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Citation: 30 N.C.J. Int'l L. & Com. Reg. 795 2004-2005



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# The Political Economy of Violence: Toward an Understanding of the Gender-Based Murders of Ciudad Juárez

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### I. Introduction

Ciudad Juárez, México (Cd. Juárez) has been described as “the

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laboratory of our future.”<sup>1</sup> It serves as a prototype of a manufacturing export zone that developed with conscientious adherence to development policies prescribed by powerful international economic and political institutions. In the course of four decades, Cd. Juárez has been remade in accordance with the directives of economic liberalization and free trade.<sup>2</sup> The case of Cd. Juárez is not isolated; conditions in Cd. Juárez are unique only to the extent that the city has fully subscribed to the conventional wisdom dispensed by the International Monetary Fund (IMF).<sup>3</sup> In varying degrees, the conditions are reproduced in the border cities of northern México and, indeed, through much of the developing world.<sup>4</sup> Because Cd. Juárez represents an experiment conducted fully in accordance with the protocols of international lending agencies, it necessarily calls attention to local consequences of the new global economy.

Sadly, Cd. Juárez has gained an international reputation of another type. Shortly after the signing of the *North American Free Trade Agreement* (NAFTA)<sup>5</sup> in December 1992, the murder rate of women in Cd. Juárez began to soar.<sup>6</sup> Estimates vary, but perhaps as many as 400 women have been murdered in the last twelve years.<sup>7</sup> Prior to NAFTA, the murder rate in Cd. Juárez was

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<sup>1</sup> Charles Bowden, *Juárez: The Laboratory of Our Future* (1998).

<sup>2</sup> See *infra* Part II.C.

<sup>3</sup> Carlos Salas, *México's Haves and Have-Nots: NAFTA Sharpens the Divide*, NACLA: REP. ON THE AMS., Jan.-Feb. 2002, at 33.

<sup>4</sup> Ginger Thompson, *Chasing México's Dream Into Squalor*, N.Y. TIMES, Feb. 11, 2001, at A1 (quoting Cd. Juárez' mayor, Gustavo Elizondo, “[t]he reality of Juárez is the reality of the whole border . . .”).

<sup>5</sup> North American Free Trade Agreement, Dec. 17, 1992, 107 Stat. 2057, 32 I.L.M. 289, available at [http://www.nafta-sec-alena.org/DefaultSite/index\\_e.aspx?DetailID=78](http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailID=78) [hereinafter NAFTA].

<sup>6</sup> Debbie Nathan, *Work, Sex and Danger in Ciudad Juárez*, NACLA: REP. ON THE AMS., Nov.-Dec. 1999, at 24-25. For a comprehensive account of the murders, see AMNESTY INT'L USA, MURDERED WITH IMPUNITY: END THE KILLINGS AND VIOLENCE IN CHIHUAHUA AND CIUDAD JUÁREZ!, at <http://www.amnestyusa.org/actioncenter/actions/action10632.pdf> (last visited Apr. 6, 2005); AMNESTY INT'L USA, MEXICO: INTOLERABLE KILLINGS, at <http://www.amnestyusa.org/countries/Mexico/document.do?id=1829EE5E27AF155F80256D75005CCB07> (last visited Apr. 8, 2005) [hereinafter INTOLERABLE KILLINGS].

<sup>7</sup> As of November 2003, the number was reported to be between 230 and 370. *Reparations Proposed in Mexican Killings*, N.Y. TIMES, Nov. 14, 2003, at A11. Others

much lower than that of similar-sized U.S. cities.<sup>8</sup> After NAFTA took effect, the number of murdered women increased, and by the end of the 1990s, the rate had jumped dramatically.<sup>9</sup> During this same period, Cd. Juárez also experienced the highest levels of reported domestic violence in México.<sup>10</sup>

The murders have been the subject of international investigation and condemnation.<sup>11</sup> Criticism has been directed at the Mexican government for its failure to protect women and solve these crimes.<sup>12</sup> This criticism has generally been framed in terms of human rights. A number of international organizations have urged Mexican authorities to reform the criminal justice system and end official indifference to crimes of violence against women.<sup>13</sup> The civil and political rights of the victims and their families have been invoked to demand changes in law enforcement systems.<sup>14</sup> As a result of the unrelenting advocacy of the families, cross-border organizing efforts, international organizations, and non-governmental organization (NGO) investigations, the murders have remained under scrutiny and modest legal reforms have been achieved.<sup>15</sup> The murder of

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estimate the number to be as high as 600. Daniel Balke, *Dancing on Their Ashes*, THE GW HATCHET, Oct. 28, 2004, available at <http://www.gwhatchet.com/news/2004/10/28/Opinions/Column.Dancing.On.Their.Ashes-784587.shtml>; see also Uché U. Ewelukwa, *Women and International Economic Law: An Annotated Bibliography*, 8 LAW & BUS. REV. AMS. 603, 614 (2002) (estimating that one woman is murdered per month). For a chronology of the killings, see Diana Washington Valdez, *Latest Discovery of Bodies Fuels Fears Anew in Juárez*, EL PASO TIMES, June 23, 2002, at 12A. The Mexican government, in its report to the U.N. Committee on the Elimination of Discrimination Against Women, stated that 66% of the murders were family or domestic violence incidents, 26% involved sexual violence, and in 8% the motives were unknown. See *Report on México Produced by the Committee on the Elimination of Discrimination Against Women Under Article 8 of the Optional Protocol to the Convention, and Reply from the Government of México* 53, CEDAW/C/22005/OP.8.MEXICO, Jan. 27, 2005 [hereinafter *CEDAW Report*].

<sup>8</sup> Nathan, *supra* note 6, at 25.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See *infra* notes 48-49 and accompanying text.

<sup>12</sup> *Id.*

<sup>13</sup> See INTOLERABLE KILLINGS, *supra* note 6.

<sup>14</sup> *Id.*

<sup>15</sup> See *infra* note 48.

women, however, has continued.<sup>16</sup>

The emphasis on protecting women within the framework of human rights law and efforts to reform the criminal justice system are no doubt critical to ending crime in Cd. Juárez. It is more complicated than that, however, the relationship between the murder of women and the new political economy of Cd. Juárez remains unexamined. This Article argues that these otherwise distinct issues are inseparable. It calls attention to the social consequences of economic liberalization otherwise obscured by explanations that emphasize the failure of law enforcement to protect women. Specifically, this Article examines the ways in which gender-violence is related to the social and political consequences attending economic transformations that depress standards of living and destroy the social fabric of communities. It seeks to illuminate the degree to which the success of globalization is derived from the marginalization of women and to understand gender-based violence as steeped in the logic of economic globalization.

Part II describes the murder of women in Cd. Juárez. It explores the current theories behind the crimes, including deviancy for profit, gender and backlash, and conditions of state impunity that allow crime against women to flourish.<sup>17</sup> It then situates Cd. Juárez as a free trade zone transformed in accordance with foreign investment strategies. The impact of economic liberalization policies on labor and trade unions, habitability, environment and health, infrastructure and social programs, and crime and drugs is examined as the context for the rise of the murder rate of women.<sup>18</sup>

Part III presents the murders as a function of economic liberalization. It considers how global economic strategies have weakened the ability of the state to prevent crime. It argues that Mexican laws have been revised to accommodate market forces and facilitate the interests of foreign investors, often to the detriment of Mexican workers, and ultimately contributing to the

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<sup>16</sup> Diana Washington Valdez, *U.N. Chides México in Slayings*, EL PASO TIMES, Jan. 29, 2005, at 1A (reporting that from Jan. 1, 2005 through Jan. 29, 2005, four more women were killed).

<sup>17</sup> See *infra* Parts II.A and II.B.

<sup>18</sup> See *infra* Part II.C.

socioeconomic conditions that produce gender violence.<sup>19</sup>

Part IV suggests the need to expand the analytical framework of the human rights discourse to include economic and social rights. Central to the strategies to protect women are policies to protect labor. This Part argues that such strategies must be considered in the context of the crisis of public governance and, thus, proceeds to examine the status of voluntary codes and enhanced labor law protections enforceable through the International Labor Organization (ILO) as sites to counter violence against women.<sup>20</sup> Intervention efforts are likely to fail unless strategies are developed to empower women to define their own needs and defend their own interests.

This Article seeks to add to the literature analyzing the relationship between gender-based violence and economic globalization. Studies that approach gender-based violence from an ecological perspective have focused principally on “internal” factors, including family dynamics and cultural norms by which patriarchal hegemony over women is sanctioned.<sup>21</sup> Certainly, these projects have proposed useful interventions and legal reforms as a response to gender-based violence on national and international levels. These studies, however, have ignored the ways that economic liberalization policies have insinuated themselves into the private spaces of households and affected the social order of communities as factors contributing to violence against women. These developments have also been ignored in the scholarship on economic globalization. This literature has principally focused on the macro benefits of liberalization strategies, while the micro consequences of global development policies have rarely been considered.<sup>22</sup> This Article examines the

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<sup>19</sup> See *infra* Part III.

<sup>20</sup> See *infra* Part IV.

<sup>21</sup> See, e.g., ANDREW MORRISON ET AL., ADDRESSING GENDER-BASED VIOLENCE IN THE LATIN AMERICAN AND CARIBBEAN REGION: A CRITICAL REVIEW OF INTERVENTIONS 8 (World Bank Pol’y Res., Working Paper No. 3438, 2004) (reviewing the correlates for intimate partner violence based on a compilation of studies on the topic), available at [http://econ.worldbank.org/files/39678\\_wps3438.pdf](http://econ.worldbank.org/files/39678_wps3438.pdf).

<sup>22</sup> See Deborah Z. Cass, *International Business and Commerce*, in THE OXFORD HANDBOOK OF LEGAL STUDIES 593, 594 (Peter Cane & Mark Tushnet eds., 2003) (noting, for example, that current legal scholarship proceeds from the consensus about the benefits of liberalization and the legal framework that supports it); Amy L. Chua,

conditions of life as lived by the men and women caught up in the vertiginous swirls of liberalization strategies, particularly women who are located “at the fulcrum of the economic process.”<sup>23</sup> In so doing, it questions the normative assumptions about dominant economic globalization policies. It points to the ways in which gender-based violence is both central to and an outcome of global production in the export economy.

The gender dynamics of globalized production in which women’s labor is sought as a means to reduce costs and increase profits has repercussions far beyond the gated *maquiladoras* of Cd. Juárez. These consequences move inexorably from factories into the communities, and eventually into homes – the most private recesses of family and kinship relations. It is important to note that Cd. Juárez is not unique. The murders, the environmental degradation, and the poverty of this city in northern México cannot be written off as “a grotesque exception,” but perhaps instead should be viewed as the “window” onto the havoc that economic globalization can wreak.<sup>24</sup>

## II. Gender and Violence in the Transformation of Ciudad Juárez

### A. *The Murders of Women in Ciudad Juárez*

In December 1992, accompanied with a mixture of official celebration and ceremonial optimism, the government of México signed NAFTA.<sup>25</sup> Soon thereafter, the first of a series of murders of women were reported in the newly established free trade zone in the northern border city of Juárez.<sup>26</sup> The murdering of women continued and soon increased, eventually assuming the dimensions

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*Markets, Democracy, and Ethnicity: Toward a New Paradigm for Law and Development*, 108 YALE L.J. 1, 15 (1998) (noting that the dominant legal scholarship in the area of law and development has been to “urge the rapid and full-blown liberalization and marketization of developing world economies”).

<sup>23</sup> LESLIE SALZINGER, *GENDERS IN PRODUCTION* 2 (2003).

<sup>24</sup> BOWDEN, *supra* note 1, at 49 (describing Cd. Juárez as the “[w]indows’ on the coming times”).

<sup>25</sup> See NAFTA, *supra* note 5.

<sup>26</sup> See Alicia Gaspar de Alba, *The Maquiladora Murders, 1993-2003*, 28 AZTLÁN: J. CHICANO STUD. 1, 1-5 (Fall 2003) (describing the victims’ bodies as “strangled, mutilated, dismembered, raped, stabbed, and torched . . .”).

of a discernible pattern: serial killings of young women, mostly migrants, employed in the northern *maquilas*,<sup>27</sup> discovered as grotesque mutilated bodies, but most of all as a phenomenon to which local and state authorities appeared powerless to halt.<sup>28</sup> To date, in the intervening twelve years, perhaps as many as 400 women have been murdered, and no one knows why.<sup>29</sup> Nor has anyone devised a way to bring the Juarez killing spree to an end.

In addition to the hundreds of murders, hundreds of other women have disappeared.<sup>30</sup> The majority of the victims have been young, slim, with tan or dark skin, long brown hair, and mostly migrants from southern México who came north in search of employment.<sup>31</sup> Observers have described the victims principally as *maquila* workers for multinational corporations, including General Electric, Alcoa, Dupont, RCA, General Motors, Ford, and Chrysler, or as shop clerks from poor families.<sup>32</sup> Some were killed or disappeared en route to or from work.<sup>33</sup> Many were raped and mutilated, their bodies abandoned in ditches and vacant lots.<sup>34</sup>

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<sup>27</sup> *Maquilas* or *maquiladoras*, refer generally to foreign-owned assembly plants located in México that produce for export. Marc Ellenbogen, *Can the Tariff Act Combat Endemic Child Labor Abuses? The Case of Côte d'Ivoire*, 82 TEX. L. REV. 1315, 1344 n.200 (2004).

<sup>28</sup> See Nathan, *supra* note 6, at 25.

<sup>29</sup> See *supra* note 7.

<sup>30</sup> See Washington Valdez, *supra* note 7 (stating that as of June 23, 2002 “[a]s many as 80 more girls and women are missing and unaccounted for”).

<sup>31</sup> Gaspar de Alba, *supra* note 26, at 4; Evelyn Nieves, *To Work and Die in Juárez*, MOTHERJONES (May/June, 2002), at <http://www.motherjones.com/news/feature/2002/05/juarez.html>; *Reparations Proposed in Mexican Killings*, *supra* note 7; John Burnett, *Who's Killing the Women of Juárez* (NPR radio broadcast, Feb. 22, 2003), available at <http://www.npr.org/templates/story/story.php?storyId=1171962>.

<sup>32</sup> Diego Cevallos, *México: Toll of Murdered Young Women Tops 300*, INTER PRESS SERV., Feb. 18, 2003; Alma Guillermoprieto, *A Hundred Women; Why Has a Decade-Long String of Murders Gone Unsolved?*, THE NEW YORKER, Sept. 29, 2003, at 83, 85; Bruno Sorrentino, *City of Dreams*, BBC NEWS, (Jan. 12, 2001) at <http://news.bbc.co.uk/1/hi/programmes/correspondent/1077942.stm>; AFL-CIO, *YOUNG WOMEN RISK THEIR LIVES TO WORK IN MÉXICO'S MAQUILAS*, (Oct. 9, 2003) at <http://www.aflcio.org/issuespolitics/globaleconomy/ns10092003.cfm>.

<sup>33</sup> Cevallos, *supra* note 32 (stating that many of the 300 victims have disappeared on the way to or from work).

<sup>34</sup> Diana Washington Valdez, *Hopeful Young Women Perish in City of Broken Dreams*, EL PASO TIMES, June 23, 2002, at 11A; see Ursula Biemann, *Performing the Border*, 14 RETHINKING MARXISM 29, 44 (2002) (noting that at least fifty bodies remain



Others were found near the airport, in poor *colonias*,<sup>35</sup> in trash dumps, by train tracks, in downtown plazas, in vacant lots near commercial areas, and, in some instances, multiple bodies were found in a single shallow grave.<sup>36</sup> Eight bodies were found in a field facing the offices of the city's *Maquila* Owners Association.<sup>37</sup>

The murders are aptly described as one of México's "most vicious unsolved mysteries," appearing as "waves of killings," with bodies "surfac[ing] in the desert that surrounds [the] city like an ocean."<sup>38</sup> The murders are reported with such frequency that they are now considered nearly commonplace.<sup>39</sup> Fear has gripped the city, which is now considered by many to be "freakish and marginal."<sup>40</sup>

The murder of women has been differentiated from the larger crime wave plaguing Cd. Juárez not only because it represents a higher rate of homicides for women than for men, but also because of the common traits shared by these murders.<sup>41</sup> These common traits include discernable patterns of ritualized acts the victims

in the morgue unidentified).

