



# Criminogenic Policy as a Crime of the Powerful: A Case Study on NAFTA's Negotiation Process

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## Abstract

State-corporate crime frameworks have typically been applied to crimes committed by a single state. In a globalizing world, multiple states are more likely than ever before to commit crime in collusion as evinced in the growing crimes of the powerful literature. Studying international policy formation offers one unique avenue for investigating social harms that may arise from policy or its consequential conditions. Using traditional state-corporate crime frameworks (Kramer and Michalowski in Michalowski, Kramer (eds.) *State-corporate crime: wrongdoing at the intersection of business and government*, Rutgers University Press, New Brunswick, 2006; Rothe and Mullins in *Int J Comp Appl Crim Justice* 33(1):97–118, 2009), the current research applies these frameworks to international policy formation by focusing on overlapping motivations, opportunities, and lax controls and constraints by multiple states, corporations, and other organizations involved in policy formation. Furthermore, the concept of a transnational capitalist class is integrated with this framework to better understand the connections between elites influencing policy. To demonstrate this novel approach, the current research is a case study of NAFTA's negotiation process. It is argued that NAFTA was a criminogenic policy—an agreement that created conditions conducive for social harm—evinced by a North American transnational class that colluded to create a policy favorable to their motivations while neglecting, censoring, or even oppressing the opposition. The result was an exclusionary policy capable of producing social harm. Future criminologists should seek ways to detect criminogenic policies during formation and implement safeguards against them, and the current renegotiation of NAFTA is one place to start.

At a NAFTA conference in November 1991 (3 years before its implementation), Stephen Schlossberg (1993: 219), Director of Washington Branch International Labor Organization, raised the following question about North American Free Trade Agreement's (NAFTA) future:

NAFTA gives this nation, Canada, and Mexico the opportunity to demonstrate that they are worthwhile societies that recognize people as social as well as economic

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beings. Shall we have a fair and compassionate society – in essence, a decent society – or shall we opt for greed and the law of the jungle?

The following research is a case study that concludes NAFTA can better be classified by the latter using the concept of a “criminogenic policy” to support this argument. The focus, however, is on NAFTA’s formation and negotiation. Such an approach fits well into the growing literature on crimes of the powerful. A focus on policy formation addresses a major concern among critical criminologists and specifically those who study crimes of the powerful that state definitions of crime have dominated mainstream criminology often ignoring or giving little attention to some of the most severe social harms (Michalowski 2013). Even in Pearce’s (1976) seminal text that coined “crimes of the powerful”, he stressed the importance of policy by highlighting legislation that favored U.S. corporate interests and struggled with the intricate relationship between colonialism, states, and corporations. The current research uses a case study of NAFTA’s negotiation and push for implementation to achieve at least three goals that should strengthen the crimes of the powerful literature: (1) further develop the concept of a (international) criminogenic policy; (2) repurpose old state-corporate crime models to deal with overlapping state interests and the creation of policy; and (3) incorporate the literature on the transnational capitalist class. For the sake of brevity, key aspects of NAFTA will be highlighted in detail to demonstrate the criminogenic nature of its creation using a state-corporate crime framework and the concept of the transnational capitalist class. Before discussing this framework and the transnational capitalist class, I will attempt to centralize the importance of policy within the crimes of the powerful literature.

## Crimes of the Powerful and International Policy

By focusing on bi- and multilateral policy formation, criminologists can study how state definitions are taking hold. As will be demonstrated with the case of NAFTA, these policies are often produced under legal frameworks by elite members of society while creating conditions conducive for social harm to be experienced by the most disadvantaged populations. In other words, policy allows elites to hide or even justify their criminal behavior. Economic policy logic often justifies appropriating resources before they are wasted, makes claims for the common good (neglecting those who may suffer), submits to the higher power of neoliberal capital, and justifies not including the public in such decisions by emphasizing their lack of knowledge (Ruggiero 2015). Repeated formation of economic policies following these logics normalizes this procedure of policy creation. While introducing crimes of the powerful, Rothe and Kauzlarich (2016: 4), explain power as “tied to authority and trust” and “exercised, obtained, legitimated and maintained through capital accumulation of varying types from economic, military, and political, to social status, discourse, and knowledge.” These authors also describe the major driving forces of crimes of the powerful as neoliberalism, globalization, and capital accumulation. A major policy like NAFTA would then be a prime candidate for researching how power is manifested as it was an important instrument promoting neoliberalism, globalization, and capital accumulation via several of the stated modes.

