both want to ensure that child support payments get to the child. But the strategies differ. While the states are satisfied with working with another nation on the basis of comity, the federal government prefers the more formal status of reciprocity, even though, as Texas officials argue, more children are being served now through state agreements on the less-formal basis of comity.

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[23] *The United States and International Child Support Enforcement*, p. 3.

Because the short-term goals are the same, the federal government allows states the freedom to pursue international cases, thereby providing a valuable service to U.S. families. But the long-term goal is that the federal reciprocal status agreements will preempt the state-generated agreements, provided the federal government can persuade more nations to accept its terms.

At first glance, the child support case indicates that when policy areas become internationalized, ultimately, the federal government is likely to assert control even in traditional areas of state regulation. Congress is authorized to regulate such activity either on the basis of regulating international commerce or supremacy in foreign affairs.

However, the presence of federal funding in this area complicates comparison to the other issue-areas somewhat. It may be that since the federal government helps to fund the states, there may be a stronger tendency to preempt. Also, because single-parent families are pervasive throughout the nation, this area of policy benefits from standardized procedures, which has led to a federal apparatus for handling domestic cases across the states, than do areas with regional variations such as trade and criminal justice.

But even though the child support policy area begins with a different dynamic from the other three case-study chapters, the developments in this field indicate that as globalization continues to change the nature of domestic policy, the federal government will reassert federal control where it can, even though the states are willing to work from a less formal basis and therefore are arguably more effective in reaching sustainable arrangements with other nations.

CHAPTER EIGHT
CONCLUSION

It is difficult to analyze or even notice change while in the midst of it. It is a joke among graduate students to conclude a project by claiming "more research is needed." But if that truism fits anywhere, it fits in this developing area of how U.S. states are developing international capacities and how intergovernmental relations are affected.

The states are vital partners in U.S. federalism, but the federal government is supreme in the practice and conduct of foreign affairs. The legal restrictions on states have contributed to a time-honored concept of states as having no capabilities or even interests in foreign affairs. But globalization has changed the nature of domestic policy, bringing international causes and effects to bear on domestic policies. Despite the lack of formal authority to operate in the international arena, the states have responded by developing relations directly with foreign governments.

According to the prevailing notion of states as powerless in foreign relations, one would expect the federal government to exercise its supremacy and restrict the states' growing international role. But this has not necessarily been the outcome. The question then becomes, why have states developed international roles, and when does the federal government restrict them?

Although states have been developing their international capabilities for several decades now, there is surprisingly little research on this issue of state freedom and federal restriction. By examining Texas-Mexico relations as they developed over time and across a range of policy issues, a clearer picture emerges of the general conditions under which states may pursue international roles and when the federal government will move to restrict one state, and by extension, all the states from international pursuits.

While each state responds to globalization in unique ways, the states share a legally subordinate position to the federal government in foreign affairs. Therefore, it is reasonable to assume that if any of the federal branches restrict a single state from expanding into an international role, it is likely all states will be subject to the same federal restrictions. So it is logical to hypothesize that the observations from the Texas case indicate the general conditions under which all states may either pursue an international role or be restricted from doing so.

In the Texas case, the state has been most free to develop its international role when 1) the state acts within its traditional areas of authority, such as economic development and criminal justice, and can exploit the lack of definition as to the role a state may play in foreign relations and thus pursue its own goals; and 2) when federal officials view the state's action as a beneficial resource in achieving mutual policy goals.

Looking at the Texas case in conjunction with past Supreme Court decisions limiting the states shows that the states are most likely to be restricted in their international roles when 1) a state's actions offends a politically significant complainant capable of challenging the state; and 2) when the federal government demands the states adopt standardized policies and procedures nationwide.

The Texas-Mexico case indicates that as domestic and foreign policy have intertwined, states are still able to fulfill their traditional roles as policy innovators, policy implementers, and essential governing resources.

A significant finding of this research is that although the historical basis for excluding states from foreign affairs has been the fear that internationally-active states would threaten the national interest, this concern does not emerge as a basis for restricting states today in these policy areas.

This concluding chapter looks at the lessons of each policy area of the Texas case, then takes a closer look at the permissive and restrictive conditions.

What the Texas-Mexico Case Indicates: The Four Issue-Areas

Trade:

The roles the two levels of government play are as follows: the federal government is responsible for regulating U.S. trade and tariff policies and negotiating international trade agreements. But the states have the authority to develop, fund, and implement their own economic development policies. Increasingly, local economic goals are met through participation in international trade. The two partners in federalism share the goals of a healthy economy, but without the efforts of the states, national economic goals could not be met.