<sup>35</sup> *Colonias* is a Spanish term for neighborhoods but refers to unincorporated rural slums lacking infrastructure and suffering high rates of poverty. See Roderick R. Williams, *Cardboard to Concrete: Reconstructing the Texas Colonias Threshold*, 53 HASTINGS L. J. 705, 705 (2002).

<sup>36</sup> Gaspar de Alba, *supra* note 26, at 1; Diana Washington Valdez, *Families, Officials Claim Cover-Ups Keep Killings From Being Solved*, EL PASO TIMES, June 23, 2002, available at [http://takenbythesky.net/juarez/june23\\_2002.html](http://takenbythesky.net/juarez/june23_2002.html); Washington Valdez, *supra* note 34.

<sup>37</sup> See Ginger Thompson, *Wave of Women's Killings Confounds Juarez*, N.Y. TIMES, Dec. 10, 2002, at A1.

<sup>38</sup> *Id.*

<sup>39</sup> Burnett, *supra* note 31 (describing the discovery of yet another body as "becoming a common occurrence").

<sup>40</sup> BOWDEN, *supra* note 1, at 25.

<sup>41</sup> INTER-AM. COMM'N ON HUM. RTS. (IACHR), THE SITUATION OF THE RIGHTS OF WOMEN IN CIUDAD JUÁREZ, MÉXICO: THE RIGHT TO BE FREE FROM VIOLENCE AND DISCRIMINATION (Mar. 7, 2003) [hereinafter IACHR] (stating the "rate of homicides for women compared to that for men in Ciudad Juárez is significantly higher than for similarly situated cities or the national average"), available at <http://www.cidh.org/annualrep/2002eng/chap.vi.juarez.htm>; Julia Monárrez Fragoso, *Serial Sexual Femicide in Ciudad Juárez, 1993-2001*, 28 AZTLÁN: J. OF CHICANO STUD. 153, 159 (Fall 2003) (noting that the level of violence against women has reached new levels not seen previous to the 1990s).

suffered before their murders as well as the similar manner in which the bodies of these women were disposed.<sup>42</sup>

In addition to the serial murders of *maquila* women, the rate of gender violence classified as “domestic violence” between current or former intimate partners has increased markedly.<sup>43</sup> Prior to the early 1990s, very few women were murdered in Cd. Juárez; there were barely a handful of cases per year.<sup>44</sup> In 2000, instances of domestic violence homicides increased more than 30% over a similar span for a similar period in 1999.<sup>45</sup> Cd. Juárez now has the highest levels of reported domestic violence in México.<sup>46</sup> The domestic violence program in Cd. Juárez reported a startling increase in their caseload, as much as a six fold increase, during that time.<sup>47</sup>

As early as 1995, just a few years after the murders began, authorities had announced the arrest of suspects and made assertions that the crimes had been solved and that the events that earned Cd. Juárez the title of “capital of murdered women” were events of the past.<sup>48</sup> But the murders continued, notwithstanding

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<sup>42</sup> Thompson, *supra* note 37.

<sup>43</sup> *Id.*; Nathan, *supra* note 6, at 30.

<sup>44</sup> Debbie Nathan, *Missing the Story*, THE TEXAS OBSERVER, Aug. 30, 2002, (noting that the rate of female homicides was far lower than in U.S. cities of similar size), available at <http://www.texasobserver.org/showArticle.asp?ArticleID=1011>.

<sup>45</sup> Jeff Barnet, *Police Under Fire as Violence, Corruption Continue*, FRONTERA NORTESUR (July 2000), at [http://www.nmsu.edu/~frontera/jul\\_aug00/feat2.html](http://www.nmsu.edu/~frontera/jul_aug00/feat2.html) (reviewing statistics from the Department of Legal Medicine in the state attorney general’s office).

<sup>46</sup> Nathan, *supra* note 6, at 30.

<sup>47</sup> Barnet, *supra* note 45.

<sup>48</sup> Arrest patterns for the murders were established as early as 1995, when authorities seized an engineer employed at a *maquila* plant, declared him guilty of a score of murders, and proclaimed the end of the crime wave. Over a six-year period, the police arrested six bus drivers whose routes passed through the *maquila* sector and tortured them into confessing to the murders. In 2003, an American citizen living in Cd. Juárez and her Mexican husband were charged with committing some of the murders and tortured into confessing. The murders have continued since their incarceration. The families of the murdered women, as well as the communities that support them, have protested the torture of those who have been arrested and have been skeptical of their guilt. For descriptions of the arrests and torture reports, see Gaspar de Alba, *supra* note 26, at 7-9; Sam Dillon, *Rape and Murder Stalk Women in Northern México*, N.Y. TIMES, Apr. 18, 1998, at A3; Guillermoprieto, *supra* note 32, at 84, 88; Thompson, *supra* note 37; Diana Washington Valdez, *Who’s Guilty? A Look at Suspects*, EL PASO TIMES, June

the detention of a string of individuals who reportedly confessed to the crimes.<sup>49</sup> Further problems arose with emerging evidence of police impropriety regarding the detained suspects. A forensic chief who worked on these cases resigned, stating that his office was asked to falsify evidence against some of the accused.<sup>50</sup> More tragic, however, was the shooting and killing of a defense attorney four days after he announced plans to file charges against the police over the torture of two defendants.<sup>51</sup>

A number of organizations and institutions have criticized the handling of the murder cases and have issued their own reports calling for changes to police practices and the Mexican criminal justice system.<sup>52</sup> All have denounced local, state, and federal police for failing to investigate the murders in a timely fashion, for negligence and incompetence, and for the apparent indifference to women's rights.<sup>53</sup>

In the face of law enforcement indifference, family members have resorted to newspapers to call attention to the plight of

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24, 2002, at 1A.

<sup>49</sup> Gaspar de Alba, *supra* note 26, at 9.

<sup>50</sup> Washington Valdez, *supra* note 34.

<sup>51</sup> Kris Axtman, *Border Mystery: 274 Murders in Nine Years*, CHRISTIAN SCI. MONITOR, May 2, 2002, available at <http://www.csmonitor.com/2002/0502/p03s01-ussc.htm>; Mary Jordan, *In México, Police Error or Political Execution?*, WASH. POST, Feb. 12, 2002, at A1; Thompson, *supra* note 37 (noting the shooting death of the defense lawyer in February 2002, who police claimed, was mistaken for a fugitive). No charges were filed against the police who shot him. Thompson, *supra* note 37.

<sup>52</sup> Such groups include Amnesty International, the Inter-American Commission on Human Rights, Human Rights Watch, the Lawyers' Committee for Human Rights, the U.N. Commission Committee on the Elimination of Discrimination Against Women, the Washington Office on Latin America, a U.S. Congressional delegation, the Los Angeles City Council, and other human rights and grassroots organizations. See INTOLERABLE KILLINGS, *supra* note 6; IACHR, *supra* note 41; Nick Pacheco, *Resolution Urging the Investigation of the Murders in Ciudad Juarez*, 28 AZTLÁN: J. CHICANO STUD. 203, 203 (Fall 2003) (adopted by the Los Angeles City Council); Chris Kraul, *Juarez Killings Breed Fierce Anger*, L. A. TIMES, Mar. 8, 2003, at 1 (reporting on organizing efforts and marches to call attention to police failures); Diana Washington Valdez, *U.N. Investigates Deaths of Juarez Women*, EL PASO TIMES, May 19, 2001, at 3B.

<sup>53</sup> See *supra* note 48 and accompanying text; see generally Norma Jean Almodovar, *For Their Own Good: The Results of the Prostitution Laws as Enforced by Cops, Politicians, and Judges*, 10 HASTINGS WOMEN'S L.J. 119 (1999) (criticizing law enforcement procedures for cases in which the victims might be prostitutes).

women in Cd. Juárez.<sup>54</sup> Advocacy groups profile individual cases as a way to pressure authorities to locate the missing women and to call attention to the murders.<sup>55</sup> Photos of missing women are displayed on windows in homes and in the storefronts of downtown discount shops.<sup>56</sup> Pink crosses have been painted on utility poles throughout the city.<sup>57</sup> Documentaries have been made and memorials have been established.<sup>58</sup> The murders have transformed Cd. Juárez into “The City of Dead Girls,” a condition that has produced a host of theories in an effort to explain the murders.<sup>59</sup>

### *B. Murder Theories*

In addition to the criticism lodged against the criminal justice system generally, a number of hypotheses about the cause of the murders have gained currency. The theories themselves are an indication of the depth of the fear that has gripped the city, as well as the ongoing victimization of women in Cd. Juárez. These hypotheses illuminate the complexities in coming to terms with the epidemic of gender violence in Cd. Juárez.

#### *1. Deviancy*

Theories have linked the murders to deviancy for profit; that is, the murder of women to obtain their organs to sell on the black market to wealthy individuals.<sup>60</sup> Other theories have suggested

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<sup>54</sup> Thompson, *supra* note 37 (quoting one woman who says she will never stop talking about her dead daughter); Washington Valdez, *supra* note 34;

<sup>55</sup> Kraul, *supra* note 52.

<sup>56</sup> Nieves, *supra* note 31.

<sup>57</sup> Burnett, *supra* note 31.

<sup>58</sup> *Id.* (noting that Feb. 2003 marked the tenth year of serial murders in Cd. Juárez); Nathan, *supra* note 44 (reviewing *Señorita Extraviada*, a documentary on the murders directed by Lourdes Portillo).

<sup>59</sup> Sandra Jordan, ‘*Rich Killers’ Stalk City of Lost Girls*, THE OBSERVER, Nov. 2, 2003, at <http://observer.guardian.co.uk/international/story/0,6903,1075952,00.html>.

<sup>60</sup> Guillermoprieto, *supra* note 32, at 86 (noting that although the theory has not been substantiated, most Mexicans attribute the murders to organ theft); Mark Stevenson, *Mexican Prosecutors Claim Organ Trafficking Behind Border Murders of Dozens of Women*, ASSOCIATED PRESS, May 1, 2003; INTOLERABLE KILLINGS, *supra* note 6 (noting that theories and rumors have proliferated).

that women have been murdered in the production of snuff films.<sup>61</sup> Suspicions exist that satanic cults have been murdering women as part of their rituals.<sup>62</sup> The murders have also been depicted as the killing of women for sport by sons of wealthy elites, including owners of *maquilas*.<sup>63</sup> Some experts have raised the possibility of serial killers, possibly from the United States, who cross the border and thus escape detection.<sup>64</sup> Others suspect that police officers are involved in the killing of women for sport, or to avoid prosecution after raping them.<sup>65</sup>

## 2. Gender and Backlash

Other theories attribute the homicides to the behavior of the victims. One former mayor of Cd. Juárez linked the murders to provocative dress and late night activity.<sup>66</sup> The governor of the State of Chihuahua claimed the victims invited their deaths by associating with the wrong types of people at the wrong places.<sup>67</sup> The Public Prosecutor and the police have blamed women for working at taverns, patronizing bars, attending dances, and

<sup>61</sup> Emma Pérez, *So Far From God, So Close to the United States: A Call for Action by U.S. Authorities*, 28 AZTLÁN: J. CHICANO STUD. 147, 149 (Fall 2003); Thompson, *supra* note 37; INTOLERABLE KILLINGS, *supra* note 6.

<sup>62</sup> Guillermprieto, *supra* note 32, at 86; Pérez, *supra* note 61, at 149; Thompson, *supra* note 37 (reporting on the descriptions of cult cutting in victims' scalps, and the manner in which some bodies were laid out in the desert); INTOLERABLE KILLINGS, *supra* note 6.

<sup>63</sup> Guillermprieto, *supra* note 32, at 86 (describing the theories of the "scions of México's ruling elite" or "juniors" killing as part of a hunting spree); Pérez, *supra* note 61, at 149 (noting accusations against international wealthy *maquila* owners and their sons who "play rough").

<sup>64</sup> Washington Valdez, *supra* note 48.

<sup>65</sup> Guillermprieto, *supra* note 32, at 86; Washington Valdez, *supra* note 34. Law enforcement has been accused of complicity in the crimes committed by drug traffickers or other organized crime groups. INTOLERABLE KILLINGS, *supra* note 6. Official corruption is described as so pervasive in México that there is speculation that the murderers gained their initial experience committing crimes while serving as former police and government agents. Jeff Barnet, *Critics Attack Failed Security Measures*, FRONTERA NORTE SUR (May 2000), at <http://www.nmsu.edu/~frontera/may00/feat2.html>.

<sup>66</sup> Pérez, *supra* note 61, at 148.

<sup>67</sup> Nathan, *supra* note 44 (noting comments by Gov. Francisco Barrio who was governor during the 1990s).

tempting men.<sup>68</sup> The *Maquila* Association has attributed the women's corrupted character as the cause of their murders.<sup>69</sup> Thus, the murdered women have been denounced as prostitutes, whose illegal conduct was responsible for their untimely ends.<sup>70</sup> The victims have been demeaned for having loose morals or no morals at all; by their very actions and demeanor, they forfeited state protection.<sup>71</sup> Alternatively, their families have been blamed for failing to teach them proper morals and for failing to protect them.<sup>72</sup>

"Backlash" theories have also gained currency. Men are said to be retaliating against women for usurping male positions in the wage labor force.<sup>73</sup> The murders are thus said to be the result of changing gender roles and social class systems. Mexican culture is blamed for engendering *machismo*, resulting in the inability of Mexican men to accept women's employment outside the home and their concomitant independence.<sup>74</sup> This view suggests that as male unemployment increases and their wages decline to levels inadequate to support their families, their self-esteem diminishes

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<sup>68</sup> Gaspar de Alba, *supra* note 26, at 6 (noting the innuendos that women "ask for it"); Nathan, *supra* note 6, at 26 (noting that many of the victims were said to frequent bars, a pastime for women considered inappropriate); INTOLERABLE KILLINGS, *supra* note 6 (quoting the former state public prosecutor who said about women who went out late at night to bars, "[i]t's hard to go out on the street when it's raining and not get wet").

<sup>69</sup> Melissa W. Wright, *Manifesto Against Femicide*, 33 ANTIPODE 550, 557 (2003).

<sup>70</sup> Almodovar, *supra* note 53, at 119 (noting that local officials believed that some of the victims were prostitutes, which in turn created disincentives in the investigations); Monárrez Fragoso, *supra* note 41, at 163.

<sup>71</sup> Monárrez Fragoso, *supra* note 41, at 157 (noting that the state authorities blamed women for going to late night bars and having poor family relationships).

<sup>72</sup> BOWDEN, *supra* note 1, at 39 (recounting the response of the police to the rape and murder of a young girl whose mother was accused of negligence); Wright, *supra* note 69, at 557 (noting that the *maquila* association attributed the murders to weak family values).

<sup>73</sup> Sylvia Chant, *Researching Gender, Families and Households in Latin America*, 21 BULL. OF LATIN AM. RES. 545, 554 n.7 (2002) (noting newspaper accounts calling murders "macho backlash").