Rothe and Kauzlarich (2016) also provide a long, yet non-exhaustive, list of crimes of the powerful. Although policy is not listed, it can be the precursor for many of the crimes provided which is already a part of the crimes of the powerful literature. For example, Rothe et al. (2009) argue that economic policies of the International Monetary Fund (IMF)

and World Bank laid the groundwork for the Rwandan genocide. Friedrichs and Friedrichs (2002) coined the phrase “crimes of globalization” while focusing on the harms of international policy surrounding a World Bank-financed dam built in Thailand. Ezeonu and Koku (2008) argue that the trade-related aspects of intellectual property rights created by the WTO, emphasizes the theft of intellectual property over distribution of life-saving drugs, and this has reduced access of those in sub-Saharan African nations to HIV drugs. While multiple states are definitely influential in these policies, these studies tend to focus on policies created by international financial institutions (IFIs; Friedrichs and Rothe 2014). They also focus on the outcomes rather than how these policies are negotiated, formulated, and implemented. If an international policy can give rise to social harm, as identified in several of the studies reviewed, is it a criminogenic policy? As criminologists, it is important to identify such policies before they fully take hold. In other words, a criminologist’s duty, in this case, should be to identify a criminogenic policy during its formation and negotiation stage in order to prevent it from being implemented. The current study explores how NAFTA’s formation process was criminogenic, or likely to produce social harm.

Studying international policy is also important for the crimes of the powerful literature since these policies include more than one state. Several of the classic studies in the crimes of the powerful literature have focused on crimes committed by one government within a single state boundary. For example, the Hamlet fire involved both local and federal government bodies, yet both within the United States (Aulette and Michalowski 1993) and the *Challenger* explosion was overseen by NASA (Kramer 1992). With the advent of globalization, multiple state involvement in crime commission has become more frequent. More recent studies have become more complicated particularly with the rise of multinational corporations operating within several state boundaries. For example, violence surrounding Nigerian oil extracted by Shell Nigeria has involved the Nigerian government, but Shell Nigeria is a subsidiary of Shell Oil Company headquartered in Houston, Texas, in turn, Shell Oil Company is a subsidiary of Royal Dutch Shell headquartered in The Hague, Netherlands which implicates potentially multiple states (Zalik 2004). Halliburton’s role in the Iraq War involved a corporation operating in multiple countries and at least the U.S. and Iraq states (Rothe 2006). Studying international policies that include multiple states could provide insights into how state interactions can result in social harm.

## A New Use for Old State-Corporate Crime Models

At least two models for studying crimes of the powerful have been implemented frequently. Kramer and Michalowski’s (2006) integrated theoretical model of state-corporate crime offers several levels of analysis including the macro (institutional environment), meso (organizational), and micro (interactional) which allows for the study of relationships that exist both horizontally between states and corporations, for instance, and vertically between the levels of analysis examining how corporate culture may impact the interactions of employees, for example. There are also three catalysts for action in the model—motivations, opportunities, and controls—that all influence the likelihood of a state-corporate crime being committed. Building from this model, Rothe and Mullins (2009) split the control catalyst for action into controls and constraints (being informal controls), and adding a fourth level of analysis by separating the institutional environment into the international level and the state/structural level.

While these frameworks have most often been applied in studying state-corporate crime, the current research differs in an attempt to study international policy formation. Thus, catalysts for action are not only important to understand for states, corporations, and individuals, but the overlap of these catalysts are essential. For example, in the case of NAFTA, one must understand how the motivations of all three states involved overlap to form a particular type of NAFTA. Rothe and Mullins (2009) framework will be applied in this fashion.

## Integrating the Transnational Capitalist Class

Lastly, the current study integrates the concept of the transnational capitalist class (Gill 1990) to help analyze policy formation among multiple states, corporations, other organizations, and individuals.<sup>1</sup> For the sake of this paper, the transnational capitalist class should be understood as a modern application of Gramsci's idea of a historic bloc expanded internationally (Gill 2003). According to Ozekin (2014: 104) the transnational capitalist class "primarily consists of productive social forces and transnational capital itself, but it also includes various economic and political forces whose interests and ideas are deeply committed to the progressive liberalization and integration of a global economic system." Some members of the transnational capitalist class include political leaders, business elites, charismatic personalities, media pundits, intellectual elites, opinion leaders, academics, and members IFIs who attempt to maintain the global structure of capital. The concept of the transnational capitalist class allows the state-corporate crime framework to be better applied when studying the overlap of multiple powerful actors forming policy. Although the original conceptualization of the transnational capitalist class envisioned a globalist class, the current study suggests investigating the transnational relationships between powerful elites among the countries under investigation, elites in the United States, Canada, and Mexico are of importance in the case of NAFTA.

Following the state corporate-crime framework (Kramer and Michalowski 2006; Rothe and Mullins 2009), Table 1 was constructed to demonstrate the various catalysts influencing the NAFTA negotiations at the different levels of analysis. The current study takes each box of this table in turn to demonstrate the overlapping motivations, opportunities, controls, and constraints of the various people and organizations involved in negotiating NAFTA with the overall goal of highlighting the various elements of the NAFTA negotiations that allow it to be classified as a criminogenic policy.

## Motivations

First, consider the motivations for NAFTA, at the state level, Mexico desired NAFTA because of its compromised position from the economic crisis in 1982 (Golob 2003) and sought foreign investment and debt restructuring to address its failing economy (Cameron and Tomlin 2000; Fairbrother 2007). Both Mexican Presidents Miguel de la Madrid's and Carlos Salinas' actions further signify Mexico's desire for neoliberal free trade. In the lead up to NAFTA negotiations, de la Madrid began reversing the previous Portillo presidency's

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<sup>1</sup> The transnational capitalist class is referred to by other names in the literature (see Cox 1987; Gill 1993; Ozekin 2014).