There is intense electoral pressure on subnational governments, as well as the federal government, to foster economic development. All levels of government respond to pressure from the business sector, which holds a privileged position in U.S. politics because of the government's need to keep voters employed and maintain a viable tax base.

Because globalization has so changed the domestic economy, the states' foreign relations begin with trade. Apparently, subnational governments were the first to realize that global economic change demanded new domestic economic strategies. Competing against one another to develop international trade promotion mechanisms, states began opening trade offices and supporting exports as far back as 1954, accelerating in the 1970s and 1980s. It appears that states willingly funded these initiatives on their own. As domestic policy has been changed by international economics, the states' traditional role as policy innovators, driven by intrastate competition, has continued.

Why has the federal government not moved to restrict the states from developing relations directly with foreign nations in trade? One reason is that the states are acting within their jurisdiction. And, the states and the federal government share the same goals. The states are the means by which federal economic goals are met. To restrict the states from direct foreign relations for economic development purposes is not in the federal government's interest. Congress has stated that nonbinding trade arrangements

between states and other nations are permissible as long as the states are not motivated by a desire to supercede federal policy.[1]

However, when a state diverges from a promotional role and behaves in a way that injures a party capable of mounting a significant political challenge, federal restriction may follow. This was the case when a free trade group challenged the law passed by the state of Massachusetts, prohibiting the state from purchasing goods or services from businesses with a presence in Burma (Myanmar). Because Congress later adopted its own sanctions against Burma, the U.S. Supreme Court preempted the Massachusetts law on the grounds of federal supremacy in foreign affairs.

However, the goal of most state-level foreign mechanisms is to expand trade; the Massachusetts law was seen by international businesses as a restriction on commerce. The lesson for states is that if their involvement in international trade is limited to trade promotion, unlikely to offend a significant political interest, their efforts will likely go unchallenged and thus unrestricted. This is true even though international trade policies have highly political effects. Winners and losers in international economics are determined by decisions made at the federal level, thus reducing the likelihood that states will be held responsible for the gripes of sectors disadvantaged by changes in international trade policies.

But there are other repercussions from the growing role of states in international trade that portend future intergovernmental conflict. The irony of this policy-area is that by responding to the pressures of a changing global economy, states furthered and deepened the interconnections between the United States and other nations. The increase in international interdependence has led to pressure for greater regulation of trade by the federal level. Through the WTO and NAFTA, the U.S. federal government has extended its reach into areas of regulatory authority where the states are traditionally sovereign. If the United States enters into more trade agreements in the future, the pressure will intensify for the United States to move to a single harmonious standard, rather than 50 state standards, in regulating commercial goods and services. In the future, states may be asked to yield areas of regulatory authority in favor of a single international standard.

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[1] See Chapter Two, p. 61.

By studying the role of states in trade policy, then, two conditions in which the federal government might restrict the states are revealed: 1) following the objections of a politically significant complainant; and 2) when the federal government desires a move to a single national standard for commercial regulation governed by international treaties.

Criminal Justice:

All levels of law enforcement share the common goal of preserving the public safety. As U.S. society has become more internationalized, the nature of domestic law enforcement has changed. State and local law enforcement have had to learn to handle domestic crimes that involve foreign citizens.

At first glance, it appears as though the federal government has not moved to prevent the states from developing an international criminal justice role. But existing international treaties set the parameters in which state and local law enforcement are supposed to operate; however, these restrictions are not consistently honored by subnational law enforcement. In theory, treaties should act as a restriction on states by providing a standard set of internationally-negotiated procedures to follow. Honoring treaties is supposed to preserve good relations with other nations, benefiting the nation as a whole. But subnational law enforcement tends to focus on the immediate goals of solving the case at hand, and sometimes sees treaty requirements as barriers to solving a case.

Thus attitudes at the federal level towards the development of a state and local role in international criminal justice are mixed. States have the authority to pursue their own cases without federal involvement, and the volume of cases state and local law enforcement handle is vast. Even if the federal government wanted to handle all cases involving foreign citizens, a huge allocation of federal resources would be required, and would prove politically and bureaucratically unfeasible. The federal government recognizes the nation as a whole benefits when state and local law enforcement pursue local cases that involve international actors, but federal officials are uneasy given the

omnipresent risk of a serious diplomatic mistake that could damage U.S. foreign relations overall.