<sup>74</sup> Mary Jordan, *In México, an Unpunished Crime*, WASH. POST, June 30, 2002, at A1 (describing México as "the country that made the term machismo famous"); Thompson, *supra* note 37 (reporting the labeling of these crimes as "hate crimes" against women whose increasing independence and control over family funds has created a backlash).

along with their inability to function as heads of household.<sup>75</sup> To compensate for this loss of male identity, men resort to violence against women.<sup>76</sup>

### 3. *State Impunity and Conditions for Murder*

The criticisms of the state by various human rights groups identify the absence of civil, political, and legal rights in Cd. Juárez as the fundamental cause of the murders, because a climate of impunity, as indicated by the inability or the unwillingness to provide justice to victims and their families, is created.<sup>77</sup> Local and international advocates consider the flawed criminal justice system as contributing to an environment that has made Cd. Juárez hospitable to predatory murders.<sup>78</sup> The very failure to solve the murders has transformed Cd. Juárez into a “mecca for homicidal maniacs.”<sup>79</sup> Rape laws that inhibit the prosecution of men for raping their wives and a paltry record of enforcing domestic violence statutes further encourage a climate of violence against women.<sup>80</sup> Organizations promoting international human rights highlight the lack of enforcement of the *International Covenant on Civil and Political Rights*,<sup>81</sup> the *American Convention of Human Rights*,<sup>82</sup> and the *Convention of the Elimination of All Forms of*

<sup>75</sup> See LORI H. HEISE ET AL., WORLD BANK, *THE HIDDEN HEALTH BURDEN* 255 (1994) (arguing that empowerment of women is “an enormous threat to men”); Margrethe Silberschmidt, *Disempowerment of Men in Rural and East Africa: Implications for Male Identity and Sexual Behavior*, 29 *WORLD DEV.* 657, 665 (2001) (arguing that men’s loss of economic status to women causes aggression toward women); Thompson, *supra* note 37.

<sup>76</sup> Silberschmidt, *supra* note 75, at 665.

<sup>77</sup> See *supra* note 52; Juan Forero, *Rights Groups Faults Police in Deaths of Women in México*, N.Y. TIMES, Aug. 12, 2003, at A6.

<sup>78</sup> INTOLERABLE KILLINGS, *supra* note 6.

<sup>79</sup> Sam Dillon, *What Went Wrong?: México Can’t Fathom Its Rising Crime*, N.Y. TIMES, June 28, 1998, at A1.

<sup>80</sup> Nieves, *supra* note 31.

<sup>81</sup> G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966). The International Covenant on Civil and Political Rights is a United Nations treaty that creates a mechanism by which individuals of member nations can submit human rights complaints to a committee for review. See Wikipedia, *International Covenant on Civil and Political Rights* (Mar. 20, 2005), available at [http://en.wikipedia.org/wiki/International\\_Covenant\\_on\\_Civil\\_and\\_Political\\_Rights](http://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights).

<sup>82</sup> O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (Nov. 22, 1969) (also known as the Pact

*Discrimination against Women*<sup>83</sup> as a cause of the murders and as a primary legal violation that should be addressed.<sup>84</sup>

These theories make little mention of the emergence of Cd. Juárez as the principal site for México's export economy. An examination of the changes that have followed the growth of the export economy provides a basis for understanding the consequences of paradigmatic economic globalization strategies implemented in much of the developing world. This examination also describes the context within which to consider murder in Cd. Juárez, and thus to critique the usefulness of theories propounded in an effort to resolve crime against women.

### C. *Situating Ciudad Juárez*

The murders of women in Cd. Juárez coincide with the enactment of NAFTA and the expansion of the free trade zone along México's northern border. México's first significant efforts to industrialize the north (*frontera norte*) and stimulate the economy were launched in 1964 and led to its ambitious *Programa Nacional Fronterizo* (PRONAF).<sup>85</sup> The plan called for the development of cultural centers, the expansion of social services, and the improvement of the economy without the aid of foreign investors.<sup>86</sup> But the weight of U.S. economic dominance quickly swayed investment strategies, and U.S. capital flowed into border development and transformed the north into the *maquiladora* (*maquila*) sector, a free trade zone for U.S.

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of San Jose, Costa Rica). The American Convention of Human Rights seeks a commitment by all parties to acknowledge and respect the rights of all persons to equal judicial protection, property, life, privacy and expression. See Jonathon P. Vuotto, *Awas Tingni v. Nicaragua: International Precedent for Indigenous Land Rights?*, 22 B.U. INT'L L.J. 219, 229 (2004).

<sup>83</sup> G.A. Res. 54/4, U.N. GAOR, 54th Sess., Supp. No. 49, U.N. Doc. A/54/49 (2000). The Convention on the Elimination of All Forms of Discrimination against Women, adopted by the UN General Assembly in 1979, was intended to provide an international bill of rights for women. See Leonard Pertnoy, *The "C" Word: Collegiality Real or Imaginary, and Should it Matter in a Tenure Process*, 17 ST. THOMAS L. REV. 201, 224 n.84 (2004).

<sup>84</sup> INTOLERABLE KILLINGS, *supra* note 6.

<sup>85</sup> LESLIE SKLAIR, *ASSEMBLING FOR DEVELOPMENT* 28 (1989); Joshua A. Cohen, *A Case Study of Internationalization: The Rise of the Maquiladoras*, BUS. MEX., Special Ed. 1994, at 52-53.

<sup>86</sup> Cohen, *supra* note 85, at 52-53.



companies.<sup>87</sup>

In the 1980s, the *maquilas* expanded dramatically as economic crisis prevented México from paying interest on its external debt.<sup>88</sup> The debt also caused México to introduce classical structural adjustment programs: the public sector contracted, banks and state industries were privatized, wages were frozen, tariffs and investment restrictions were eliminated, and industries were deregulated in accordance with the dictates of international lending agencies.<sup>89</sup> México's communal land grants that once served as family farming structures were restructured, thereby setting the stage for privatization of family farms and buyouts by private interests.<sup>90</sup> As a result, *maquilas* assumed an increasingly strategic place in the Mexican economy.<sup>91</sup> Mexicans migrated from the south, displaced by the changes in land tenure forms, and crowded along the U.S.-Mexican border areas in search of employment, thereby assuring the *maquilas* a reserve of workers.<sup>92</sup>

Geography is central to Cd. Juárez's standing as a location from which to understand the consequences of the *maquila* development strategies. With a population surpassing one million people, Cd. Juárez is México's sixth largest city and receives an estimated 60,000 migrants annually.<sup>93</sup> As the city with the largest concentration of *maquilas*, Cd. Juárez has been described as the

<sup>87</sup> Robert Anthony et al., *El Paso y Ciudad Juárez: Economic History*, at <http://www-personal.umich.edu/~kenlo/econdev/econhistory.html> (last visited Apr. 8, 2005).

<sup>88</sup> Kim Moody, *NAFTA and the Corporate Redesign of North America*, 22 *LATIN AM. PERSP.* No. 1, at 100 (1995).

<sup>89</sup> *Id.* at 101-02; Salas, *supra* note 3, at 33 (describing the neoliberal processes in México that resulted in a weaker state less likely or capable of intervening in the economy and changes in regulatory systems in favor of business interests).

<sup>90</sup> Kimberly Olson, *Will Fox Change Chiapas? Not Unless Trade Partners Understand the Real Issues*, 10 *MINN. J. GLOBAL TRADE* 459, 463 (2001).

<sup>91</sup> Paul Cooney, *The Mexican Crisis and the Maquila Boom*, 28 *LATIN AM. PERSP.* No. 3, at 69 (2001).

<sup>92</sup> Pérez, *supra* note 61, at 148 (noting the stream of young women who steadily enter Juárez and look for jobs in *maquila* industries); see also Jeff Barnett, *Crisis, Maquilas, Scams Bring Migrants to Juarez*, *FRONTERA NORTE SUR* (Feb. 2000), at <http://www.nmsu.edu/~frontera/feb00/feat5.html> (describing hundreds of poor villagers from Veracruz migrating to Cd. Juárez because of the crisis in the agricultural sector).

<sup>93</sup> Melissa W. Wright, *Feminine Villains, Masculine Heroes, and the Reproduction of Ciudad Juárez*, 19 *SOC. TEXT* 93, 97 (2001); *CEDAW Report*, *supra* note 7, at 49.

country's "economic powerhouse."<sup>94</sup> In this instance, location is everything. Situated along the northern frontier, Cd. Juárez serves as a repository of cheap labor able to produce and transport goods on demand.<sup>95</sup>

Cd. Juárez, like the rest of México and much of Latin America, has dutifully turned to the invisible hand of the market to guide social and economic development.<sup>96</sup> But, in creating the conditions necessary for the successful free trade zones along the border, México's economy and social structure have suffered significant shifts and dislocation.<sup>97</sup>

### 1. Labor

Independent labor unions have struggled to exist in Cd. Juárez, where government-controlled unions have obstructed organizing efforts.<sup>98</sup> Labor unions in México have often been described as

<sup>94</sup> BOWDEN, *supra* note 1, at 76-77 (noting that there are 325 foreign-owned factories in Cd. Juárez employing 175,000 workers); Thompson, *supra* note 4. Estimates indicate that Cd. Juárez has one-fourth of all *maquila* workers. See Melissa W. Wright, *The Dialectics of Still Life: Murder, Women, and Maquiladoras*, 11 PUB. CULTURE 453, 462 (1999).

<sup>95</sup> Elisabeth Malkin, *A Boom Along México's Border*, N.Y. TIMES, Aug. 26, 2004, at W1 (noting that U.S.-owned companies locate their factories in México not only because of cheap labor but because geographical proximity allows them to avoid holding expensive inventory by demanding that Mexican factories continuously ship supplies).

<sup>96</sup> México has embraced market liberalization strategies advocated by the World Bank, the IMF, and the influence of the Washington Consensus free-market development policies that were first applied in Latin America. Carlos Alzugaray Treto, *Governance, Security, and Interamerican Relations*, in NEOLIBERALISM AND NEOPANAMERICANISM 47-48 (Gary Prevost & Carlos Oliva Campos eds., 2002) (noting the heightened degree of influence had by "Washington's unquestionable hegemonic will and capacity" on economic policies of the region); see also DANIEL YERGIN & JOSEPH STANISLAW, THE COMMANDING HEIGHTS 236 (1998); cf. Tina Rosenberg, *Globalization*, N.Y. TIMES MAG., Aug. 18, 2002, at 28 (describing the inability of South Koreans to disagree with the IMF).

<sup>97</sup> Mercedes González de la Rocha, *The Urban Family and Poverty in Latin America*, 22 LATIN AM. PERSP. No. 2, at 12 (1995) (describing the impact of the free trade zones on the economies of Mexican urban areas); see María Eugenia Padua, *México's Part in the Neoliberal Project*, 8 U.C. DAVIS J. INT'L L. & POL'Y 1, 13 (2002) (noting that scholars of many disciplines have set out to critique the neoliberal project in México because of its failure to achieve adequate economic benefits).

<sup>98</sup> Cooney, *supra* note 91, at 66-68 (noting that Cd. Juárez is one of the weaker cities with regard to successful independent labor union efforts where company unions are prevalent, function with impunity, and prevent effective worker representation).

disorganized and debilitated; unions are often subverted by a corrupt government bureaucracy, notwithstanding progressive labor laws.<sup>99</sup> Recent globalization strategies have recast México's labor culture beyond the historical difficulties between unions and government. The disciplining of independent labor unions and the rise of government-sponsored labor organizations, while not new strategies, are often used by the Mexican government at the behest of *maquila* owners to accomplish flexibilization<sup>100</sup> as a means to control wages and working conditions.<sup>101</sup> Independent union activists in *maquila* industries have been blacklisted; organizing efforts are foiled by irregular and illegal practices.<sup>102</sup> Government deference to the interests of foreign investors has further resulted in the failure to defend worker interests and allowed employers to

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<sup>99</sup> For a general overview of the history of labor unions in México, see Amy H. Goldin, *Collective Bargaining in México: Stifled by the Lack of Democracy in Trade Unions*, 11 COMP. LAB. L.J. 203 (1990). *But see* Michael Joseph McGuinness, *The Politics of Labor Regulation in North America: A Reconsideration of Labor Law Enforcement in México*, 21 U. PA. J. INT'L ECON. L. 1, 4 (2000) (describing various causes of México's disorganized and ineffective labor structures and noting how some criticisms of México's labor unions are based on unsubstantiated stereotypes and racist myths).

<sup>100</sup> Flexibilization is understood to involve labor cost flexibility (wages), external numerical flexibility (employment-at-will), internal numerical flexibility (work time arrangements), functional flexibility (modifying tasks as needed), and informal flexibility (replacing "standard" employment with part-time or other unstable work). Orly Lobel, *The Slipperiness of Stability: Contracting for Flexible and Triangular Employment Relationships in the New Economy*, 10 TEX. WESLEYAN L. REV. 109, 111 n.3 (2003); *see also* Edward J. McCaughan, *México's Long Crisis*, 20 LATIN AM. PERSP. No. 6, at 17-18 (1993) (associating México's crisis with labor flexibility policies).

<sup>101</sup> Elizabeth Fussell, *Making Labor Flexible: The Recomposition of Tijuana's Maquiladora Female Labor Force*, 6 FEMINIST ECON. 59, 64 (2000) (noting that pressure from U.S. investors to control labor unions is a crucial factor in enabling the expansion of the *maquila* sector); *see* Elizabeth C. Crandall, *Will NAFTA's North American Agreement on Labor Cooperation Improve Enforcement of Mexican Labor Laws?*, 7 TRANSNAT'L LAW 165, 177 (1994) (describing the government's labor strategies as related to the needs of foreign investors). For an overview of the origins of government controlled unions in México, *see* Hobart A. Spaulding, Jr., ORGANIZED LABOR IN LATIN AMERICA 104-106 (1977).

<sup>102</sup> U.S. NAT'L ADMIN. OFF., PUBLIC REPORT OF REVIEW 20 (NAO Submissions #940001 & #940002) (reporting on deceptive and unfair practices used to thwart unionizing efforts); Frances Lee Ansley, *Rethinking Law in Globalization Labor Markets*, 1 U. PA. J. LAB. & EMP. L. 369, 379-85 (1998) (reporting that Cd. Juárez union organizers indicated that a worker who raised issues regarding wages or attempted to organize other workers would be fired).

“manipulate labor relations at their pleasure.”<sup>103</sup> In the *maquila* sector, collective bargaining has all but been eliminated.

As a result of de-unionization, the terms of employment have been individualized and managerial discretion has expanded in terms of defining job responsibilities.<sup>104</sup> Women workers in particular have been classified as unskilled labor to justify low wages, despite the introduction of technologically advanced processes requiring heightened worker capabilities.<sup>105</sup> Assembly-line conditions have worsened with the global transformation of manufacturing, from large-scale mass production to the mode of constant product modification and just-in-time inventory delivery requirements that are dependent on faster output times, excessive hours, and stressful working conditions.<sup>106</sup>

Income in México has plunged while disparities in wealth have expanded.<sup>107</sup> Unemployment in Cd. Juárez has increased even as *maquilas* have created jobs in the export zone.<sup>108</sup> As firms downsize and outsource within the new model of supply chain manufacturing, many workers have been pushed to the margins of

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<sup>103</sup> Manuel Fuentes Muniz, *The NAFTA Labor Side Accord in México and Its Repercussions for Workers*, 10 CONN. J. INT'L L. 379, 388 (1995).

<sup>104</sup> Richard Roman & Edur Velasco Arregui, *Neoliberalism, Labor Market Transformation, and Working-Class Responses*, 28 LATIN AM. PERSP. No. 4, at 56 (2001).

<sup>105</sup> Moody, *supra* note 88, at 99 (noting that *maquila* industries have combined greater technology with lower wages). *Business Week* has acknowledged that the *maquila* labor force is increasingly well-trained. *Id.*; Cooney, *supra* note 91, at 64-65 (noting that despite the increasing skills of *maquila* workers, they are treated and paid as though they were unskilled).

<sup>106</sup> See OXFAM INT., TRADING AWAY OUR RIGHTS, WOMEN WORKING IN THE GLOBAL SUPPLY CHAIN 7 (2004) (describing the effects of a 30% cut in production time in the past five years due to just-in-time manufacturing); Wright, *supra* note 93, at 98 (noting increased demands on labor as a result of new market-sensitive production techniques); see also Cooney, *supra* note 91, at 64 (discussing the extended work week and higher levels of productivity); Moody, *supra* note 88, at 97 (describing these labor processes as “management by stress”).