**Table 1** State-Corporate Crime Catalysts for Action Influencing NAFTA Negotiations

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

nationalization programs. Upon inauguration, de la Madrid quickly implemented a recovery plan to satisfy the IMF's demands by freezing wage increases, slashing government social expenditures, and reducing major state consumption subsidies (Cameron and Tomlin 2000). Furthermore, both the de la Madrid and Salinas administrations sought to form an alliance with big business, operating throughout North America, to win support for economic restructuring from groups like the Mexican National Chamber of Industry and Labor (CANACINTRA; organization that represented small- and medium-sized businesses) and the general public (Thacker 1999). NAFTA was thought to fulfill both of these goals.

The United States, on the other hand, desired NAFTA to solidify the unilateral moves towards trade liberalization already taken by Mexico (Grinspun and Cameron 1996). U.S. negotiators feared that there was nothing stopping a future Mexican administration from reversing the neoliberal policies to a more nationalized economic program (Hernández Rodríguez 1986). The nationalization of Mexican banks in 1982 was still fresh in the international business class's mind. Canada joined negotiations more reluctantly to protect its interests previously established in CUFTA (Cameron 1991; Goar 1992). Overall, Mexico was desperate to secure investment due to its position as a peripheral nation and dependence on the United States, while the United States and Canada pushed to maintain the current neoliberal economic system while also expanding its regional economic influence.

Although there were differences among the three countries in motivations at the state level, internationally, there was much more overlap. The overlap is best explained by the transnational capitalist class, consisting of political elites, business leaders, leading intellectuals, and members of the IFIs among others (Faux 2005). Members of the transnational capitalist class sought a neoliberal global market exemplified by deregulation and trade liberalization (Robinson and Harris 2000; Ozekin 2014). The 1982 economic crisis shook the social, political, and economic fabric of Mexico as a result of a failing Keynesian philosophy. During this time of crisis, a transnational capitalist class emerged from the wreckage in the form of technocrats in Mexico, most of whom possessed economic degrees from elite U.S. universities (Ángel Centeno and Maxfield 1992).<sup>2</sup> Most likely, due to their similar education, they commonly viewed free market capitalism, global economic integration, and foreign investment as solutions to Mexico's economic woes which was much in line with the Washington Consensus. Concurrently, the private sector grew jaded with the state and their corporatist policies, and found neoliberal economics more appealing (Pastor and Wise 1994). These views by both groups intensified when trade liberalization policies demonstrated a capability in lowering inflation and stabilizing the economy.

The Mexican transnational capitalist class incorporated business interests through lucrative trade deals. During Salinas's wave of privatization, he sold several government companies at several times market value to make the economic strategy look favorable (Oppenheimer 1998). He made furtive deals to investors to secure their overpayment unbeknown to the public. For instance, Telmex, purchased by Carlos Slim, was allowed to increase their prices by nearly 250% while only increasing their workers' wages by 18% (Meyer 1992). However, the exorbitant prices were met by widespread protests resulting in a compromise

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<sup>2</sup> Salinas, for example, was a family friend of U.S. President George W. Bush and was the son of a major Mexican politician, Raúl Salinas Lozano—an economist and technocrat himself. Carlos Salinas served as the secretary of the Budget Secretariat before becoming president, and his father was the minister of industry and commerce during the Adolfo López Mateos administration. Most importantly, Carlos Salinas received a master's degree in public administration and a doctoral degree in political economy from Harvard University's Kennedy School of Government.

of only a 170% increase in rates. These lucrative deals spring-boarded ordinary businesspersons like Carlos Slim into the ranks of the ultra-wealthy.

Furthermore, the transnational capitalist class sought investors' rights, a major piece of NAFTA, designed to shift power away from the state to corporations (Dent 1994). Some of the most important articles of NAFTA that highlight its commitment to investors' rights include: (1) Article 1105 provided an exit plan for investors allowing them to cut their losses; (2) Article 1108(7)-(b) protected investors from "armed conflict and civil strife" providing an exit strategy against strong union pushes and political opposition protest; (3) Article 1110 appeased the fears of expropriation by future governments and guarantees compensation for the few exemptions; and (4) Article 1907-2(b) allowed open interpretation of governmental subsidies as acceptable or not. One major point of contention has been Section C in Chapter 3 which provides business security from non-tariff trade barriers—restrictions, prohibitions, policies, stipulations, or other mechanisms, typically implemented by a government, that make the importation or exportation of a product more difficult and/or expensive. Thus, any environmental and/or worker protection policy that increased the difficulty or price of producing goods could be classified as a non-tariff trade barrier and disputed under NAFTA. For instance, a U.S. company could challenge the Mexican government if it implemented a policy to protect the environment by reducing the amount of oil to be extracted, under the assumption that this policy would increase the price of oil. Natural resource preservation strategies, in general, are viewed as violations under NAFTA (Barry 1995). Furthermore, the burden of proof would be on Mexico to prove that its policy is in accordance with Article 712. An appointed panel of representatives according to Chapter 20 of NAFTA would then settle such a dispute. The power held by these dispute settlement panels is not democratic (Brown 1993).<sup>3</sup> In addition, NAFTA created a North American trade bloc that could rival the European Union, and gain leverage for future global negotiations (Baggaley 1998; Robinson and Harris 2000). Such a trade bloc allowed major business and political elites to consolidate their power and influence beyond their national boundaries, providing a competitive edge in global economic competition.