By looking at the Texas case, it is apparent that the federal government has not made comprehensive efforts to prevent the states from relying on their own international contacts in fugitive recovery. But neither has it communicated to state and local officials that seeking a deportation of a U.S. citizen is not necessarily going to cause a problem. Texas officials still feel that contacting foreign authorities for help with a fugitive is a "back-door" process that would meet with federal disapproval, despite the fact that federal agencies have encouraged other nations to deport U.S. citizens who are fugitives from federal law.

This lack of communication between the federal government and the states over what type of international role the states may take is surprising, given the acknowledged need to increase intergovernmental cooperation to combat terrorism. How much more could the states accomplish, if there were more clarity on what their international law enforcement role could be?

And yet, it is not in Washington's interest to encourage the states to be internationally active. Criminal justice is a sensitive area, and there is always the possibility a subnational official will behave in a way that offends a foreign nation. Federal officials arguably use ambiguity as a tacit means of discouraging the states from expanding their international criminal justice roles, in hopes of minimizing the possibility of international incidents. The lack of clarity surrounding these issues works to the advantage of the federal government, by acting as a brake on states. At the same time, lack of clear rules acts to the advantage of the states, giving them room to maneuver.

What of the future of this area? In the long term, federal policy goals could come to differ from local goals depending on the global security climate. Currently, fighting terrorism involves both military and law enforcement strategies. These strategies may shift, depending on how international developments unfold. A change in the international security climate or a change in federal strategy could change the role of domestic law enforcement and increase the levels of conflict in intergovernmental

relations. As state and local law enforcement are asked to play a larger role in meeting national security goals, how resources are distributed between national and local responsibilities could become a larger point of contention.

If more international law enforcement treaties are negotiated in the future, state and local law enforcement may have to conduct investigations according to international standards. Technological developments may demand new forms of intergovernmental cooperation according to a single international standard. International police bodies such as Interpol may become more influential in domestic law enforcement. Whether future treaties are effective in guiding the behavior of state and local law enforcement will depend on how well federal officials communicate with state and local law enforcement the value of its long-term goals. The only other option to ensure state and local compliance would be to increase the federal resources given to oversight or management of cases involving foreign nationals, both exceedingly unlikely developments due to the sheer number of cases.

Relations:

The federal government alone has legal authority to confer with foreign nations; the states have none. No policy arrangements emanating from the state level rise to the level of binding law; therefore all state-foreign relations are nonbinding, no matter how regular or institutionalized they may be.

There is a perpetual lack of definition on which level of government is responsible for U.S.-Mexican border development. But for purposes of analysis, the assumption is that the state and federal levels share goals of harmonious relations with Mexico, free and open trade, progress in environmental management, and reliable security. The desire for policy coordination along the U.S.-Mexican border (and the U.S-Canadian border as well) is stronger at the subnational level than at the federal level, although even state-level interest in policy along the Southern border is historically spotty.

In developing regional policy-coordinating mechanisms, the states were acting in their traditional roles as innovators of policy designed to meet local needs. The conferences also lobby the federal government to pass legislation favorable to the region's interest, an acceptable political practice in which the states may engage. The difference in these cases is that states were expanding their traditional domestic roles to include foreign state actors in previously unprecedented international intergovernmental mechanisms.

The constitutional limits on the states' role in foreign affairs contribute to a lack of clarity on exactly how far the states can develop relations with bordering states. But the lack of a formal role for the states did not prevent the states from meeting and discussing matters of federal jurisdiction. The two regional mechanisms studied here developed without serious federal objections, indicating each could be more assertive than they are today – after all, the region does not lack challenges to address. All the same, state officials seem to limit themselves in part because of the legal ambiguities surrounding the role of states in the foreign affairs of each nation.

Ambiguity works to the federal government's advantage by causing the state leaders to voluntarily water down the strength of the their policy recommendations to the federal government. But ambiguity could work to the states' advantage as well, giving state officials room to push more aggressively for specific federal policies before meeting federal resistance.

But without leadership willing to test the limits of the legal and political grey areas in international intergovernmental relations, the Border Governors' Conference and the Border States Attorneys General Conference will continue to meet and even be effective in lobbying, but on a limited range of largely non-controversial policies.

In the long term, if the population along the border continues to grow, the challenges of economic development, social policy, and resource management are likely to intensify. If so, the need for policy definition and coordination will only increase.