<sup>107</sup> *North American Labor Markets: A Comparative Profile 1997*, 35 LAT. AM. RES. REV. 177, 178 (2000) (report prepared by the Secretariat of the Commission for Labor Cooperation).

<sup>108</sup> Susan Tiano, *Maquila Women: A New Category of Workers?*, in WOMEN WORKERS AND GLOBAL RESTRUCTURING 193 (Kathryn B. Ward ed., 1990) (observing the “paradox” of jobs created by the *maquila* programs and rising unemployment which doubled in the first fifteen years of the program).

the workforce and subsist in the informal economy through subcontracting or self-employment.<sup>109</sup> Lourdes Benería notes that “production processes that were illegal and viewed as part of the underground economy two or three decades ago are now considered to be legal or part of the regular economy, even if functioning under similar situations.”<sup>110</sup> Workers are unable to counter this restructuring imposed from the top down.<sup>111</sup>

Real wages have steadily declined since 1995.<sup>112</sup> Foreign manufacturers are attracted to Cd. Juárez precisely because of the availability of a well-trained, cheap labor force, unapologetically advertised as free of the “costs and burdens” of “U.S. mandated government programs, including Worker’s Compensation,” and assurances of “free[dom] from personal contingent liability related to safety and security matters.”<sup>113</sup> *Maquila* workers earn less than service workers and workers in the domestic manufacturing economy; in some instances, *maquila* workers earn less than self-employed workers on the periphery of the labor market.<sup>114</sup>

<sup>109</sup> Ronaldo Munck, *Introduction: Globalization and Labor Flexibility: The Latin American Case(s)*, 31 *LATIN AM. PERSP.* No. 4, at 5-6 (2004) (describing “top-down” informalization processes that rely on the flexible worker who is out of the mainstream labor market); see LOURDES BENERÍA, *GENDER, DEVELOPMENT, AND GLOBALIZATION* 94 (2003).

<sup>110</sup> BENERÍA, *supra* note 109, at 96; see also ROBERT E. SCOTT, *ECON. POL. INST., THE HIGH PRICE OF ‘FREE’ TRADE*, at [http://www.epinet.org/briefingpapers/147/epi\\_bp147.pdf](http://www.epinet.org/briefingpapers/147/epi_bp147.pdf) (Nov. 2003) (noting the significant decrease in the number of people regularly employed in paid positions and the introduction of many workers into the “subsistence-level” work in the informal economy).

<sup>111</sup> Roman & Arregui, *supra* note 104, at 56 (noting the dramatically sharp decline in the number of strikes over the past 15 years). In 1982, there were 947 strikes compared with thirty-four in 1997. *Id.*

<sup>112</sup> Steve Scifferes, *Mexican Growth ‘Too Slow,’* BBC NEWS, at <http://news.bbc.co.uk/1/hi/business/3233832.stm> (Nov. 24, 2003); ECON. POL. INST., *RETHINKING THE GLOBAL POLITICAL ECONOMY*, at [http://www.epinet.org/content.cfm/webfeatures\\_viewpoints\\_global\\_polit\\_econ](http://www.epinet.org/content.cfm/webfeatures_viewpoints_global_polit_econ) (transcript of speech given at Asia-Europe-U.S. Progressive Scholar’s Forum (Apr. 11-13, 2002)) (describing a recent study by economists in México, Canada, and the United States that found that there was a decline in real wages accompanied by an upward redistribution of income and an increase in informal sector employment).

<sup>113</sup> See Advertisement, *Why Manufacture in México?*, at <http://www.napsMexico.com> (last visited Apr. 6, 2005).

<sup>114</sup> Cooney, *supra* note 91, at 63 (noting that *maquila* wages are half that of manufacturing wages); Fussell, *supra* note 101, at 60, 67 (noting that *maquila* workers earned less than those working in local commerce or services, and self-employed

*Maquila* wages are often insufficient to meet the needs of housing, food, and utilities.<sup>115</sup> The high cost of living in Cd. Juárez and the inability of workers to subsist on *maquila* wages refute the explanation that low wages are adequate to meet local standards of living.<sup>116</sup>

## 2. Gender and Labor

Women entering the labor-intensive manufacturing sector in record numbers are the foundation of the export zone economy. Between the late 1960s and the early 1980s, *maquila* managers recruited young women for their ideal labor force in the belief that these women worked hard and produced at low cost.<sup>117</sup> It was assumed that not only would women with little or no experience in the wage labor force make minimum demands, but also that they would lack the skills necessary to organize and present grievances.<sup>118</sup>

The recruitment effort was specific and direct: management documents and advertising campaigns described in precise terms the gender characteristics of the workers they intended to hire.<sup>119</sup>

workers); Kathryn Kopinak, *Gender as a Vehicle for the Subordination of Women Maquiladora Workers in México*, 22 *LATIN AM. PERSP.* No. 1, at 30 (1995) (noting that wages paid by transnational corporations to the *maquilas* were lower than what had been paid to traditional Mexican industry).

<sup>115</sup> *Maquiladora Workers Can't Meet Basic Needs on Plant Wages*, at <http://www.womenontheborder.org/art%20workersbasneeds.htm> (July 6, 2001) (noting that the basic needs of a family of four require four to five times the minimum wage offered to *maquila* workers); AFL-CIO, *YOUNG WOMEN RISK THEIR LIVES TO WORK IN MÉXICO'S MAQUILAS*, at <http://www.aflcio.org/issuespolitics/globaleconomy/ns10092003.cfm> (last updated Oct. 10, 2003).

<sup>116</sup> *Maquiladora Workers Can't Meet Basic Needs on Plant Wages*, *supra* note 115.

<sup>117</sup> SUSAN TIANO, *PATRIARCHY ON THE LINE* 222 (1994) (noting that in the past thirty years, Mexican women have entered and remained in the workforce in unprecedented numbers). Mexican women are described as *maquiladora* heroines. See NORMA IGLESIAS PRIETO, *BEAUTIFUL FLOWERS OF THE MAQUILADORA* xix (1994) (noting the industry's description of the preferred workforce as docile, disciplined, healthy, and productive young women); Wright, *supra* note 93, at 96.

<sup>118</sup> Nathan, *supra* note 6, at 25.

<sup>119</sup> A. Maria Plumtree, *Maquiladoras and Women Workers: The Marginalization of Women in México as a Means to Economic Development*, 6 *SW. J.L. & TRADE AM.* 177, 184 (1999) (noting that more than two thirds of advertisements in a Mexican newspaper for *maquila* employment were directed at women). Plumtree describes the signs: 'Personal Femenino [sic]' (Women personnel) wanted. *Id.* Leslie Salzinger, *Making*

As a result, the initial composition of the *maquila* workforce was composed of approximately 80% women, most of whom were young, single, and childless.<sup>120</sup> If the ideal woman could not be found in requisite numbers, manufacturers looked to hire gay men instead.<sup>121</sup> As the economic crisis deepened and the *maquila* sector expanded in the mid 1980s, the demand for workers increased. Factory owners began hiring men and older women, who were identified as “ideal,” because as primary wage earners, they could not risk losing their employment and would, presumably, endure exploitative working conditions.<sup>122</sup> Internal migration to the north, together with a rise in unemployment elsewhere in México, increased the willingness of young men to accept the low wages previously associated with women workers.<sup>123</sup> Ciudad Juárez, however, remains known as a city where women without skills or education can find employment.<sup>124</sup>

Despite the promise of respectable working conditions for women, *maquila* employment has not compared favorably with work in the domestic economy or, for that matter, with those women working outside of the formal economy. Low wages often oblige women to turn to prostitution on the weekends as a means

*Fantasies Real: Producing Women and Men on the Maquila Shop Floor*, NACLA: REP. ON THE AMS., Mar-Apr. 2001, at 13, 14 (noting advertisements seeking “señoritas” or “damas”). Help-wanted signs posted in front of *maquila* factories indicated explicitly that employment was limited to women. Fran Ansley, *Standing Rusty and Rolling Empty: Law, Poverty, and America's Eroding Industrial Base*, 81 GEO. L.J. 1757, 1844 n.337 (1993) (describing signs outside of *maquilas* soliciting *operadoras* or *personel femenino* or women workers).

<sup>120</sup> Jennifer Mandina, *NAFTA's Contribution to the Discrimination of Mexican Women in the Maquiladoras*, 9 BUFF. WOMEN'S L.J. 25, 27 (2001-2002); Salzinger, *supra* note 119, at 14 (noting one manufacturer who stated that 85% of the workforce is made up of women, who are more disciplined, pay more attention to what they do, and get bored less than men do).

<sup>121</sup> SALZINGER, *supra* note at 23, at 37 (describing the factory “pink line”).

<sup>122</sup> TIANO, *supra* note 117, at 222; Elvia R. Arriola, *Voices from the Barbed Wires of Despair: Women in the Maquiladoras, Latina Critical Legal Theory and Gender at the U.S.-México Border*, 49 DEPAUL L. REV. 729, 768 (2000); Fussell, *supra* note 101, at 65.

<sup>123</sup> BENERÍA, *supra* note 109, at 176 n.12; SALZINGER, *supra* note 23, at 46 (noting that despite preferences for women, by the 1980s, men were 45% of the *maquila* workforce).

<sup>124</sup> Wright, *supra* note 93, at 109. Although women continued to be the preferred hires, they were offered unstable and flexible jobs. BENERÍA, *supra* note 109, at 128.

of subsistence.<sup>125</sup> Because women workers are deemed unreliable, or simply because they are women, corporate investment in training is not required; women employed at one *maquila* gain few new skills with which to improve their positions with another manufacturer.<sup>126</sup>

Women also endure a range of discriminatory and dehumanizing practices.<sup>127</sup> They are subject to physical exams that include a history of their sexual activity, monthly pregnancy tests, and coerced birth control measures as conditions of employment.<sup>128</sup> Women who have become pregnant have been fired without any pay or health coverage, despite Mexican labor laws that guarantee these benefits.<sup>129</sup>

Sexual harassment is commonplace.<sup>130</sup> Male managers leer at young women on the assembly line; sexual competition is encouraged both as a device to control labor and as a means to increase productivity.<sup>131</sup> *Maquila* managers seek to hire attractive

<sup>125</sup> Pastoral Juvenil Obrera, *The Struggle for Justice in the Maquiladoras: The Experience of the Autotrim Workers*, in *CONFRONTING GLOBALIZATION* 181 (Timothy A. Wise et al. eds., 2003); see Biemann, *supra* note 34, at 15 (arguing that low salaries suggests that “pimping takes place on a corporate level”). Studies estimate that *maquila* wages are as low as \$4.00 per day. Wright, *supra* note 69, at 554.

<sup>126</sup> Arriola, *supra* note 122, at 765.

<sup>127</sup> Lorenia Trueba de Avedano, *A Report on Sexual Harassment in the Workplace in México* (May 2003), at <http://www.laborrights.org/projects/women/Mexico%20report.pdf>.

<sup>128</sup> Although Human Right Watch initiated a campaign to end pregnancy testing, studies demonstrate that such practices remained pervasive. See Juvenil Obrera, *supra* note 125, at 181 (reporting that pregnancy tests have continued even after NAFTA regulations outlawed them); Arriola, *supra* note 122, at 784-85; Biemann, *supra* note 34, at 8 (also noting that women who are pregnant are fired from work); see also Marta Lamas, *Standing Fast in México: Protecting Women’s Rights in a Hostile Climate*, *NACLA: REP. ON THE AMS.*, Mar-Apr. 2001, at 38-39 (noting that contraceptives for women are vigorously pushed by factory managers).

<sup>129</sup> See Juvenil Obrera, *supra* note 125, at 181; Nicole Grimm, *The North American Agreement on Labor Cooperation and Its Effects on Women Working in Mexican Maquiladoras*, 48 *AM. U. L. REV.* 179, 201 (1998).

<sup>130</sup> Cooney, *supra* note 91, at 71-72.

<sup>131</sup> SALZINGER, *supra* note 23, at 30, 64 (describing male managers as “voyeurs” and women workers as “the center of attention”); see also Arriola, *supra* note 122, at 783 (describing groping and molestation on the factory floor, accompanied by threats of termination if women workers did not give in to the male supervisors’ sexual demands).



and sexy women.<sup>132</sup> Women are encouraged to dress suggestively, wear lipstick, and flirt as a means of securing their employment.<sup>133</sup> They have been coerced into entering beauty contests, bikini contests, and other activities disguised as “work incentives and morale boosters,”<sup>134</sup> all designed to reinforce exploitative benchmarks of femininity.<sup>135</sup>

Male workers on the line are segregated from female workers and suffer gender-based harassment as well.<sup>136</sup> They are demeaned as lacking in manliness by virtue of their employment in the assembly process and for earning wages acknowledged as insufficient for respectable wage-earners.<sup>137</sup> They are sent to female-only lines as a form of discipline.<sup>138</sup>

Relegated to the least desirable jobs, women work without proper ventilation and are subjected to dangerous chemicals, toxic gases, and stress.<sup>139</sup> Their diet suffers due to a lack of cafeterias in

<sup>132</sup> IGLESIAS PRIETO, *supra* note 117, at 37 (noting that women considered “fat” were not hired because they were told they could not tolerate the heat in the factory); Nathan, *supra* note 6, at 27 (noting that plant managers admitted to recruiting women who looked like models).

<sup>133</sup> Nathan, *supra* note 6, at 27 (noting that plant managers favored women who wore short skirts, and heels); Salzinger, *supra* note 119, at 13, 19 (describing rows of *maquila* workers with red lipstick and manicured fingers, who are encouraged to wear miniskirts and are examined for their appearance as well as their productivity by male floor managers).

<sup>134</sup> Alicia Gaspar de Alba, *The Price of Free Trade is Dead Women*, 24 UCLA TODAY No. 2 (Sept. 23, 2003), at [http://www.today.ucla.edu/2003/030923voices\\_freetrade1.html](http://www.today.ucla.edu/2003/030923voices_freetrade1.html). For a related study about the production of gender roles as a means to achieve greater productivity from the male work, see Elizabeth Ogelsby, *Machos and Machetes in Guatemala's Cane Fields*, NACLA: REP. ON THE AMS., Mar-Apr. 2001, at 17 (describing techniques designed to “masculinize” harvest labor, the use of industrial psychologists to recruit and train cane cutters, high calorie diets, weight training regimes, amphetamines, and the use of Rambo movies and “exotic dancers” as entertainment).

<sup>135</sup> IGLESIAS PRIETO, *supra* note 117, at 75 (noting that the beauty contests organized by the *maquilas* are designed to distract workers from the exploitation they suffer); Arriola, *supra* note 122, at 779-80 (describing the well-known “*La Flor Mas Bella de la Maquildora*” beauty contest).

<sup>136</sup> Nathan, *supra* note 6, at 27.

<sup>137</sup> *Id.* (noting that men on the line are equated with women and considered pathetic bread winners).

<sup>138</sup> *Id.*; Salzinger, *supra* note 119, at 18-19 (observing that gender identities “are defined by management in the structure of the plan but they are reinforced by workers”).

<sup>139</sup> IGLESIAS PRIETO, *supra* note 117, at 10-11, 21-22 (describing the dangerous and

the workplace.<sup>140</sup> On the occasions that women leave their jobs, it is usually due to illnesses related to working conditions in the *maquilas*.<sup>141</sup>

### 3. *Habitability, Environment, and Health in Ciudad Juárez*

Tens of thousands of Mexican workers migrate annually to Cd. Juárez only to arrive to find a city lacking the capacity to provide adequate housing. Cd. Juárez is now described as a visual nightmare of “exploding squatter settlements” and “urban dilapidation.”<sup>142</sup> Shanty-town industrialization has produced a bleak, urban landscape, with sprawling *colonias* forming out of one room hovels, constructed from packing materials, cardboard, pallets, and other highly flammable debris recovered from factory refuse bins.<sup>143</sup> These make-shift houses are constructed on abandoned land set against the backdrop of neatly groomed industrial parks and lack any semblance of minimum conditions of habitability. During the winter months, in the elevated parts of the city that experience cold, desert weather, families attempt to stay warm and illuminate their homes by wood fires, candles, make-shift heaters, or improvised connections to nearby electrical systems used by the *maquilas*.<sup>144</sup> Deaths in the *colonias* from fires, electrocutions, and carbon monoxide poisoning are

noxious conditions in the factories).