At the organizational level, many of the corporations pushing for NAFTA were informed by a neoliberal ideology that saw NAFTA as an investment opportunity to expand their scope of influence (Chavolla Nava 1993; MacArthur 2000). For Canadian- and Mexican-based transnational corporations, the massive U.S. domestic market was also on the table (Cameron and Tomlin 2000). The USA\*NAFTA coalition best exemplifies the unity of big business, and the North American states, around NAFTA. Among the attendees of the meeting in which this coalition was formed were President Salinas and staff members, the Business Roundtable, and several business leaders from both the United States and Mexico, specifically key representatives of USA\*NAFTA, Kay R. Whitmore (chairman of Eastman Kodak and chair of the Business Roundtable) and James D. Robinson of American Express and former chairman of the Business Roundtable's task force on trade (Cameron and Tomlin 2000). When crunch time approached at the height of the NAFTA negotiations, the USA\*NAFTA coalition represented a staggering 2300 corporations and lobbies. U.S. transnational corporations operating in Mexico comprised a significant portion of the USA\*NAFTA coalition (Hogenboom 1998). They spearheaded a sophisticated

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<sup>3</sup> One major case that illustrated the likely scenario of dispute settlement under non-tariff trade barrier provisions during NAFTA negotiations was the well-known Tuna Dolphin Case. See <http://www1.american.edu/ted/TUNA.HTM> for a summary of the case.

multi-clustered lobbying campaign where groups of corporations were assigned specific states and jurisdictions (Levy and Bruhn 2006). At the helm, 35 captains orchestrated these campaigns, of which 34 came from *Fortune 500* companies (Von Bertrab 1997). On September 14, 1993, the very same day the NAFTA supplemental agreements were signed, a secret meeting attended by both business and Washington lobbyists, along with three officials from the Clinton administration, was held at the Allied Signal Corporation in Washington, D.C. to discuss the bleak prospects of NAFTA ratification in the U.S. Congress (MacArthur 2000; Roman and Arregui 2015). In other words, the pro-NAFTA interests devised a plan to alter the course of NAFTA through a major lobbying campaign headed by USA\*NAFTA at this meeting.<sup>4</sup>

Individuals involved in the NAFTA negotiations, primarily members of the transnational capitalist class, held a common belief in neoliberal policies as a panacea for the economic woes in North America. Many of them had similar social upbringings with similar educations, and likely viewed NAFTA as a way to either advance their careers or maintain power (Petras and Morley 1990; Ángel Centeno and Maxfield 1992). For example, many of the U.S. politicians simply advanced NAFTA to appease their donors and political partners, and Salinas and his administration tried to push NAFTA through while simultaneously securing the Institutional Revolutionary Party's (PRI) dominance (Oppenheimer 1998; MacArthur 2000; Dombos et al. 2003).<sup>5</sup> President Clinton's side deals preceding the U.S. Congressional vote on NAFTA revealed some individual motivations. Clinton also directed the USA\*NAFTA team to find out each congress member's needs to get his or her vote (Bradsher 1993b). The creation of the North American Development Bank was one such deal that secured Esteban Torres's vote (MacArthur 2000). Clinton's furtive deal with Oklahoma Representative Bill Brewster demonstrates how fickle some of these decision makers were despite the potentially widespread effects of NAFTA on the populous, securing his vote with the promise of a golf trip to which Clinton held true to the deal.

## Opportunities

The opportunities for getting NAFTA through were nearly limitless for those in favor, while those opposed faced extreme odds. At the state level, Mexico was able to use its undemocratic structure to advocate for NAFTA (Von Bertrab 1997). The Mexican state benefited from its single-party dominance, corporatist mechanisms to control union opposition, and hierarchical structure and informal *camarilla* networks (Cameron and Tomlin 2000). Despite the 70 years of nearly unchallenged political rule by the PRI, *camarrilas* and *el dedazo* allowed even more concentration of power. *Camarillas* are integral to the Mexican political system and operate as small political blocs of power and influence based on quid pro quos oftentimes between unequals (Ángel Centeno 1994). *El dedazo* allowed acting presidents to handpick their successor (La Botz 1995). Thus, presidents could ensure their political power would expand beyond their six-year term by effectively hand selecting the next president, and filling several political positions with members of their own *camarilla* (Cameron and Tomlin 2000). These two characteristics paired with 70 year of single party rule made Mexico's political system authoritarian. Furthermore, the Mexican

<sup>4</sup> Lawrence A. Bossidy, CEO of Allied Signal Inc. told the press that business and "the proponents have not done a very good job of selling [NAFTA]" (Bradsher 1993a).