Theoretically, grassroots citizens' groups and environmental management organizations could step in to what appears to be a chronic leadership vacuum. If these groups were able to persuade the border state officials' groups that the scope of state-

level involvement in border intermestic relations is still untested, perhaps these two mechanisms could be encouraged to increase their influence. After all, organizing criticism of ineffective federal policies is a far cry from attempting to supercede federal prerogatives.

This research indicates that these organizations could expand their activities as long as their motives were not to supercede federal policy and their actions produced no complaints from a significant political group with the influence to mount a challenge, both unlikely occurrences in the area of border intergovernmental relations. The states, through asserting their jurisdiction over domestic policy along the border, in an area of political and legal ambiguity, have an opportunity to define their own roles, if they but take it.

Child Support:

Family law is the traditional purview of the states. By moving into international child support enforcement, Texas was fulfilling its traditional state role as an innovator of policy, but in an area of exceeding legal ambiguity. Texas officials grounded the expansion of the state's authority in family law on an arguably legitimate basis for state action, citing the absence of federal action in this area of family law, as it became internationalized.

But as the numbers of single-parent families has grown, the federal government first moved into domestic child support enforcement, on the basis of regulating interstate commerce. Congress has created a nationwide enforcement mechanism by standardizing policies and procedures the states must follow in order to receive federal welfare funds. In international child support enforcement, the federal government seeks the standardization of policies and procedures between the United States and other nations. Even though the federal government has authorized the states to pursue international child support arrangements in the absence of federal action, eventually the states will be preempted by binding international agreements negotiated by the federal government and individual nations.

The states and the federal government certainly share the policy goals of getting child support checks to children in need. But as the federal government reaches international child support enforcement agreements, states will then have to comply with uniform federal enforcement policies and procedures, and any state-level arrangements will be preempted.

The federal agencies involved in child support issues have adapted the model Texas innovated for its own child support negotiations with other nations, showing that even when domestic policy becomes internationalized, the states continue to act as a source of policy inspiration for the federal government.

An unexpected feature of the federal government's involvement in international child support cases is intergovernmental conflict in two directions: domestically, the Texas official in charge of international child support feels the federal government is inept in negotiating federal agreements; and internationally, the federal government is in conflict with some foreign nations over the terms of the agreements. The federal government's insistence on reciprocity rather than comity and free court costs for U.S. citizens are proving to be sticking points with nations such as Mexico, one of the top two countries involved in Texas' international child support cases. Washington has negotiated only eight reciprocal agreements in almost as many years.

The child support case shows the federal government recognizes the value of allowing states an international role to pursue shared policy goals; this is evidenced by Congress' declaration that states may make their own arrangements. But this case also shows the federal government will preempt even the states' traditional regulatory authority in domestic politics when the federal government sees a need for uniform policies and practices, indicating the federal government would also preempt a state international role under the same conditions.

CONDITIONS

Although the Texas-Mexico case is the focus of this dissertation's research, the observations drawn from this case are applicable in general to the other U.S. states. The policy areas in which Texas is active in pursuing relations with Mexico are also areas in which other states are internationally active. Although each U.S. state experiences and responds to globalization in unique ways, the extent to which the states may develop their international role is contingent upon the permissiveness of the federal government. Because Texas has been developing its international relations with Mexico over a longer span of time and over a range of issues, examining this case offers many opportunities to observe the federal response. Because all the states share a subordinate relationship to the federal government, the degree to which Texas has been permitted or restricted in developing its international role indicates the general conditions under which other states are granted freedom or are limited by the federal government.

Evaluating these four policy areas suggests there are conditions under which states are most likely to be permitted to develop an international role, and conditions under which the federal government will assert its supremacy in foreign affairs in ways that eventually affect all the states.

Permissive Conditions

States seem to be most free to develop an international role under the following conditions:

Legal Ambiguity

Because states are constitutionally prohibited from operating in foreign affairs, there is still a lack of definition as to how far the states' evolving international roles may develop. In theory, states can use this ambiguity to their advantage, however, by expanding their international roles up until the point they offend a significant political interest.

In the case of border relations, Southwestern state officials took advantage of the legally and politically ambiguous arena of border relations by cultivating international

intergovernmental relations with their Mexican counterparts. Given the lack of federal opposition to the creation of international forums for state officials, the states could arguably be more aggressive in pursuing policies that benefit states on both sides of the border.