<sup>140</sup> *Id.* at 43.

<sup>141</sup> Julie Light, *Engineering Change: The Long, Slow Road to Organizing Women Maquiladora Workers*, at <http://www.corpwatch.org/issues/PID.jsp?articleid=691> (June 26, 1999) (noting that a 1996 study in the *International Journal of Occupational and Environmental Health* found that between 15-20% of *maquila* workers had to leave work due to health and safety issues arising at work). Another study in the *American Journal of Industrial Medicine* found that 21% of *maquila* workers had problems related to repetitive stress injuries and 45% of workers were exposed to toxic materials. *Id.*

<sup>142</sup> Wright, *supra* note 93, at 93, 97; see David W. Eaton, *Transformation of the Maquiladora Industry: The Driving Force Behind the Creation of a NAFTA Regional Economy*, 14 ARIZ. J. INT'L & COMP. L. 747, 774 (1997) (noting that *maquila* workers have no option other than sub-standard housing).

<sup>143</sup> Ansley, *supra* note 102, at 381-82 (describing neighborhoods built on top of old land fills); Joshua Briones, *Paying the Price for NAFTA: NAFTA's Effect on Women and Children*, 9 UCLA WOMEN'S L.J. 301, 309 (1999) (describing cardboard hovels along polluted rivers).

<sup>144</sup> BOWDEN, *supra* note 1, at 30-31.

common.<sup>145</sup> Land available for shanty-town development has grown scarce, forcing some families to live in the city's dump.<sup>146</sup>

Housing squalor has been accompanied by pervasive environmental degradation described by the American Medical Association as a "virtual cesspool."<sup>147</sup> Many neighborhoods lack water, sewage, and sanitation systems.<sup>148</sup> The contamination of air and water has been attributed to the failure of the *maquilas* to dispose of toxic materials properly.<sup>149</sup> Environmental controls are known to be lax, a condition that serves to encourage *maquila* growth. Worse yet, manufacturers routinely ignore existing environmental regulations.<sup>150</sup> *Maquila* factories have dumped toxic materials used in production directly into the municipal water system.<sup>151</sup> Indeed, the concentration of toxic pollutants in

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<sup>145</sup> *Id.* at 31, 34, 82 (describing such deaths as "epidemic"). In those *colonias*, with minimal electrical services, defective wiring is a common cause of fires. *Id.* On Aug. 26, 2004, this author toured Anapra, the largest *colonia* in Cd. Juárez. A single electrical line ran along the main road of the neighborhood. Builders Without Borders describes the "hundreds of cables spliced into [the main line], haphazardly running down the roads." *Spotlight Program-Builders Without Borders* (Aug. 11, 2004), at [http://www.usgbc.org/News/usgbcnews\\_details.asp?ID=964](http://www.usgbc.org/News/usgbcnews_details.asp?ID=964).

<sup>146</sup> BOWDEN, *supra* note 1, at 34, 82. Although housing development is stagnant, there is no shortage of transactions of land sales for industrial parks. *See* Moody, *supra* note 88, at 110. A number of corporations have provided for improved employee housing, but assistance has been limited to a small percentage of workers and has not provided relief to the vast numbers of *maquila* workers and migrants drawn to the city. Eaton, *supra* note 142, at 774 (noting the plans announced by GM and Sony to contribute to worker housing stock); *see* Wright, *supra* note 93, at 105 (describing Delphi corporation's plan to offer housing assistance to employees with at least one year's seniority despite statistics demonstrating that the average tenure on the assembly line was ten months, thus assuring that most workers would not qualify for the aid).

<sup>147</sup> Moody, *supra* note 88, at 109-10; *see* Jaime Preciado Coronado & Jorge Hernández, *The Geopolitics of the Relationship Between México and the United States*, in *NEOLIBERALISM AND NEOPANAMERICANISM* 225 (Gary Prevost & Carlos Oliva Campos eds., 2002).

<sup>148</sup> Briones, *supra* note 143, at 309; Thompson, *supra* note 4 (noting that residents often buy water from itinerant vendors from trucks parked along the edges of the neighborhoods).

<sup>149</sup> BOWDEN, *supra* note 1, at 41; Cooney, *supra* note 91, at 73.

<sup>150</sup> BOWDEN, *supra* note 1, at 82; Cooney, *supra* note 91, at 73; *see* Eaton, *supra* note 142, at 781-82 (noting that many manufacturers dump their toxic waste illegally); Elizabeth A. Ellis, *Bordering on Disaster: A New Attempt to Control the Transboundary Effects of Maquiladora Pollution*, 30 VAL. U. L. REV. 621, 623, 630 (1996).

<sup>151</sup> Eaton, *supra* note 142, at 781-82 (describing water pollution from the dumping

the water system has rendered available treatment processes useless.<sup>152</sup>

Factory workers are poorly protected from exposure to toxic chemicals, smoke, dust, and fumes.<sup>153</sup> Inadequate ventilation has been associated with a host of health problems, including impaired vision, breathing difficulties, and kidney disease.<sup>154</sup> The rate of miscarriages among female *maquila* workers is high, and the number of children born with birth defects is rising.<sup>155</sup> Children have been born with facial deformities and mental impairments, and residents of all ages suffer high rates of cancer, lupus, hepatitis, diarrheal diseases, and gastroenteritis.<sup>156</sup> Environmental degradation, coupled with harsh working conditions and low wages, have contributed to increasing cases of stress-related mental illnesses.<sup>157</sup>

#### 4. *Financing the Infrastructure*

Until the 1970s, economic policies emphasized infrastructure development and public programs that benefited many Mexicans. These policies included rural communications, public housing, and universal public services such as education, health, utilities, and transportation.<sup>158</sup> The structural adjustment policies imposed

of highly polluting chemicals and material into the water system); Juvenil Obrerea, *supra* note 125, at 177 (noting that transnational firms are overwhelmingly responsible for the pollution).

<sup>152</sup> Eaton, *supra* note 142, at 782.

<sup>153</sup> Juvenil Obrerea, *supra* note 125, at 173, 183.

<sup>154</sup> IGLESIAS PRIETO, *supra* note 117, at 10-11, 21-22.

<sup>155</sup> Eaton, *supra* note 142, at 781 n.183; Ellis, *supra* note 150, at 621-622; Grimm, *supra* note 129, at 211 (describing the births of about 100 children known today as the "Mallory Children," born to mothers who worked in the Mallory Capacitors *maquila* in Matamoros and who were exposed to toxic PCB chemicals).

<sup>156</sup> Ellis, *supra* note 150, at 631-32. These illnesses are also found on the Texas side of the border, but chemical emissions are two to six times greater in Cd. Juárez. Sam Howe Verhovek, *Pollution Puts People in Peril on the Border with México*, N.Y. TIMES, July 4, 1998, at A7.

<sup>157</sup> IGLESIAS PRIETO, *supra* note 117, at 22; Arriola, *supra* note 122, at 792.

<sup>158</sup> After the 1930s, México nationalized key industries in order to preserve its resources for the nation and end what it considered "persistent and improper intervention in [the country's] foreign affairs." ENRIQUE DUSSEL PETERS, POLARIZING MÉXICO 148-49 (2000) (noting that such social policies had been the foundation of development); Elizabeth Dore, *In the National Interest*, NACLA: REP. ON THE AMS., Jan-Feb. 2003, at

during the 1980s required privatization of state sector systems, including transportation, health care, pensions, and much of the education system; the elimination of government subsidies; and the reduction of government spending on those social programs that remained.<sup>159</sup> As a result, there are few schools to which workers can afford to send their children. Available schools are typically makeshift structures, or even old school buses, with few resources.<sup>160</sup> The cost of food and medicine has increased; staple items in the Mexican diet have quadrupled in price.<sup>161</sup> Adequate health care systems are lacking and the transportation system is over-burdened and inadequate.<sup>162</sup>

NAFTA tax exemptions on most imports used in the manufacturing process and on products sent back to the United States for sale and distribution have diminished local resources.<sup>163</sup> During the 1990s, tax collections as a percentage of gross national product declined.<sup>164</sup> The low or no-tax incentives used to attract

20-21 (quoting President Lázaro Cárdenas); Enrique Krauze, *Past Wrongs, Future Rights*, N.Y. TIMES, Aug. 10, 2004, at A21 (noting that from the 1930s through the 1970s, México carried out agrarian reform, created social security institutions, widened the educational net and fostered four decades of economic growth with political stability).

<sup>159</sup> DUSSEL PETERS, *supra* note 158, at 68; González de la Rocha, *supra* note 97, at 16.

<sup>160</sup> Although nominally free, parents in Cd. Juárez must pay for expenses for their children's education, which results in the denial of educational opportunities. Interview with Las Hormigas, in Cd. Juárez (Aug. 26, 2004); *see also* Thompson, *supra* note 4 (describing old school buses that serve as classrooms and provide no protection from the scorching sun). The World Bank has recommended drastic reductions in public investment in education, the privatization of schools, and the nullification of teacher contracts. *See* Adriana Puigros, *World Bank Education Policy*, NACLA: REP. ON THE AMS., May-June 1996, at 26.

<sup>161</sup> *See* Gary Prevost & Robert Weber, *The Prospects for the Free Trade Area of the Americas*, in NEOLIBERALISM AND NEOPANAMERICANISM 67, 71 (Gary Prevost & Carlos Oliva Campos eds., 2002) (noting that NAFTA drove down the price of corn and forced more than one million small farmers out of business since 1994, yet at the same time, lower corn prices failed to benefit consumers because of the elimination of tortilla subsidies).

<sup>162</sup> Eaton, *supra* note 142, at 773-74.

<sup>163</sup> *See* Cooney, *supra* note 91, at 73; Nandini Gunewardena, *Reinscribing Subalternity: International Financial Institutions, Development, and Women's Marginality*, 7 UCLA J. INT'L L. & FOREIGN AFF. 201, 217 (2002).

<sup>164</sup> Alejandro Nadal, *Macroeconomic Challenges for México's Development Strategy*, in CONFRONTING DEVELOPMENT: ASSESSING MÉXICO'S ECONOMIC AND SOCIAL

foreign capital do not provide adequate financing to support an infrastructure in a city that has experienced rapid population growth resulting from the success of such inducements.<sup>165</sup> If taxes are collected, however, it is not certain that funds will be invested in public works or in assets to benefit foreign investors.<sup>166</sup> In 2000, Cd. Juárez's budget was only slightly more than that allocated to El Paso's police department, although its population is twice as large as El Paso's.<sup>167</sup> Municipalities such as Cd. Juárez are said to have "mortgaged their slim revenue base for years to come in order to attract the factories."<sup>168</sup>

Cd. Juárez does not control its wealth.<sup>169</sup> Industrial parks with modern buildings, clean exteriors, landscaped views, water towers, outdoor electrical lights, highways, and private airports coexist with communities of corrugated tin hovels, dirt paths, and raw sewage.<sup>170</sup> The mayor of Cd. Juárez recently described the paradox of the export zone: "[e]very year we get poorer and poorer, even though we create more and more wealth."<sup>171</sup>

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POLICY CHALLENGES 62 (Kevin J. Middlebrook & Eduardo Zepeda eds., 2003).

<sup>165</sup> Cooney, *supra* note 91, at 73 (noting that tax breaks given to manufacturers results in a transfer of the costs of basic services to poorly-paid workers). NAFTA provisions allow for the conversion of firms from export sector status to permanent domestic enterprises with tax paying obligations, but multinational corporations have threatened to withdraw rather than allow the Mexican government to pursue such transformation. See Juvenil Obrerea, *supra* note 125, at 174. Cd. Juárez has imposed a local tax on *maquilas* but at a very low rate, and it is not certain that such tax will be collected. BOWDEN, *supra* note 1, at 82. Corporations successfully negotiate tax incentives, including reduction in rates on payroll, city, and property tax. *Perspectives: Case Study: Tax Incentives*, U.S.-Mex. Free Trade Rep., 1997 WL 9049742 (reporting Motorola's negotiated tax incentives for its beeper production plant).

<sup>166</sup> See Juvenil Obrerea, *supra* note 125, at 182; Wright, *supra* note 93, at 93, 106 (detailing the ORION proposal to redevelop Cd. Juárez into a city that would attract professionals and managers, including a proposal for a city beautification project and the construction of a Juárez Civic Center). Wright's findings demonstrate that ORION's proposal to design an economy around skilled professionals would depend on the ongoing exploitation of low-wage workers in labor-intensive *maquilas*. *Id.*

<sup>167</sup> Thompson, *supra* note 4.

<sup>168</sup> Moody, *supra* note 88, at 110.

<sup>169</sup> Cooney, *supra* note 91, at 76.

<sup>170</sup> Arriola, *supra* note 122, at 761-62.

<sup>171</sup> Thompson, *supra* note 4.

### 5. *The Social Fabric of Ciudad Juárez*

Until the mid-1990s, Cd. Juárez was considered a reasonably safe place; it is now known as a social disaster and one of the most distressed urban areas in the Western Hemisphere.<sup>172</sup> Rising rates of violence have accompanied the environmental degradation and sprawling squatter settlements inhabited by a rapidly increasing migrant population.<sup>173</sup> Much of the criminal activity is related to drugs and is attributed in large part to the combination of an increase in cross-border NAFTA-related commerce and the tens of thousands of unemployed in the city.<sup>174</sup> To escape detection, drug traffickers have used the local population, many of whom are desperate for a means of living, to smuggle greater numbers of smaller drug quantities.<sup>175</sup> There are now an estimated 800 neighborhood gangs in addition to major drug trafficking cartels.<sup>176</sup> Moreover, drug traffickers have become sophisticated businessmen, exploiting the advantages of borderless commerce. In fact, former legitimate businessmen have become drug traffickers as a result of the demise of the domestic economy.<sup>177</sup> NAFTA trade has increased the volume of transportation and large numbers of trucks crossing the border are not inspected.<sup>178</sup>

Economic liberalization strategies have also contributed to the development of a gun culture in Cd. Juárez. New NAFTA regulations have resulted in increased sales of U.S. firearms and

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<sup>172</sup> Dillon, *supra* note 79 (noting that México was considered one of the safest places in the hemisphere).

<sup>173</sup> Molly Moore, *Young Women Follow Journeys of Hope to Factories and Then, to Violence*, WASH. POST, June 25, 2000, at A1.

<sup>174</sup> Diane E. Davis, *Law Enforcement in México City: Not Yet Under Control*, NACLA: REP. ON THE AMS., Sept.-Oct. 2003, at 17 (noting that criminal behavior also accelerated in México City related to NAFTA induced unemployment); Wright, *supra* note 93, at 93, 97; Thompson, *supra* note 4.

<sup>175</sup> Barnett, *supra* note 92; Nathan, *supra* note 44.

<sup>176</sup> See Molly Moore, *On the Border, Juárez a City of Contrasts: Mix of Wealth and Poverty Stimulates Widespread Crime, Police Corruption*, WASH. POST, Dec. 5, 1999, at A41.

<sup>177</sup> J. Patrick LaRue, *The "Ill-icit" Effects of NAFTA: Increased Drug Trafficking into the United States Through the Southwest Border*, 9 CURRENTS: INT'L TRADE L.J. 38, 39 (2000).