<sup>5</sup> The PRI was the single political party that held power from 1929 to 2000 in Mexico.



authoritarian regime also has a track record of repressive action towards labor unions and the manipulation of union leaders which threatens Mexican democracy (Middlebrook 1989). Mexico was able to oppress the opposition violently if necessary (America's Watch 1994). Although unions were not always treated with repressive tactics, there is a long history of the PRI using corporatist methods to coopt any push for workers' rights. One example is the Kodak union that was actually created by the Eastman Kodak Company along with the PRI (MacArthur 2000). In the lead up to NAFTA, some companies were relocating to Mexico, but were concerned with the potential strength of unions. Thus, in this case, Kay Whitmore, the CEO of Kodak, explained in an interview with MacArthur (2000:140):

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

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

On the other hand, the United States benefited most from Mexico's desperation and its control over information (Fairbrother 2007). The United States was able to get more concessions from Mexico because of its dire need for investment (Mayer 1998). These unique U.S. opportunities allowed the United States to more vigorously negotiate for a deal that better reflected their interests. Canada mostly stayed under the radar during the NAFTA negotiations which likely helped, given the unpopularity of the recent CUFTA (Rohter 1990; Magnusson et al. 1991).

Similar to motivations, the opportunities to pass NAFTA were nearly boundless for the transnational capitalist class. More overlap exists between the elites in each country than divergence. The opportunities at the international level revolved largely around the massive collusion of wealth and power concentrated in the transnational capitalist class.

With these resources, segments of the transnational capitalist class including Von Bertrab (1997) Mexican negotiating team and USA\*NAFTA were able to control the media and dominate the information disseminated on NAFTA (Baldwin 1993; Heredia 1994). The transnational capitalist class exposed the public to overwhelming favorable information on NAFTA. The negotiation meetings were secret and classified, blocking the public from having any meaningful involvement in the negotiations (Mayer 1998; MacArthur 2000). These moves by the transnational capitalist class further evince their motivations listed in Table 1.

Similarly, at the organizational level, nearly all of the largest corporations coalesced their boundless resources in USA\*NAFTA making it a truly international organization (Baldwin 1993). Furthermore, these corporate leaders had access to the negotiations, while the public did not (Hogenboom 1998). While the forming of the USA\*NAFTA shows motivation, its capability demonstrates its available means for achieving its goals. Their NAFTA campaign included election-like television campaign commercials aired, and business reached out to the public through talk shows and newspaper editorials (Austen 1993). The primary goal of the campaign was to create an image that there was universal consensus behind NAFTA by amplifying the positives and eliding the negatives (Heredia 1994). At the outset, USA\*NAFTA hired both Democratic and Republican political organizing firms to create the illusion of widespread political support (MacArthur 2000). USA\*NAFTA used its enormous wealth to purchase the best advertisers and public relations firms money could buy. Bill Clinton even made a personal phone call to recruit Lee Iacocca as lead salesman of NAFTA who eventually spewed unsubstantiated claims about

NAFTA in nationally aired commercials mostly revolving around its likelihood of creating high-paying jobs (Kolbert 1993).

Von Bertrab (1997) headed the NAFTA negotiating team for Mexico and focused his team's initial efforts on convincing members of U.S. Congress.<sup>6</sup> To win them over, he bolstered his team by building partnerships with the private sector (e.g., Business Roundtable), establishing contacts with think tanks (e.g., The Heritage Foundation, Hudson Institution, and the American Enterprise Institute), acquiring government relations advisors, and enlisting the help of several law firms. The armada of experts was necessary to help von Bertrab's team successfully lobby as foreign agents in the U.S. political system. It was an extraordinary lobbying campaign conducted by a foreign government in the United States (Gerstenzang 1993). A clear coalition formed between the Mexican government and prominent businesses that together unprecedentedly spent over \$30 million lobbying in Washington to promote the enactment of NAFTA which, at the time, was considered "the most expensive, elaborate campaign ever conducted in the United States by a foreign government" (Baldwin 1993:1; Bradsher 1993a). Salinas was personally involved in heavily influencing U.S. government officials and business leaders (Cameron and Tomlin 2000). U.S. and Mexican citizens banded together in response to organize a public forum comprised of both U.S. and Mexican elected representatives in opposition to NAFTA. Mexican government officials and the U.S. ambassador to Mexico, John D. Negroponete, moved quickly to block the forum, understanding that such a forum would bring widespread attention to NAFTA and the reality that support for NAFTA was less than unanimous (Pei-Tsu 1991). Salinas contributed to the media campaigns by praising supporters of NAFTA and vilifying the opponents. Simply put, the pro-NAFTA opportunities were seemingly endless.

At the interactional level, the bonds formed between members of the transnational capitalist class created an opportunity for them to work together to influence passage of a favorable policy (Pastor and Wise 1994). To better understand both the elite connections between the United States and Mexico and the opportunities provided by these connections, consider New Mexico representative and friend of Von Bertrab, Bill Richardson. Richardson acted as a gatekeeper for the Von Bertrab lobbying team to establish various contacts in Washington (Von Bertrab 1997). Richardson was a supporter of NAFTA, and free trade generally, who had elite ties to both U.S. and Mexican business interests (MacArthur 2000). His father opened a Mexico City branch of the National City Bank (now Citibank) in 1929. When the Mexican banks were privatized in 1982, Citibank was left alone by the PRI (Marois 2008). Later, in 1998, Citibank was the first U.S. bank to acquire a large Mexican bank, Banco Confia, paying only \$195 million for the acquisition despite the Mexican government recapitalizing it for \$1 billion one year prior (Friedland 1998). Not surprisingly, Richardson was a major proponent of Mexican privatization.