In criminal justice, states have the authority to pursue their own cases, but there is a marked lack of clarity on exactly how far they can go when these cases involve foreign actors. International treaties govern international criminal justice issues, and are supposed to restrict state and local agents. However, subnational officials are routinely able to operate outside the bounds of the treaties, even though such behavior may imperil U.S. foreign relations as a whole. In this case, the ambiguity is a permissive condition, strengthened by the lack of control the federal government currently exercises over the multitudes of subnational law enforcement officials.

Common Goals

In all of these policy areas, the states and the federal government share common goals, even when their stakes in those goals differ. The lower levels of government have a far greater stake in local issues and outcomes. As states are legally able to fund their own initiatives, states can innovate policies without waiting for either federal direction or funding. State officials interviewed for this project did not expect ever to be limited by the federal government, nor did they feel it was necessary to ask federal permission to contact foreign actors directly.

Although shared goals are important factors in maintaining intergovernmental harmony, the developments in these areas fall short of cooperative federalism because of the lack of mutual planning between the levels of government. The continued lack of clarity surrounding the extent to which the states may develop their international roles arguably reduces the effectiveness of policy at all levels. In the Texas case, the state is surprisingly uncoordinated from agency to agency; even though several different agencies may be cultivating relations with the same foreign government, they do not necessarily confer with one another on goals and strategies.

In the future, the possibility exists that as globalization continues to integrate nations, the international pressure for an harmonious standard in many policy areas will move the United States towards coercive federalism. If the United States continues to pursue additional international agreements, it is likely the federal government will demand the states yield fifty different state standards, in areas like sanitary standards and transportation of goods, to a single international standard, negotiated by the U.S. Trade Representative and foreign trade ministers.

Thus while common goals are important in establishing conditions favorable to the states, common goals are sometimes not enough to stave off preemption, if federal officials see a need for policy uniformity.

Restrictive Conditions

The federal government is most likely to restrict the states from developing an international role in the following conditions:

A Significant Complainant

The role of a complainant is of huge significance in determining the political practice of U.S. federalism; in the United States, actors act until they are stopped by a significant enough force. The practice of federalism in this era of intermestic policy reinforces this truism about U.S. federalism and the legalistic U.S. culture.

At the moment, multinational corporations have more influence on the development of international trade policies than do the states. When Massachusetts passed a law changing its own procurement policies to prohibit the purchase of goods and services from corporations operating in Burma, a complainant arose, offended that the state sought to limit economic activity. The result of the challenge was a unanimous Supreme Court decision preempting the state law.

In the future, it is possible that other traditional state and local government practices could be restricted by the federal government in order to meet national trade policy goals. If other nations successfully argue that U.S. state economic development

practices, such as subsidizing local businesses or awarding procurement contracts to minority businesses, constitute unfair treatment or restrictive trade practices, these areas of state authority may be preempted by federal action.

In criminal justice, other nations continually complain about U.S. criminal justice practices they perceive as unjust, such as the use of the death penalty, currently with no political effect. But it is not inconceivable that in the future – admittedly the distant future – international pressure on the federal government could become significant enough to lead to the abolishment of the death penalty in the United States. Strange to think, yes, but then, who ever thought U.S. state courts would be enforcing child support orders issued in Poland?

Border relations and child support are unlikely areas to generate a significant complainant. Because of the mysteriously low political priority placed on the border, the conferences of border state officials are unlikely to increase in influence to the point of offending the federal government. In child support, the goal of federally-negotiated enforcement agreements is to prevent defendants in foreign courts from objecting to the long arm of a U.S. state reaching into another nation's legal procedures. Federally-negotiated international child support enforcement agreements are intended to obviate such complaints.

A Single Policy Standard

Two of the four cases show that when the federal government argues the need for a single national standard or procedure, preemption will likely follow. The trade and international child support enforcement cases show that even given common goals, the federal government will preempt on the basis of the desirability of policy uniformity.

If globalization continues to bring international causes and effects on domestic policy, the likelihood of intergovernmental conflict will only increase, particularly if the federal government negotiates future treaties regulating trade and investment according to a single international standard. If so, the two levels of government will find their policy goals diverging, as states find they want to maintain their regulatory authority, but

the pressure for an international standard leads the federal government to preempt state laws.

The same pressures for standardized practices in law enforcement and criminal justice could develop, and given the problems today of keeping state and local law enforcement in line with international treaty obligations, more federal oversight may follow. Or, the federal government could levy some kind of political penalties for treaty infractions committed by state and local law enforcement.