<sup>178</sup> *Id.* at 40 (noting that drug smugglers have expanded into legitimate business with significant transportation systems).

ammunition imports.<sup>179</sup> Border cities like Cd. Juárez are now considered favored locations for obtaining guns.<sup>180</sup> Despite the protests of human rights organizations in México, U.S. gun manufacturers have lobbied México's Congress to change its domestic laws to raise the legal limit on the number of guns per domicile.<sup>181</sup>

The full range of criminal activity, from the trafficking of people and guns, the increase in the number of guns, the smuggling of stolen goods, and money laundering schemes, has been described by México's former ambassador as "a phenomenon of NAFTA."<sup>182</sup> Kidnappings, once rare events in México, have soared since the first half of 1990 to 1,500 per year.<sup>183</sup> This climate of fear, climbing crime rate, drug culture, and atmosphere of a militarized zone have developed into the emblematic representations of globalization south of the border.

Cd. Juárez has been transformed by economic liberalization policies. Populations have been dislocated; workers, particularly women, have been exploited. A comprehensive explanation for the murders in Cd. Juárez must take into account to the demise of organizations that protect workers, the degradation of physical space, the lack of resources for social services, and the conditions that contribute to drug trafficking.

### III. Global Economics and Their Progenies: Theorizing Gender Murders in Context

The murders of Cd. Juárez require an analysis that considers a range of theories related to political economy and the socioeconomic injustices that global economic liberalization

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<sup>179</sup> John Ross, *Guns, Trade and Control*, NACLA: REP. ON THE AMS., Sept.-Oct. 2003, at 18 (noting that in México City, 80% of the guns come from the United States).

<sup>180</sup> *Id.* at 18.

<sup>181</sup> *Id.* at 19 (noting that the country's Human Rights Ombudsman accused U.S. gun manufacturers of exporting the U.S. gun culture to México).

<sup>182</sup> Ambassador Adolfo Aguilar-Zinser, *International Money Laundering: From Latin America to Asia, Who Pays?*, 22 BERK. J. INT'L. L. 8, 10 (2004).

<sup>183</sup> Jeremiah E. Goulka, *A New Strategy for Human Rights Protection: Learning from Narcotics Trafficking in México*, 9 CARDOZO J. INT'L & COMP. L. 231, 235 (2001) (noting that México now has the second highest kidnapping rate in Latin America).



produces.<sup>184</sup> Theories about the murders must be examined through the perspective of daily life in Cd. Juárez, a city transformed by global economic policies that favor the flow of capital and unfettered markets over the interests of workers drawn to Cd. Juárez in search of a better life. The city has plunged headlong into an export economy, and its salient characteristic has been the degree to which this change has implicated the demise of social controls. These circumstances invite scrutiny of the murders with attention to this context.

Such an approach does not negate the importance of existing theories or minimize the importance of individual decisions and responsibility of criminals. Rather, it seeks to bring into perspective a more nuanced understanding of the relationship between socio-economic systems that contribute to and depend on the subordination of poor communities and gender oppression in the form of gender-based murders. Without undertaking this task, the murders are more likely to recede into distant and garish spectacles while the root causes remain unrevealed and unaddressed.

*A. Crime in Context: Economic Liberalization, Crime, and Deviancy*

The Cd. Juárez murders are correctly understood as sadistic, cruel, and deviant, whether they are the acts of individuals who kill for profit, for thrill, as a cover-up for other crimes, or for yet unknown reasons. Explanations for these crimes have considered individual behavioral culpability (e.g., serial killers) and group-based behavioral theories (e.g., organ theft ring, snuff film makers, corrupt police, wealthy industrialists' sons).<sup>185</sup> Although there is no single theory that explains the murders of Cd. Juárez, an analysis of the structural considerations shifts the paradigm from one that locates Cd. Juárez on the periphery of the Third World to

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<sup>184</sup> See NANCY FRASER, JUSTICE INTERRUPTUS 13, 15 (1997) (arguing that socioeconomic injustice is inherent in the current political economic social structure requiring theorists to critically examine and then link particular forms of oppression with economic subordination).

<sup>185</sup> For a description of behavioral theories of crime by individual and group behaviors, see MICHAEL J. LYNCH ET AL., CRITICAL PERSPECTIVES ON CRIME, POWER, AND IDENTITY (2000).

one that places Cd. Juárez at the center of a global process.<sup>186</sup>

1. *Economic Liberalization and the Production of Victims*

The transition to an export economy has produced a category of victims: poor women workers who are subordinated, if not rejected, from social protections in the workplace as well as in their communities. The living conditions in Cd. Juárez have disrupted socio-economic norms, producing a state of crisis and anxiety that impedes social cohesion.<sup>187</sup> Vast numbers of people live in essentially permanent conditions of indigence, without the possibility of relief or prospect of remedy. Life on these terms involves more than questions of livelihood. Indeed, intolerable living conditions have created insecurity and fear.<sup>188</sup> The reach of market influences has extended beyond the economic and entered the realms of daily life. These circumstances have given rise to the conditions described as “a set of social processes by which large bodies of populations are irreversibly kept outside or thrown out of any kind of social contract.”<sup>189</sup>

This is particularly true for women *maquila* workers. In the *maquila* sector, the image of women possessing inherent tendencies within (or outside of) the labor force has been constructed as a means to justify low wages and has taken on new purpose. Women are portrayed in ways that subject them to disrepute.<sup>190</sup> No longer concerned with the need to formulate descriptions of women as model recruits, new stereotypes have developed related to the characteristics of women on the assembly line. Women workers are now represented as inherently unsuitable for training and unworthy of any investment by virtue

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<sup>186</sup> *Id.* at 81 (describing an approach to crime that considers the behaviors of criminals as *examples* of wider social processes rather than as unique experiences).

<sup>187</sup> LYNCH ET AL., *supra* note 185, at 128; BOAVENTURA DE SOUSA SANTOS, TOWARD A NEW LEGAL COMMON SENSE 455 (2002).

<sup>188</sup> CEDAW Report, *supra* note 7, at 46.

<sup>189</sup> Boaventura de Sousa Santos, *Nuestra America: Reinventing a Subaltern Paradigm of Recognition And Redistribution*, 54 RUTGERS L. REV. 1049, 1050 (2002). These conditions have been described as “societal fascism.” *Id.*; see also MATTHEW C. GUTMANN, ROMANCING DEMOCRACY 81 (2002) (noting the lack of hope for economic improvements).

<sup>190</sup> See *supra* notes 66-72 and accompanying text.

of their gender, suggesting that they lack significance in the world beyond the workplace.<sup>191</sup> They are denounced as flighty, irresponsible “girls [without] any responsibilities” who “just come [to Cd. Juárez] to meet friends, boys, [and] have fun,” and are demonized as rash and untrustworthy.<sup>192</sup> They are victimized first by attribution and then by acts of violence.

Violence is perpetrated against women whose place in the hierarchy of market values render them as readily interchangeable cogs in the wheel of production.<sup>193</sup> They are vulnerable precisely because they are easily expendable; they are deprived of human rights because they are denied their humanity.<sup>194</sup> Women are more easily excluded from the social contract by the employment strategies that cast them as culpable for the general state of labor’s exploitation.<sup>195</sup> Low-wage jobs in the labor-intensive export zones have been perceived to be the result of the employment of women.<sup>196</sup> *Maquila* women generally are disparaged as the cause for workplace instability, high turnover, and the justification for labor flexibilization.<sup>197</sup>

<sup>191</sup> Wright, *supra* note 93, at 103 (quoting a *maquila* manager who explained, “if you have a plant full of girls, then you’re gonna have high turnover”).

<sup>192</sup> *Id.* (quoting a *maquila* supervisor who denounced women workers for their lack of family orientation). That the *maquilas* used images of partying and dancing as part of their recruitment efforts is conveniently forgotten. See *id.* (describing radio ads to recruit new workers which played songs with lyrics describing partying and sex, and in which *maquilas* were described as a place to have fun and make friends).

<sup>193</sup> de Sousa Santos, *supra* note 189, at 1051 (describing the collapse of expectations of victimized people and the risks of violence they face). The actions of three middle class youths in Brazil who murdered a landless peasant for “the fun of it” is said to be symbolic of this phenomenon. *Id.*; see also Elliott Currie, *Market, Crime and Community: Toward a Mid-Range Theory of Post-Industrial Violence*, 1 THEORETICAL CRIMINOLOGY 147, 164 (1997) (noting the indifference that develops in a culture overwhelmed by market values).

<sup>194</sup> See INT. COUNCIL ON HUM. RTS. POL., ENHANCING ACCESS TO HUMAN RIGHTS 9, at <http://www.ichrp.org/ac/excerpts/150.pdf> (last visited Apr. 6, 2005) (reporting on the World Bank publication, VOICES OF THE POOR, which found that the poor experienced both humiliation and a sense of acute vulnerability).

<sup>195</sup> See BENERÍA, *supra* note 109, at 82 (noting that the feminization of the labor force has been linked to deteriorating working conditions).

<sup>196</sup> *Id.*

<sup>197</sup> SALZINGER, *supra* note 23, at 34 (noting that stereotypes of femininity have shaped manager’s expectations); Wright, *supra* note 93, at 103 (describing how industry spokesmen blamed Mexican femininity for high turnover and other ills that affect the

These circumstances produce a link between gender victimization in the workplace and gender violence that is deliberate and direct. Gender bias in workplace strategies is more readily implemented when it is justified on the basis of gender bias in larger social systems.<sup>198</sup> Similarly, gender discrimination in the workplace influences behavior and contributes to a climate of gender hostility.<sup>199</sup>

In these circumstances, where segments of the population are understood as excluded from the social contract, it is reasonable to perceive the murderers as individuals who believe themselves to be acting out the mandates directed by society, and to interpret their actions by the conditions that produced them.<sup>200</sup> This is the social enactment of the disdain for poor working women, their status assigned according to their economic function.<sup>201</sup> This phenomenon occurs in circumstances where market values both predominate and determine human value to the exclusion of other measures of social worth.<sup>202</sup> Such circumstances may be evident in the depiction of women *maquila* workers whose condition of disposability in the workplace has extended to the shallow graves where their bodies lie.

## 2. *Economic Liberalization and the Production of Perpetrators*

Social disorganization theories propose that structural factors,

*maquilas*).

<sup>198</sup> Wright, *supra* note 93, at 103.

<sup>199</sup> Bini Litwin, *A Conceptual Framework for a Multi-Factor, Multi-Level Analysis of the Origins of Workplace Violence*, 8 ILSA J. OF INT'L & COMP. L. 825, 831 (2002) (noting mutual relationships between workplace systems and beliefs with those in the general social systems).

<sup>200</sup> See MARK SELTZER, *SERIAL KILLERS: DEATH AND LIFE IN AMERICA'S WOUND CULTURE* 44 (1998) (describing serial killers as "oversocialized" individuals who believe they are "carrying out sentences that society at large has leveled").

<sup>201</sup> See Shlomo Giora Shoham, *Micro-Macro Criminology*, in *VARIETIES OF COMPARATIVE CRIMINOLOGY, INTERNATIONAL STUDIES IN SOCIOLOGY AND SOCIAL ANTHROPOLOGY* 9, 52 (2001) (examining, for example, Holocaust murders, and describing those who committed the atrocities as thoroughly influenced by myths created at the macro-level).

<sup>202</sup> Keith Aoki, *100 Years of Solitude: The Alternate??? Futures of Latcrit Theory*, 54 RUTGERS L. REV. 1031, 1043 (2002); de Sousa Santos, *supra* note 189, at 1051, 1081.

including economic insecurity, stressful working conditions, the lack of community kinship and absence of social support networks, and uprooted ness are the sources of the multiple ways in which communities experience social disruption and fall victim to high crime rates.<sup>203</sup> Conditions of poverty and inequality have been demonstrated to produce “alienated individuals [who] have little to gain by conforming.”<sup>204</sup> These theories have applicability to Cd. Juárez, which suffers from structural violence, both physical and psychological, experienced as a deprivation of physical, mental, and emotional needs and which acts to erode the values of poor communities from within.<sup>205</sup>

The factors that underlie social disorganization theories are at work in Cd. Juárez. With the end to a steady increase in the standard of living and the decline in the crime rates prior to the implementation of economic liberalization, crime has soared as never before in México’s history.<sup>206</sup> Population growth in communities without public services or private support have been identified as breeding grounds for crime.<sup>207</sup> Migrants from the south, unfamiliar with the north, and without the resources of kinship networks, live in squalor, often on the streets and at the margins of society, where they are vulnerable to crime and drugs.<sup>208</sup> Communities that suffer from such circumstances are

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<sup>203</sup> See CLIFFORD R. SHAW & HENRY D. MCKAY, *JUVENILE DELINQUENCY AND URBAN AREAS: A STUDY OF RATES OF DELINQUENCY IN RELATION TO DIFFERENTIAL CHARACTERISTICS OF LOCAL COMMUNITIES IN AMERICAN CITIES* 315 (rev. ed. 1969). Shaw and McKay’s theories have been ratified by current research, which focuses on the role of community characteristics as opposed to those of individuals in understanding crime. See Tracey L. Meares, *Praying for Community Policing*, 90 CAL. L. REV. 1593, 1603 (2002); Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271, 1285 (2004).

<sup>204</sup> LYNCH ET AL., *supra* note 185, at 128.

<sup>205</sup> PETER UVIN, *AIDING VIOLENCE: THE DEVELOPMENT ENTERPRISE IN RWANDA* 68, 103, 110 (1998) (quoting Sohan Galtererg in defining “structural violence” as “those factors that cause people’s actual physical and mental realizations to be below their potential realizations”).

<sup>206</sup> *Id.* at 110.

<sup>207</sup> Greg S. Weaver, *Firearm Deaths, Gun Availability, and Legal Regulatory Changes: Suggestions from the Data*, 92 J. CRIM. L. & CRIMINOLOGY 823, 829 (2002) (noting that dramatic population growth accompanied by social disorganization stressors are likely to produce an increase in violence).

<sup>208</sup> *Id.* (quoting migrants from Veracruz: “we live like dogs”); see Currie, *supra* note

less likely to possess the means to deter crime.<sup>209</sup>

Shanty town dwellers, stigmatized as socially inferior, are vulnerable to a range of physical dangers, all of which are conditions long recognized as contributing to criminality.<sup>210</sup> Uninhabitable housing conditions have been associated with a high incidence of violent crime and social disorganization.<sup>211</sup> The transient nature of cardboard housing creates residential rootlessness and instability, thus further contributing to crime and ineffective law enforcement.<sup>212</sup>

Residents of Cd. Juárez experience the effects of privatization daily in realms of hopelessness. The closing of schools and the lack of health care serve to deny the possibility of a better future for children.<sup>213</sup> Cd. Juárez residents experience daily varying degrees of chaos, and the reversal of economic trends only contributes to the fear and despair arising from a deepening formlessness that unravels the social fabric.<sup>214</sup> Populations

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193, at 160 (describing the problems of rootless communities).

<sup>209</sup> Meares, *supra* note 203, at 1602 (referring to social disorganization theory, first developed by Clifford R. Shaw and Henry D. McKay in 1942, which hypothesized that social disorganization is the product of the weakening of community bonds and the absence of ties to powerful institutions). Communities with social organizational processes that serve as an infrastructure are more likely to develop a “norm highway,” which can resist crime and support the acquisition of neighborhood resources. *Id.* at 1604.

<sup>210</sup> SELTZER, *supra* note 200, at 47 (describing the links between gruesome locations and gruesome murders); Richard C. Schragger, *The Limits of Localism*, 100 MICH. L. REV. 371, 409 (2001) (noting that the physical conditions of a community that contribute to crime have been understood by urban planners since the beginning of the discipline of urban planning).

<sup>211</sup> See Schragger, *supra* note 210, at 409 (noting that in *Village of Euclid v. Ambler Realty Co.*, the U.S. Supreme Court validated zoning as a means of protecting the well-being of communities); see also Cait Clark, *Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor*, 14 GEO. J. LEGAL ETHICS 401, 417 n.57 (2001) (noting the relationship between the physical deterioration of housing and increased crime).

<sup>212</sup> Deborah W. Denno, *Gender, Crime, and the Criminal Law Defenses*, 85 J. CRIM. L. & CRIMINOLOGY 80, 99 (1994) (noting the relationship between homelessness and crime).