The groupthink among members of the transnational capitalist class probably was the most important opportunity that allowed for NAFTA, in its final form, to occur. The transnational capitalist class groupthink likely existed for two reasons. First, members of the transnational capitalist class involved in the NAFTA negotiations likely sought to gain what they could rather than question NAFTA which would have compromised their own position by creating conflict (Heredia 1994). For example, the Mexican government gave concessions and incentives to the business community for participation in working for the

<sup>6</sup> See also Baldwin (1993) and Long (2015) for more context on Mexico's NAFTA lobbying campaign.

best possible terms as long as they did not oppose NAFTA in general (Tornell and Esquivel 1995; Fairbrother 2007).

Second, neoliberal economic philosophy was heavily influential in harmonizing many of the members in favor of NAFTA and central to U.S. universities teaching economics (Golob 2003). Beyond President Salinas' background in economics from an elite U.S. university, the most important negotiator for Mexico was Commerce Secretary Jaime Serra Puche. Serra was also trained as an economist with a Ph.D. from Yale University who directly entered government from academia. After Herminio Blanco was named chief negotiator for NAFTA in October 1990, he asked his long-time friend Von Bertrab to head up a negotiating team for Mexico. Blanco was an old student of Von Bertrab's at Mexico's Monterrey Institute of Technology. Both Von Bertrab and Blanco were U.S. educated obtaining PhDs in economics. Several members of Von Bertrab's negotiating team had connections to IFIs, with one member from the IMF, Ildefonso Guajardo, who pursued graduate studies in the United States. Two other members were from the World Bank—Harvard-educated Eduardo Wallentin and Luis de la Calle who holds a Ph.D. in economics from the University of Virginia (Cameron and Tomlin 2000). Furthermore, the overwhelming disseminated information in favor NAFTA only likely spurred the fire.

## Constraints

Since NAFTA was an international policy, most of the constraints were at the international level. The largest opposition to NAFTA was environmental and labor groups which, of course, led to the signing of the NAFTA supplemental agreements (Mayer 1998). Without this opposition, NAFTA would likely have passed without the side agreements, thus resulting in fewer protections to workers and the environment. Popular opposition rallied behind politically diverse intellectuals who posed major threats to NAFTA, including Ross Perot, Pat Buchanan, and Ralph Nader (Scott 1998). Despite their efforts, however, public opinion was at best only slightly unfavorable to NAFTA, and more often remained split (Molyneux 1994; Ayres and Macdonald 2009). The resources possessed by the transnational capitalist class seemingly were too much to overcome (Mayer 1998). NGOs also played a role in constraining NAFTA through their criticism of the policy and the players involved (Human Rights Watch 2001). Most notably, they pointed to the abysmal environmental and human rights record in Mexico (America's Watch 1990, 1992, 1994; Hogenboom 1998).

At the state level, both the Canadian and U.S. elections threatened NAFTA (Bryden 1992; Cameron and Tomlin 2000). In both cases, NAFTA proponents overcame a brief scare when liberal candidates won in each election. The day after Clinton won the U.S. election, Salinas called Clinton to urge him to ratify NAFTA without any renegotiations (Cameron and Tomlin 2000). Clinton agreed to move with Salinas on NAFTA without renegotiations in a January meeting (Jouzaitis 1993). Salinas also wanted to assuage rising investors' fears of NAFTA.<sup>7</sup> Later, Salinas informed Clinton that delays in the ratification of NAFTA would likely weaken the Mexican economy, creating political instability—something no U.S. president wanted (Miller 1993). Although NAFTA may have passed without its side agreements with a Bush win, Clinton's presidency did not kill NAFTA, and

<sup>7</sup> See White House memorandum of meeting with Carlos Salinas on July 14, 1992 at [https://bush41library.tamu.edu/files/memcons-telcons/1992-07-14--Salinas%20\[1\].pdf](https://bush41library.tamu.edu/files/memcons-telcons/1992-07-14--Salinas%20[1].pdf).

may have actually helped to get it through by quieting some of the opposition since both environmental and labor groups were long time members of the Democratic constituency (Cameron and Tomlin 2000).

When Jean Chrétien, the anti-NAFTA Liberal Party candidate, won the election for Prime Minister of Canada, uncertainty struck the NAFTA crowd (Bryden 1992). USA\*NAFTA immediately leaked a story on health care to sidetrack the media away from the election (MacArthur 2000). Despite the worries, Chrétien was on board, but he needed political cover against the anti-NAFTA members of his party. For that, a symbolic NAFTA renegotiation on sensitive issues fit the bill (Bradsher 1993c). In the end, not a single word of the entire NAFTA document was changed, and Chrétien continued to give his support behind the scenes (MacArthur 2000).