The move to a single policy standard raises the most serious questions for the future of democracy in the United States. The language of this dissertation has emphasized how domestic policy has taken on international aspects. But reversing this concept – instead thinking how foreign affairs has expanded to cover an endless range of domestic policies – changes the focus and implications, what Huntington calls the "domesticization" of foreign policy.[2] As Barry Friedman writes, "If the national government's power in foreign affairs is great, and the area that can be called foreign affairs is endlessly expansive, then state autonomy is subject to serious compacting."[3]

If globalization continues to transform both international and domestic politics, the questions this dissertation addresses need to be considered seriously by policymakers at all levels of U.S. government.

The Link Between Governance and Foreign Policy Activism

In recent years, the only significant challenge to the states' involvement in international politics was against Massachusetts, when the state refused to grant state contracts to businesses with a presence in Burma. Yet *Crosby v. NFTC* is the anomaly in several decades of increasing state-level international involvement, in that it generated a significant opponent in the form of the National Foreign Trade Council, who objected that the effect of the state law would be a restriction on economic activity.

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[2] Samuel P. Huntington, "The Erosion of National Interests," *Foreign Affairs* 76 (September/October 1997): 29.
[3] Barry Friedman, "Federalism's Future in the Global Village," *Vanderbilt Law Review* 47 (October 1994): 1471.

While the significant lesson of *Crosby* is that the federal government may restrict the states following an objection of a politically significant complainant, the case is also one of foreign policy activism, as opposed to governance like the other areas studied here. Massachusetts' intent was to influence events in another country – arguably a foreign policy objective. Even though Congress later passed its own sanctions with the same intent – indicating common goals with respect to events in Burma – the federal law preempted the state law, on the grounds that the state had overstepped its authority and impinged on federal supremacy in foreign affairs.

While *Crosby* shows that states can be restricted when their activities offend a significant complainant, the case begs the question of when states might move from establishing foreign relations for purposes of governance into the realm of foreign policy activism.[4]

While the research presented in this document may be of interest to state officials who want to know how much leeway they have in developing overseas contacts, federal officials might be more interested in knowing whether or not a state will move from establishing foreign links for governance to foreign policy activism. This should be of special interest to federal officials, given that states are now more willing to express their dissatisfaction with federal policies, and states are likely to be increasingly affected by any future international treaties.

The shortcoming of the Texas case is that it does not reveal whether there is a link; in Texas' case, a rich experience in expanded governance has not led to foreign policy activism. True, several cities in Texas declared themselves to be "safe havens" for Central American refugees in the 1980s, objected to nuclear weapons development, and opposed apartheid government in South Africa. But as of October 2003, only one of the 167 or so local governments nationwide opposing the Patriot Act is in Texas: Sunset Valley, a subdivision of Austin, population 365.

[4] Readers may recall that Chapter Two discussed the foreign policy activism of the states; of which, the Massachusetts Burma law is the only to generate a significant complainant and be struck down by the Court.

Texas has not been one to disturb the waters by opposing federal foreign policy. Why would Texas be a leader in international ties for purposes of governance but not in foreign policy activism?

One might expect Texas to be activist, given the Lone Star State is famous for its independence and prides itself on its history as a sovereign republic. Texas certainly exhibits attitudes Ivo Duchacek would term "opposition to bigness and distance" that subnational governments use to justify the development of direct foreign relations.[5]

But there are other reasons why Texas would not be activist, not the least of which is that the current U.S. president was previously twice elected Texas governor. In addition to the state's independent-mindedness, characteristic of the U.S. West, Texas also has a conservative Southern culture; in the past ten years the state's electoral base has become more Republican. Texas has a patriotism born of a sizeable military presence and an influential defense industry, and the significant role of business, particularly the oil industry, in state politics mirrors the important role business plays in national politics. So despite the rhetoric that Texas is an independent state that doesn't cotton to orders from a distant federal government, in reality Texas is a pro-business state, and business is not a source of opposition to U.S. foreign policy, but a driving force, as the sectionalism literature shows so well.