<sup>213</sup> Greg Bloom, *Border Maquilas: An Overview*, FRONTERA NORTE SUR (Sept. 2000), at <http://www.nmsu.edu/~frontera/sep00/feat1.html> (noting that Cd. Juárez is part of the border area that has the fewest number of students who complete their education).

<sup>214</sup> See Dan M. Kahan, *Between Economics and Sociology: The New Path of*

suffering such conditions become fearful and experience a loss of control such that "desperate fragmented solutions to problems can more easily take hold."<sup>215</sup> Powerlessness and resentment loom large.<sup>216</sup>

Working conditions on the assembly lines further contribute to the likelihood of increased violence.<sup>217</sup> Workers produce what they cannot buy and live within sight of a well-being they cannot reach.<sup>218</sup> *Maquila* work is alienating, fragmented, and dangerous, and it has taken its toll on the physical and mental well-being of workers. The pressures of just-in-time production schemes, inequitable wages, the lack of opportunity for advancement, and chronic insecurity have contributed to the creation of a frustrated, humiliated, and increasingly hostile workforce.<sup>219</sup>

The socio-psychological consequences of structural violence serve to authorize lawlessness as the moral order shifts and societal norms lose their legitimacy.<sup>220</sup> Such circumstances are everywhere in Cd. Juárez, where crime and violence, particularly street crime, kidnappings, and public killings have become almost daily recurrences prompting social commentators to note that

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*Deterrence*, 95 MICH L. REV. 2477, 2480 (1997).

<sup>215</sup> GUTMANN, *supra* note 189, at 141 (describing Mexicans' response to the fear of crime and resulting sense of powerlessness); BARBARA HARRISS-WHITE, GLOBALIZATION AND INSECURITY 189 (2002) (acknowledging that conflict theorists have demonstrated that the source of structural violence at the core of conflict and violence has been the unequal distribution of wealth and failure to meet basic human needs); INT. COUNCIL ON HUM. RTS. POL., CRIME, PUBLIC ORDER AND HUMAN RIGHTS 22, at <http://www.ichrp.org/ac/excerpts/139.pdf> (last visited Apr. 6, 2005) (noting that a consequence of economic liberalization and the inequality of wealth opportunities is the increased uncertainty about proscribed behaviors).

<sup>216</sup> HARRISS-WHITE, *supra* note 215, at 189.

<sup>217</sup> Litwin, *supra* note 199, at 826 (describing workplace conditions that give rise to violence).

<sup>218</sup> *Id.*

<sup>219</sup> *Id.* at 842-43; *see also* Bloom, *supra* note 213 (reporting a riot by construction workers brought into Cd. Juárez as a result of the mistreatment they suffered).

<sup>220</sup> UVIN, *supra* note 205, at 138 (describing the social processes by which people may become "increasingly unhampered by constraints on the use of violence"); *see* LYNCH ET AL., *supra* note 185, at 98 (noting that a life based on poverty, dumpster-diving, and other forms of degradation fail to promote a desire to obey "the rules of the game").

“[t]here has been a total crack in society.”<sup>221</sup> The increase in suicide, accidents, mental illness, and delinquency has also been attributed to economic policies and market reform.<sup>222</sup>

The focus on social disorganization as an explanation for the murders is neither a denigration of the people nor the place.<sup>223</sup> Indeed, the pattern of increased violence and rising crime rates in Cd. Juárez is consistent with recurrent violence in other countries similarly caught up in economic liberalization projects.<sup>224</sup> The murders of Cd. Juárez are replicated elsewhere, sometimes in similar form, such as the case of the epidemic gender murders of Guatemala City.<sup>225</sup> The murders illustrate that the synthesis of

<sup>221</sup> Enrique C. Ochoa & Tamar Diana Wilson, *Introduction*, 28 *LATIN AM. PERSP.* No. 3, at 3, 6 (2001) (quoting Carlos Monsiváis with regard to the impact of neoliberal reforms on the unprecedented crime wave affecting Mexicans).

<sup>222</sup> Patricia L. Price, *Bodies, Faith, and Inner Landscape*, 26 *LATIN AM. PERSP.* No. 3, at 37, 40 (1999).

<sup>223</sup> Social disorganization theories raise the complex issue of agency conceived as “the potentiality of ordinary people . . . to act on their own behalf.” See GUTMANN, *supra* note 189, at 72. The manner in which people react to the degrading circumstances of poverty is difficult to address without stereotyping poor people and rendering the culture of poverty as synonymous with an eviscerated culture of the poor. The “culture of poverty” is a term coined by anthropologist Oscar Lewis who studied the poor in México and offered that as a result of systemic conditions, certain traits were present in poor communities including strained or fractured family relationships, lack of impulse control, inability to plan for the future, and a tolerance for psychological pathology. See Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 *N.Y.U. REV. L. & SOC. CHANGE* 659, 664 (1987-1988). The “culture of poverty” has been criticized for its depiction of the poor as pathological, and historically inaccurate in light of the ongoing struggles of the poor to control their lives and their communities. See *id.* However, Matthew Gutmann cautions against “romantic notions of agency.” See GUTMANN, *supra* note 189, at 42-43.

<sup>224</sup> ANNE ORFORD, *READING HUMANITARIAN INTERVENTION: HUMAN RIGHTS AND THE USE OF FORCE IN INTERNATIONAL LAW* 106 (2003); Randall Peerenboom, *Out of the Pan and into the Fire: Well-Intentioned But Misguided Recommendations to Eliminate All Forms of Administrative Detention in China*, 98 *Nw. U. L. REV.* 991, 1048 (2004) (noting China’s increased crime rates due to the transition to a market economy and growing income disparities); Raul Pierri, *Globalization Begets Insecurity Begets Violence* (Jan. 20, 2004), at <http://www.commondreams.org/headlines04/0120-05.htm> (quoting Joseph Stiglitz, “[e]conomic instability and social insecurity will lead to a rise in violence in the world because it is impossible to separate economic issues from social and political issues”).

<sup>225</sup> See Edgardo Rotman, *The Globalization of Criminal Violence*, 10 *CORNELL J.L. & PUB. POL’Y* 1, 26, 28 (2000) (describing labor exploitation in Guatemala City that has generated sexual violence directed toward women employees by factory managers). The



abstract virtues, such as free markets and efficiency, with privatization and the abandonment of social welfare programs results in despair and death.

The idea of deviancy to describe the murders may also be used to describe political economic relationships in effect in Cd. Juárez.<sup>226</sup> To put it another way, current global economic policies in Cd. Juárez that depend on the demise of the domestic economy, the consolidation of cheap labor, and the production of poverty as “an input on the supply side” are neither natural nor inevitable. Instead, they reflect an outcome with a long history of exploitation of the many for the benefit of the few and should be seen as outside acceptable moral standards.

*B. Gender Conflict in Context: Economic Liberalization, Gender Relations, and Backlash*

It is crucial to examine the function of gender conflict as a motivation for homicide in order to obtain a comprehensive account of the murders in Cd. Juárez. Such an analysis must consider the relationship of market institutions and global capital to gender conflicts, thereby avoiding the imaginary divide between the global economy and violence against women.<sup>227</sup> The development of the export economy has restructured relations between men and women in families and communities in ways that affect survival strategies, social expectations, and the very idea of the future. An examination of these changes helps to untangle myths from reality with regard to the concept of gender backlash and further clarifies how such a phenomenon is produced.

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murders also have in common those causal factors that underlie ethnic cleansing and genocide. See generally UVIN, *supra* note 205, at 110 (noting that “scapegoating” often occurs in societies with structural violence); Anthony W. Pereira & Diane E. Davis, *New Patterns on Militarized Violence and Coercion in the Americas*, 27 *LATIN AM. PERSP.* No. 2, at 3, 6 (2000) (noting that the violence is a product of “specific institutional dynamics, relationships and interactions”).

<sup>226</sup> LYNCH ET AL., *supra* note 185, at 126 (noting that crimes committed by corporations and those with access to means and wealth are the logical extension of capitalist political-economic relationships).

<sup>227</sup> See BENERÍA, *supra* note 109, at ix (warning that women’s issues cannot be isolated from the socioeconomic conditions within which they exist).

### 1. *Economic Liberalization and the Production of Backlash*

The murders of Cd. Juárez are often attributed to acts of reprisal against women perceived to be responsible for the loss of men's jobs.<sup>228</sup> Similarly, increased employment of women outside the home is said to contribute to heightened domestic violence within the home.<sup>229</sup> These theories may rest on a distortion of cultural characteristics even as they describe the consequences of the loss of identity and economic devastation as a result of chronic unemployment. To be useful, such theories must begin with an analysis of gender violence that considers the use of gender renderings both historically and in context. In historical terms, Mexican women have often been portrayed as "long-suffering objects of gratuitous violence,"<sup>230</sup> while the image of Mexican men has been deeply etched in the discourse of *machismo*, hot-bloodedness, and violence.<sup>231</sup> As historical depictions, such constructions are misleading and contribute to the blurring of the relationship of violence to economic conditions in Cd. Juárez.<sup>232</sup> These characterizations suggest that crime is cultural and serves to separate gender injustices from questions related to political economy.

Gender relations in México have not been static.<sup>233</sup> Rigid

<sup>228</sup> See *supra* notes 195-197 and accompanying text.

<sup>229</sup> See *supra* notes 75-76 and accompanying text.

<sup>230</sup> STEVEN J. STERN, *WOMEN, MEN AND POWER IN LATE COLONIAL MÉXICO: THE SECRET HISTORY OF GENDER* 7 (1995) (characterizing this notion as a stereotype with a grain of truth).

<sup>231</sup> *Id.* at 151-53 (characterizing these descriptions as having an archetypal quality); see also GUTMANN, *supra* note 189, at 44 (noting that violence and manhood in México is an imaginary cultural trait).

<sup>232</sup> STERN, *supra* note 230, at 155-56 (suggesting that such stereotypes avoid the critical issues involving the social analysis of masculinity, economic, social and power relations); see also Merle Kling, *Violence and Politics in Latin America*, in *CONFLICT AND VIOLENCE IN LATIN AMERICAN POLITICS* 218, 230 (Francisco José Moreno & Barbara Mitrani eds., 1971) (describing the ways in which pervasive political violence can be siphoned off into violence between individuals); Evelyn P. Stevens, *Mexican Machismo: Politics and Value Orientations*, in *CONFLICT AND VIOLENCE IN LATIN AMERICAN POLITICS* 80, 81 (Francisco José Moreno & Barbara Mitrani eds., 1971) (criticizing the social science literature of machismo for its inevitable description of the Mexican male as aggressive and anti-social).

<sup>233</sup> See Mara Viveros Vigoya, *Contemporary Latin American Perspectives on*

characterizations of the responses to women's employment deny the possibility of a variety of reactions to women's increased role in the labor market, including those that have led to an "erosion of machismo."<sup>234</sup> Backlash theories tend to eclipse other studies of gender relations that suggest that men accept women as co-workers and recognize the importance of the contributions of women's wages.<sup>235</sup> If in fact gender backlash contributes to the murders of women, there has been little effort to consider how the dynamic is produced or to examine the way in which both men's and women's identities are constructed in current economic conditions. Without such consideration, the possibilities for community agency and solidarity against destructive economic forces are limited.

Escalating conflict in gender relations cannot be attributed simply to the increasing presence of women in the workforce.<sup>236</sup> Women have long worked outside the home.<sup>237</sup> Nor are they

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*Masculinity*, in CHANGING MEN AND MASCULINITIES IN LATIN AMERICA 27, 28 (Matthew Gutmann ed., 2003) (describing the shifts in gender relations generally in Latin America in response to ongoing economic, social, and cultural changes). Vigoya also notes that gender must be considered not only by an ordering of social practices determined by sex, but by class, race, and ethnicity. *Id.* at 52.

<sup>234</sup> *Id.* at 32.

<sup>235</sup> *Id.* (describing empirical findings of such acceptance as a result of changing household roles where more men have undertaken housework as a result of women's involvement in paid work); see also ALTHA CRAVEY, WOMEN AND WORK IN MÉXICO'S MAQUILADORAS 112 (1998) (noting that men in the export zone have renegotiated household tasks and have assumed childcare responsibilities while their wives work, help with cooking, laundry, and shopping); GUTMANN, *supra* note 189, at 49 (noting that women in México are no longer looked down upon for working outside of the home); TIANO, *supra* note 117, at 222 (describing normative changes in Mexican households).

<sup>236</sup> TIANO, *supra* note 117, at 222 (noting that conventional beliefs that women's employment is thought to negatively affect their traditional roles in the home have given way to a different view that considers such employment as helpful and necessary to support the household).

<sup>237</sup> See Susan Eckstein, *Women in Latin America*, DRCLA NEWS, Winter 1998, at 2 (noting that women in Latin America in the 19th century, like women in the 20th century, have always worked, but also always earned less than men); Mercedes González de la Rocha, *From the Resources of Poverty to the Poverty of Resources?* 28 LATIN AM. PERSP. No. 4, at 72, 77 (2001) (noting that for the period of 1940 through 1970 women contributed significantly to household wages). This is not meant to dispute that, historically, there was a rigid system of gender subordination in México. See Steve J. Stern, *What Comes After Patriarchy? Reflections from México*, 71 RADICAL HIST. REV. 54 (1998).

taking jobs previously held by men.<sup>238</sup> Certainly, men whose identities are linked to their ability to provide financially for family needs have been affected by the failure to fulfill such roles.<sup>239</sup> The impact of the loss of the central feature of one's productive life cannot be measured. But as studies demonstrate, it is the cumulative affect of rising male unemployment coupled with the demise of income-producing alternatives for working class families in general that have contributed to catastrophic conditions affecting gender relations.<sup>240</sup>

Without attention to context and absent sufficient interrogation of underlying social structures, backlash theories reflect the type of totalizing thinking about gender violence that "construct[s] men as 'universal agents' of violence and women as 'universal victims.'"<sup>241</sup> Such theories also rest on the under-theorized notion that women's employment is, in fact, causally related to crime.<sup>242</sup> Because such theories discourage investigation into the production of gender animosity, they contribute little to an understanding of the sources of gender violence.<sup>243</sup> Rather than sorting through the

<sup>238</sup> González de la Rocha, *supra* note 237, at 92.

<sup>239</sup> Matthew Gutmann, *Introduction, Discarding Manly Dichotomies in Latin America*, in *CHANGING MEN AND MASCULINITIES IN LATIN AMERICA* 1, 13 (2003) (noting, with respect to employment, that "the public sphere sustains and legitimizes masculine predominance"); Dale Hurst, *Transcultural Masculinities: Engagement of Men in Domestic Violence Prevention - Key Issues* 3 (Feb. 2002) (noting that for men, "'worklessness' equates with 'worthlessness'"), available at <http://www.austdvclearinghouse.unsw.edu.au/Conference%20papers/Exp-horiz/Hurst.pdf>.

<sup>240</sup> See generally González de la Rocha, *supra* note 237 (describing household instability and diminished survival capacity due to a lack of resources in poor urban households in México).

<sup>241</sup> Ruth Jacobson, *Introduction to the Workshop: Violence, Masculinities and Development* (Jan. 2000), at <http://www.brad.ac.uk/acad/dppc/gender/mandmweb/rjacobsontext.html>.

<sup>242</sup> Leslie Salzinger criticizes the use of "third-world girls snatching jobs from first-world (male breadwinners) . . . as a set piece in political rhetoric and a magnet for first-world public anxieties." Salzinger, *supra* note 119, at 12.

<sup>243</sup> See Richa Nagar et al., *Locating Globalisation: Feminist (Re)readings of the Subjects and Spaces of Globalization*, 78 *ECON. GEOGRAPHY* 257, 261 (2002) (arguing that gender conflict is produced at the sites of global economic restructuring that constructs gender differences to benefit *maquila* production); Caroline Sweetman, *Beyond Rhetoric? Male Involvement in Gender and Development Policy and Practice* (June 2000) (arguing that gender stereotypes are used by those in power to exploit both men and women living in poverty), at <http://www.brad.ac.uk/acad/dppc/gender/>

complicated experiences of violence for women and men, backlash theories, which often offer little more than incomplete descriptions, serve to discourage affinities between poor working men and women.