Maybe most problematic at the state level was the opposition to NAFTA found in the U.S. Congress, most principally, Majority Leader Richard Gephardt (Bradsher 1993c). Early on, few major Democratic players were overly interested in passing NAFTA (Gephardt and Wessel 1999). Gephardt was probably the staunchest opponent of NAFTA throughout negotiation, but even he showed weakness at times likely due to fear of being labeled a protectionist which could be damaging to his political career (Cameron and Tomlin 2000). Despite his reluctance, Gephardt and his longtime adviser on trade issues, Michael Wessel, were making a serious effort to derail NAFTA. Both were not pleased by the NAFTA side agreements, viewing them as essentially toothless, even opposing them up until the final vote. One example of Gephardt's influence on, at the very least challenging, NAFTA is when he publicly uncovered a fund called the AmeriMex Maquiladora Fund L.P. that received funding from a Mexican development bank, Nafinsa, and was dedicated to luring U.S. companies to relocate to Mexico (Bradsher 1993d). Of course, this confirmed the fears of labor groups in the United States opposed to NAFTA. Mexico quickly responded by removing Nafinsa from the fund as a form of damage control (Golden 1993). Again, this constraint on NAFTA from members of U.S. Congress, at best, led to the NAFTA supplemental agreements. In the end, the congressional opposition was offered political cover from its voting constituency via the side agreements, and that was good enough for them (Mayer 1998).

Few, if any, constraints existed at the organizational and interactional level. In fact, there was little resistance to NAFTA among large businesses. Mexican National Chamber of Industry and Labor (CANACINTRA) was the major opposition in Mexico representing small- and medium-sized business. Initially, CANACINTRA vehemently opposed NAFTA, but later reversed its opinions of NAFTA fearing too much to lose by taking on the state (Poitras and Robinson 1994; Shadlen 2000). Critics of CANACINTRA viewed it as being a tool used by the government to manipulate perceived acceptance of NAFTA by the business community (Thacker 1999). Small business owners were probably only represented if they were in favor of accessing U.S. markets. CANACINTRA likely refrained from mounting serious public criticism against NAFTA for three reasons: (1) CANACINTRA leaders were content with maintaining their political influence in the PRI and did not desire to become confrontational with its members; (2) many CANACINTRA members relied on some form of state aid, such as economic protections and subsidies, and did not want to risk this support being discontinued; and (3) much of the CANACINTRA membership was determined by a compulsory membership rule for small industry (Fairbrother 2007).

Although NAFTA opposition arose in all three countries, the Mexican coalition held the least power and influence over changing the course of neoliberal policies. Organized labor was particularly weak in Mexico because the national labor organizations were predominantly affiliated with the Institutional Revolutionary Party's (PRI), and thus capitulated to

the business elite (Massicotte 2009). The PRI also actively worked to disrupt and dissolve social movement organizations to weaken the possibility of a threat to PRI's political stranglehold (Cadena-Roa 2009). The opposition in all three countries banded together, striking common ground on appeals to democracy, human rights, economic justice, and environmental sustainability, yet their strength through integration did not really solidify until after NAFTA was ratified (Ayres and Macdonald 2009). While the opposition in Canada and the United States successfully mobilized a large segment of their populations and drastically shifted public opinion on NAFTA to slightly favor a rejection of the treaty, NAFTA still was signed and implemented. In both countries, the possibility of rejecting NAFTA through a popular referendum was blocked (Dent 1994). The U.S. success of altering public opinion is owed to opposition on both sides of the political spectrum with key figures such as Ralph Nader and Pat Buchanan (Scott 1998). As for Mexico, the authoritarian governmental structure was too much to overcome for these social movement organizations to alter public opinion on NAFTA. Since members of the transnational capitalist class experienced similar socialization, there was little constraint offered by its members (Ángel Centeno and Maxfield 1992; Camp 1995). Much of the public also likely trusted the members of the transnational capitalist class such as political elites, business leaders, and the media, and had little reason to question them based on limited knowledge.

## Controls

Finally, more formal controls were also limited. The most important were likely the need for fast-track approval and ratification of NAFTA by the U.S. Congress which were the major battles ultimately won by the transnational capitalist class through their vigorous information campaigns, some of which has already been documented (Cameron and Tomlin 2000; MacArthur 2000). Although this existed at the state level for the United States, the U.S. Congress was the safeguard to potentially stop NAFTA from happening for all three countries (Mayer 1998). Other than the U.S. Congress, there was virtually nothing that could stop NAFTA. As discussed, the ample resources held by NAFTA supporters provided the opportunity to overcome this major control.

At the state level, legal recourse was taken in an attempt to stop NAFTA, yet to no avail. For example, take the case of some environmental NGOs. A group of critical environmental NGOs was ostracized from the NAFTA debates due to its questioning of basic free trade elements. Key among these critical environmental NGOs was Ralph Nader's Public Citizen, Friends of the Earth, and the Sierra Club who joined forces to bring a case to the U.S. District Court which ruled that the Bush administration violated the Administrators Procedures Act (Cameron and Tomlin 2000).<sup>8</sup> This ruling raised the political stakes of any Clinton decision on NAFTA, but still did not incorporate these groups in any meaningful way into the environmental side deal negotiation process. After a messy court battle, the U.S. Supreme Court freed the government to pursue NAFTA escaping a potential end to the negotiations.