Program of Future Research

The fact that no existing model applies to this area provides an exciting opportunity for thinking about the study of international politics in a radical new way. Models that focus on central-government-to-central government relations have obscured important activities taking place outside of the limited focus of traditional theory in both International Relations and federalism. Shifting the emphasis from studying levels of government to studying governance could open up new vistas of understanding how interests and capabilities coalesce and fragment around specific issues rather than at a

[5] Ivo Duchacek, "The International Dimension of Subnational Self-Government," *Publius:The Journal of Federalism* 14 (Fall 1984): 16.

given level of government. This can allow the researcher to see the significant patterns of activity, the alliances and antagonisms that develop around issues, which a single-lens focus obscures. It may be helpful to think about how jurisdiction is determined by issue-area rather than by level of government.

The emphasis of this project is on states because they are one of the two components of federalism; but were I starting this project with what I know now, the study would be more open to local governments in order to show the complete picture of how different levels of government intersect in areas of domestic policy that are now internationalized.

The ways in which each state responds to globalization is shaped by a state's internal politics, resources, and culture. While globalization may open the door for all states to initiate international roles, each state will respond in unique ways. Explaining each state's specific response to globalization requires exploring other factors peculiar to each state's internal politics. For example, in the Texas case, Gov. Bill Clements' experience in both the state's oil industry and in the U.S. Department of Defense may have contributed to his willingness to reach out to the Mexican governors. His warm personal relations with the President of Mexico facilitated the establishment of the Border Governors' Conference.

While personal relationships and leadership played a significant role in how Texas' international role developed, without further state-by-state research, it is not possible to draw conclusions as to the significance of gubernatorial leadership for state-international mechanisms in general. Factors other than leadership could be more influential in other states, such as bureaucratic initiative, demographics, or the influence of particular pressure groups. An interesting research project could consider which internal state factors across many states led to state-foreign initiatives, and the specific ways Washington responded to which state-level causes. A project of this sort could help to update the federalism literature which has yet to fully consider the effect of globalization on U.S. intergovernmental relations.

Future research could also raise normative questions about the link between governance and legitimacy, and how subnational governments' willingness to venture

into global affairs may or may not increase the effectiveness of government, thereby serving to legitimize U.S. government overall. If this could be proven, then the need for more policy coordination among levels of government would be shown to be of utmost importance. Understanding how levels of government interact in internationalized policy areas then becomes crucial to achieving good governance.

Another research question to pursue, related to the goal of good governance, would be to see whether in the era of intermestic policy, states enact more democratic policy or if they are captured by the same interests as the federal government, and how the influence of interest groups changes – or not – if globalization intensifies. Valuable research could be done on how political interests determine how quickly and in what areas the U.S. government moves to adopt international commercial standards, and how this affects the practice of U.S. democracy.

John Kincaid suggests future research when he writes,

> Implicit in the fear that constituent diplomacy threatens the nation-state is the assumption that sovereign nation-states ought not to be challenged in foreign policy by competition from their constituent governments. This in turn must rest on the assumption that nation-states are the only legitimate and competent representatives of the people who live within their territorial domains, and that national elites represent a unified national interest…these assumptions require both normative and empirical examination.[6]

Whether or not there is a link between the increase in presidential power in trade negotiations and the rise of states forging their own international trade relations has yet to be thoroughly examined, but arguably, a stronger presidential role in trade relations reduces the influence of states by reducing the input of their congressional representatives. This possible link merits further study.

[6] John Kincaid, "Constituent Diplomacy in Federal Polities and the Nation-state: Conflict and Cooperation," in *Federalism and International Relations: The Role of Subnational Units*. Hans J. Michelmann and Panayotis Soldatos, eds.(Oxford: Clarendon Press, 1990): 55.

A Future of Increased Conflict

This dissertation research suggests that even mutual policy goals do not necessarily ensure the freedom of the states. This project has argued that throughout the course of this nation's history, both the states and the federal government pursued economic development goals, largely in harmony. But if the United States continues to integrate itself further into the world economy and initiates more international treaties, the states may find themselves facing further restrictions on their traditional areas of regulatory authority such as criminal justice, agricultural production, transportation of goods, and so forth. If the federal government's goals shift from support of short-term economic development to the long-term goal of creating a global market, the potential for conflict among the levels of government may increase.

A move towards coercive federalism may be tempered by the fact that the federal government needs to maintain good relations with the states. The federal government is either incapable of or unwilling to handle all domestic-level developments that involve foreign actors. Arguably, when states develop international roles for the purpose of meeting domestic governing goals, the nation is benefited more than it is harmed. The fears that internationally-active states would undermine the nation as a whole have come to naught; this research shows that in today's policy environment, the cherished notion that internationally-active states will damage the national interest does not carry the weight it did in the past.