At the international level, the body of law known as the International Bill of Human Rights can be applied to NAFTA to make an argument that NAFTA violates some human

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<sup>8</sup> Von Bertrab (1997), when discussing this lawsuit from the perspective of the Mexican negotiating team, appears to admit that the National Environmental Policy Act was violated, but he still adamantly rejected the lawsuit.

rights and therefore should not have been passed (Smith 1994). However, this was not a common argument made, and only Dent (1994) made a similar argument, albeit after NAFTA was implemented. During the NAFTA negotiations, the arguments against NAFTA did not discuss NAFTA or its probable outcomes as human rights violations or criminal. Thus, this control virtually did not exist, even though the argument was there to be made.

Lastly, at the interactional level, a morality of human rights appeared to exist among the opposition, but seemingly did not influence members of the transnational capitalist class evinced by the near complete remission of human rights language in the final NAFTA text. Much of this could be explained by the neoliberal groupthink among the negotiators. Grinspun and Cameron (1996: 170) demonstrate classic neoliberal assumptions built into many of the economic models assessing NAFTA lacked the inclusion of a series of complicating factors such as:

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

Many of these factors would have covered important human rights.

## Conclusion

The transnational capitalist class actively pursued a NAFTA that was sympathetic to business interests while neglecting the concerns of the people. Connections within the transnational capitalist class ran deep with seemingly boundless resources utilized to win public and political support for NAFTA. Although the opposition was successful in winning supplemental agreements, these side agreements arguably fell well short of the opposition's desires. Thus, the constraints on NAFTA were relatively weak, and the controls were virtually non-existent. U.S. Congress was largely swayed to the side of the transnational capitalist class and international human rights law was completely off the radar. Ultimately, NAFTA was largely shaped by the transnational capitalist class who saw NAFTA as an opportunity to further its goal of achieving a neoliberal global market that favored investors. The resultant NAFTA reflective of these interests should then, unsurprisingly, bring outcomes favorable to those who played a role in creating it and campaigning for it. It would also not be surprising if the reckless neglect of legitimate concerns over NAFTA led to the negative social outcomes predicted by its critics. In other words, this particular NAFTA was criminogenic—creating conditions conducive for social harm. To trace the effects of NAFTA is beyond the scope of this paper, but it should suffice to say that the conditions for social harm are built within a NAFTA that favors the transnational capitalist class while addressing few of the concerns of the public.

Due to the attention more recently paid to NAFTA, a brief postscript may be warranted here. While extreme nationalism has gained popularity, Donald Trump won the U.S. presidency with a tough stance on dismantling NAFTA. Yet, the current study has shown that NAFTA serves the interests of several major players, in business, Congress, and elsewhere, making it unlikely that Trump alone could undo NAFTA further evinced by his failure to withdraw completely from the agreement (Mayeda et al. 2018). Trump's wishes will not

likely be met unless there is sufficient overlap with members of the transnational capitalist class. Trump has ostensibly criticized NAFTA for being too multilateral and not unilaterally meeting the demands of the United States, while he is correct, he is unlikely to achieve a unilateral deal as the same hurdles preventing that in the original NAFTA negotiation still exist. At the time of this writing, the new NAFTA, the U.S.-Mexico-Canada Agreement (USMCA) was finalized, yet it still must be signed and ratified by all three countries (Tankersley 2018). Even this new agreement, at first glance, has some benefits to the transnational capitalist class such as extending intellectual property rights for pharmaceutical companies, despite some concessions to the working class such as strengthening labor laws in Mexico. Trump's current strategy appears to be avoiding multilateral trade deals in favor of negotiating bilateral agreements. Removing the United States from the Trans-Pacific Partnership supports the former, and the shift from separate agreements with both Mexico and Canada to the USMCA highlights the difficulty in achieving the latter. Both moves could be interesting territory for future criminologists. The Trans-Pacific Partnership negotiations will continue without representation from U.S. elites while the USMCA still has several stages before implementation.

Beyond Trump and NAFTA, the current study should provide future researchers with at least three unique ways of approaching future crimes of this nature. First, the literature on both the transnational capitalist class and crimes of the powerful should be integrated since members of the transnational capitalist class are often the same as high-level actors involved in crimes of the powerful. This integration allows the interactions between states, corporations, and other powerful organizations to be better studied and understood. Second, the concept of a criminogenic policy provides one avenue for studying how members of the transnational capitalist class and elite actors in corporations, states, and other organizations produce favorable policy that could, without intent, cause catastrophic outcomes for those neglected in the policy formation process. Lastly, this study demonstrates that the frameworks for studying state-corporate crime (Kramer and Michalowski 2006; Rothe and Mullins 2009) can be applied in a novel way to analyze criminogenic policy by investigating how multiple motivations, opportunities, controls and constraints of states, corporations, and other organizations overlap. This approach expands how criminologists can approach crimes like those committed by multiple states for instance. With such new understandings, policy implications on how to produce more fair and representative policy should organically arise paving the way for a more just world.

## Compliance with Ethical Standards

**Conflict of interest** Author declares that he has no conflicts of interest.

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