If globalization proceeds, the risk of intergovernmental conflict arising out of changes in domestic policy will need to be well-managed. The current lack of clarity on how far the states may go in pursuing an international role indicates there is much room for improvement in managing the domestic changes brought about by globalization. This is the responsibility of the federal government.

If current conditions persist, the merging of two state-level trends can be foreseen which will produce conflict: the tendency of states to assert themselves in international commerce and to be more vocal in opposing federal foreign policy will at some point converge with growing concerns about international labor and environmental standards. If subnational governments continue to see manufacturing sectors suffer from the effects

of cheaper imports, a grass-roots movement could develop to pressure the U.S. federal government to develop a trade policy that demands other nations improve their labor and environmental standards.

Intergovernmental conflict between the federal government and the states is exactly what the Supreme Court case law in the past tried to prevent: the perception outside of U.S. borders that disunity and disharmony reign within U.S. borders. Such a perception would not serve the interests of U.S. national security, providing cracks through which both internal and external threats may slither. While the states arguably place a higher interest in economic goals over security, the states have still been willing partners in fighting to achieve U.S. security goals. The degree of intergovernmental conflict that will accompany fighting the war on terrorism depends on how well the federal government communicates to state and local actors what their roles in this dynamic policy environment may be.

The states are partners in the federal system. But as domestic policy and foreign policy have intertwined, it is no longer possible to hold a concept of states as lacking in capabilities or interests in international politics. If the global economy continues to change apace, relations between these partners in federalism will continue to transform. The federal government needs to ensure that democratic legitimacy is not compromised in the process, or governance in the United States will be imperiled.

GLOSSARY

Federalism is a "pluralistic democracy in which two sets of governments, neither being fully at the mercy of the other, legislate and administer within their separate yet interlocked jurisdictions."[1] Although local governments are a part of the governing structure, the two constitutional partners in the United States are the federal government and the states. Although the local role is often included in this research, the focus remains state-level developments and the federal response.

Foreign policy comprises those policy responses, instruments, and processes that take place at the federal level and serve to further U.S. goals abroad. Only the federal government can legally create policy that is binding in international law. No matter how much international goodwill individual states or cities may generate with foreign entities, states are legally incapable of creating binding international agreements. For this reason, I do not call any state action "foreign policy," but refer to the action of the states as foreign affairs, foreign relations, or international intergovernmental relations.

The term globalization is overused and under-defined. But that term more than any other describes in general the phenomenon explored in more detail in chapter 3, that of the rapid global economic integration that developed after World War II. The focus here is on economic globalization (as opposed to social or cultural globalization) as a force driving the internationalization of domestic policy and the development of international intergovernmental relations.

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[1] Ivo D. Duchacek, "Perforated Sovereignties: Towards a Typology of New Actors in International Relations," in *Federalism and International Relations: The Role of Subnational Units*. Hans J. Michelmann and Panayotis Soldatos, eds. Oxford: Clarendon Press, 1990, p. 3.

Governance is the process of managing public concerns in order to meet constitutionally mandated goals of maintaining a prosperous and safe society.

International intergovernmental relations are the establishment of regular communication between state-level actors in the United States and state or federal-level actors in another nation. The degree of formality of these relations may span a continuum from informal – characterized by infrequent but regular phone contact – to the creation of a venue for regular in-person meetings

Internationalization of policy occurs when a domestic policy development includes an international cause or effect, which in order to be managed effectively, requires contact or cooperation with foreign actors and leads to the development of regular international intergovernmental relations.

States, in the lexicon of International Relations, refer to central governments. But in this document, "states" means the U.S. states as distinguished from the federal government.

Subnational governments are state and local governments. U.S. cities are also establishing themselves as international actors, for many of the same reasons as states. But because the state is the crucial partner to the federal government in U.S. federalism, the state is the unit of analysis emphasized by this project. Subnational governments are also referred to as state and local governments and non-central governments.

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VITA

Julie Melissa Blase was born in San Antonio, Texas, the daughter of Marianna Clore Blase and A.J. “Bob” Blase. She earned her first Bachelor’s degree from the University of Texas at Austin in 1987 from the College of Fine Arts and her second Bachelor’s from the Department of Government in 1989. After working as a freelance journalist and editor, she entered the Graduate School of the University of Texas. Beginning in 2004, she will be Assistant Professor of Political Science at Principia College in Elsah, Illinois.

Permanent Address: 1 Maybeck Place, Elsah, Illinois, 62028

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