## 2. *Economic Liberalization and the Transformation of Household Relations*

Economically liberal policies impact gender relations within families and communities.<sup>244</sup> The literature in this area has mainly focused on the increased responsibilities of women and the burdens placed upon women to provide resources both within and outside of the home.<sup>245</sup> Less attention has been paid to the debilitating impact on families and the transformations within household relations.<sup>246</sup>

The loss of resources and diminution of opportunities to provide for basic family needs have impacted households in drastic ways. It has weakened the family as a site for managing economic exchanges outside of the workplace. Poor households are no longer able to rely on social exchange networks and norms of reciprocity that often develop through relationships formed in the workplace but function in the realm of non-work related activities and personal spaces.<sup>247</sup> These networks extend from household to household and often have served as a means of survival outside of the formal economy through bartering, exchanges, and the sharing of resources.<sup>248</sup> Their loss has created

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mandmweb/csweetmantext2.html .

<sup>244</sup> Nagar, *supra* note 243, at 261 (noting that economic liberalization strategies encourage women's disproportionate role in work related to social reproduction).

<sup>245</sup> See González de la Rocha, *supra* note 237, at 82-83 (describing the intensification of work for women as a result of structural adjustment programs).

<sup>246</sup> Cf. Anne Whitehead, *Continuities in the Political Constructions of the Working Man in Rural Sub-Saharan Africa*, (Sept. 1999) (arguing that recent policy literature that focuses on development and the relative light work burdens of men compared with women have revived the colonial discourse of the lazy African male). at <http://www.brad.ac.uk/acad/dppc/gender/mandmabstracts/awhitehead.html>.

<sup>247</sup> Cynthia L. Estlund, *Working Together: The Workplace, Civil Society, and the Law*, 89 GEO. L.J. 1, 43 (2000) (applying Robert Putnam's concept of the development of social capital and trust through civic engagement to the workplace); González de la Rocha, *supra* note 237, at 88 (describing the crisis of the 1990s where unemployment weakened social organizations created through employment relationships).

<sup>248</sup> González de la Rocha, *supra* note 237, at 84 (explaining how social networks

further impoverishment. Men excluded from the labor force are divested of opportunities to develop home-based social networks to cushion the effects of their inadequate wages.<sup>249</sup> Women who no longer work either as wage-laborers or earn income from selling goods produced in the informal economy have experienced the erosion of economic well-being in both spheres.<sup>250</sup>

Unemployment has disrupted day-to-day patterns and disturbed social dynamics vital to stable familial relationships. The well-being of individuals is deeply impacted by the loss of jobs, because a crucial element in their lives is now absent.<sup>251</sup> Those outside the workplace are divested from a range of social interactions in which the ability to communicate and mediate disagreements is exercised.<sup>252</sup> The stigmatization of unemployment and loss of place in the working world engenders a disorientation that affects relations within the family.<sup>253</sup>

The new household regimens that have developed have empowered neither men nor women. When family income is inadequate for subsistence, women can hardly appreciate the benefits of diminished hierarchies within the family that often occur as a result of their increased employment outside of the home.<sup>254</sup> The exploitation and discrimination against women

compensate for low wages).

<sup>249</sup> *Id.* at 90 (noting that unemployment results in the exclusion of a range of social experiences and opportunities).

<sup>250</sup> *Id.* at 77, 87, 91 (describing the diminished economic role of women in petty commodity trade due to economic liberalization).

<sup>251</sup> Kent Paterson, *Downturn in Maquiladora Industry: Local Economy Contributes to Increase in Crime & Violence in Ciudad Juarez*, at <http://retanet.unm.edu/LADB-articles/25080.html> (Sept. 11, 2002) (reporting that family violence, including the murder of two children and increased domestic violence, was related to the stresses of unemployment).

<sup>252</sup> Estlund, *supra* note 247, at 46-47 (observing that the workplace provides individuals with the opportunity to develop the skills necessary for civil engagement, including communication, compromise, and collective decision-making); Vicki Schultz, *Life's Work*, 100 COLUM. L. REV. 1881, 1887 (2000) (describing the importance of work to an individual's sense of self-worth).

<sup>253</sup> Schultz, *supra* note 252, at 1889. Schultz notes that "[h]aving lost their place in the workworld, these men are lost to the larger world." *Id.*

<sup>254</sup> Cf. Cynthia L. Estlund, *Work and Family: How Women's Progress at Work (and Employment Discrimination Law) May Be Transforming the Family*, 21 COMP. LAB. L. & POL'Y J. 467, 468 (2000) (arguing that in the United States, women's advancement in the

workers taints any rewards associated with employment and increases the difficulty of meaningful acquisition of power within families and society. The previous set of conventions that serve to subordinate women has shifted to a system where both men and women are dispossessed of minimal levels of economic power and left with few alternatives.

Mercedes Gonzalez de la Rocha has examined the impact on families and household dynamics in urban México in which members are dependent on wage labor and who found themselves lacking an adequate subsistence base.<sup>255</sup> She notes that the collapse of routines that affect physical and emotional well-being, coupled with a process of social isolation and stigmatization, has adversely affected the unemployed.<sup>256</sup> Entire families have experienced instability and uncertainty as new economic arrangements have transformed the roles of both men and women. The division of tasks and the fruits of their accomplishments under the previous social structure may not always have been allocated in a manner that served men and women equally, but it did assume purpose and achieve household order, self-respect, and a semblance of economic stability.<sup>257</sup> Long-established household arrangements based upon the performance of certain tasks, whether collectively undertaken or performed according to gender-ordered dictates, have plunged into disarray. The household and familial obligations that bound men and women together in a common endeavor have been rendered either unnecessary or impossible to fulfill.<sup>258</sup> Male members of the family who grew corn and other food staples are no longer able to carry out such tasks.<sup>259</sup> Their migration north in search of work as wage laborers has not been successful either. Female members upon whom the family relied to provide food from family crops

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workplace has altered traditional gender roles in the family).

<sup>255</sup> González de la Rocha, *supra* note 237, at 86-87.

<sup>256</sup> *Id.* at 90.

<sup>257</sup> Stern, *supra* note 237, at 60 (describing gender patterns of hierarchical complementarity by which men and women performed separate but essential and interdependent household functions).

<sup>258</sup> *See id.*

<sup>259</sup> *See id.* (noting that, historically, Mexican women needed men to obtain access to peasant community property).

have also been drawn into a wage labor economy inadequate to meet family needs.<sup>260</sup> As the market economy has eviscerated previous household arrangements, there have been few opportunities to develop constructive alternative conventions by which men and women can discharge mutual responsibilities toward each other and their families.

Daily routines have been so disrupted and unemployment is so rampant in Cd. Juárez that the immigration of household members may appear as the only solution.<sup>261</sup> Households thus suffer further destabilization. The transition from the “resources of poverty” to the “poverty of resources” has hindered family members from fulfilling obligations within the home to each other.<sup>262</sup> These community characteristics correlate with gender violence.<sup>263</sup> The stress and disorder of the market has been replicated in households and has manifested itself in increased rates of divorce, separation, household volatility, and gender violence.<sup>264</sup>

### *C. State Impunity in Context: Economic Liberalization, Governance, and the Rule of Law*

A number of organizations and institutions have criticized the

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<sup>260</sup> *Id.* at 58 (observing that food staples are now purchased instead of produced by women at home).

<sup>261</sup> González de la Rocha, *supra* note 237, at 91 (noting that sons tend to disappear, partly through emigration); LaRue, *supra* note 177, at 45 (describing the devastation along México’s border area, including a sharp increase in the unemployment rate accompanied by increases in immigration to the United States).

<sup>262</sup> González de la Rocha, *supra* note 237, at 89.

<sup>263</sup> See *Social Ecological Risks of Violence Against Women*, in *ADVANCING THE FEDERAL RESEARCH AGENDA ON VIOLENCE AGAINST WOMEN* 59, 60-61 (Candace Kruttschnitt et al. eds., 2004) (asserting the relevance of community characteristics, including social networks to rates of violence against women).

<sup>264</sup> See BENERÍA, *supra* note 109, at 27 (connecting the links between domestic violence, male unemployment, and household poverty); UVIN, *supra* note 205, at 137 (describing how “hatred of the other” combats low-self-esteem caused by chronic unemployment and particularly applies to young men who cannot fulfill the socially constructed ideals of manhood). For findings that indicate that intimate violence occurs with greater frequency in poor neighborhoods and in households facing economic crises, see NAT. INST. OF JUST., *WHEN VIOLENCE HITS HOME: HOW ECONOMICS AND NEIGHBORHOOD PLAY A ROLE* 1-4 (Sept. 2004), available at <http://www.ncjrs.org/pdffiles1/nij/205004.pdf>; González de la Rocha, *supra* note 97, at 14-15, 24 (noting the inevitability of increased tension over scarce household resources).



handling of the murder cases and have issued their own reports calling for changes to the practices of police and the criminal judicial system, accusing both of engendering a climate of impunity.<sup>265</sup> Demands upon the state from victims' families and various human rights groups expose the acute failures of state systems, including legal systems, that have contributed to gender violence and the lack of accountability for criminal acts. Human rights groups have directed their denunciation against the highest levels of the federal government as well as local officials for the failure to investigate the murders in a timely fashion, for negligence and incompetence, and for the apparent indifference to women's rights.<sup>266</sup> Perhaps most significantly, the families of the victims have lost faith in the police; indeed, many have initiated their own investigations.<sup>267</sup> They criticize government institutions for their unwillingness to discharge their obligations to protect the public, particularly women.<sup>268</sup> Such condemnation accurately describes the state's dereliction, lack of political will to correct its deficiencies, and its role in contributing to an environment that provides tacit acceptance of the murders. But without considering the determinants of the failures of the state, the implications of the state's inadequacies and the solutions that might address them cannot be fully developed.

Calls for reform urge the state to respond to the crimes, prevent further murders, and afford justice to victims' families primarily through rule of law strategies and the restructuring of

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<sup>265</sup> See *supra* note 52.

<sup>266</sup> The reports have criticized police forensic techniques as incompetent and inefficient, pointing to the failure of law enforcement agencies to coordinate their efforts. The use of torture as a means of exacting "confessions" has been condemned. See Almodovar, *supra* note 53, at 119; Letter from Congress, to President Vicente Fox (June 17, 2003) (encouraging, among other points, the coordination of law enforcement activities with the FBI), available at [http://www.wola.org/Mexico/hr/ciudad\\_juarez/fox\\_letter.pdf](http://www.wola.org/Mexico/hr/ciudad_juarez/fox_letter.pdf).

<sup>267</sup> Washington Valdez, *supra* note 7. Those who have been critical of police practices have been met with threats and harassment. Gaspar de Alba, *supra* note 26, at 6 (describing activists as "rich, nosey women who just want to 'save the poor'" and who are accused of self-aggrandizement); Pérez, *supra* note 61, at 148 (noting the accusations of threats by the police against anyone who came forward with information about the murders).

<sup>268</sup> See INTOLERABLE KILLINGS, *supra* note 6.

México's justice system.<sup>269</sup> These demands, however, avoid key questions of political power and obscure from view the 'realpolitik' of market-based governance that have supplanted the functions of state government and redirected legal systems.<sup>270</sup> Economic globalization strategies have impaired the ability of the state to perform traditional functions and contributed to delegitimizing the rule of law as a means of addressing gender violence. Not only has the control of economic systems moved beyond the boundaries of the state, but state systems affecting security and crime have been subordinated to the governance mechanisms of the market.<sup>271</sup>

### *1. Economic Liberalization and the Functions of the State*

The demand for state accountability, as formulated in the context of the murders of Cd. Juárez, evokes a conceptual notion of the state as a concentrated political and juridical entity with the resources and authority to intervene for the benefit of the polity.<sup>272</sup> This account overlooks the ways in which conditions imposed by international financial institutions weaken the state's ability to discharge such functions.<sup>273</sup> Although the sovereign state is

<sup>269</sup> See *supra* note 52 and accompanying text.

<sup>270</sup> Gary Gereffi & Frederick W. Mayer, *The Demand for Global Governance* 2, 3 (Sept. 2004) (arguing that we are witnessing a crisis in government as a result of globalized market institutions), at <http://www.pubpol.duke.edu/people/faculty/mayer/SAN04-02.pdf>.

<sup>271</sup> See Richard H. Pildes & Cass R. Sunstein, *Reinventing the Regulatory State*, 62 U. CHI. L. REV. 1, 9 (1995) (noting concerns that the modern regulatory state is "subject to the influence of well-organized private groups with personal stakes in the outcome"); Joseph R. Thome, *Heading South but Looking North: Globalization and Law Reform in Latin America*, 2000 WIS. L. REV. 691, 692-93 (2000) (describing the influence of market forces on legal systems in Latin America with regard to addressing crime).

<sup>272</sup> David W. Kennedy, *A New World Order: Yesterday, Today, and Tomorrow*, 4 TRANSNAT'L L. & CONTEMP. PROBS. 329, 350 (1994) (the concept of state sovereignty "suggests a unified political authority, the centrality of governments, and a sharp split between public and private authority" and "an image of power as juridically concentrated in the hands of the State").

<sup>273</sup> For an examination of the ways in which global economics interferes with the role of the state generally, see Ewelukwa, *supra* note 7, at 612 (noting that structural adjustment programs entail the "4 'Ds' - deregulation, deflation, devaluation, and denationalization" and impact the role of the states with regard to public welfare).

understood to be the entity responsible for public safety, the stranglehold of economic liberalization policies and conditions attached to the use of IMF and World Bank funds, as well as agreements with the United States requiring cuts in public spending and the privatization of public functions, raise questions related to the capacity of government to carry out its responsibilities.<sup>274</sup> The willingness of México's administration to implement structural adjustment programs that began almost two decades ago has weakened the power of the government to protect its citizens.<sup>275</sup>

The loss of resources to support public functions, including policing, has an evident role in the inability of the state to respond to the increasing levels of violence. Rising crime has, in part, been attributed to the inability of the Attorney General to handle a sufficient number of criminal cases.<sup>276</sup> In some Mexican cities, the salaries of the police are among the lowest; officers must often use their own pay to purchase their uniforms, and guns and police equipment are lacking.<sup>277</sup> State tax policies, which could potentially mitigate the problems of police and judicial corruption associated with poor pay and lack of investigative resources, are

functions); Saskia Sassen, *The State and Economic Globalization: Any Implications for International Law?*, 1 CHI. J. INT'L L. 109 (2000).

<sup>274</sup> ORFORD, *supra* note 224, at 89 (describing the conditions attached to IMF and World Bank funding including privatization, cuts to public funding, and deregulation); see MICHEL CHOSSUDOVSKY, *THE GLOBALIZATION OF POVERTY* 15 (1997) (describing structural adjustment policies that require the dismantling of state institutions); James Gathii, *Human Rights, the World Bank and the Washington Consensus: 1949-1999*, 94 AM. SOC'Y INT'L L. PROC. 144, 145 (2000); Zoe Young, *Market Gardeners*, 30 TLS (July 23, 2004) (describing the hegemonic influence of these institutions worldwide through a "bombardment of bribes and threats"); Jeff Faux, *Rethinking Global Political Economy*, (Apr. 2003) (reporting that the former chief economist with the IMF admitted that no important decisions are made without first checking with the U.S. Treasury) at [http://www.epinet.org/content.cfm/webfeatures\\_viewpoints\\_global\\_polit\\_econ](http://www.epinet.org/content.cfm/webfeatures_viewpoints_global_polit_econ).

<sup>275</sup> Guillermprieto, *supra* note 32, at 85 (noting President Fox continued the same policies of his predecessors regarding the weakening of the federal government).

<sup>276</sup> Angel Gustavo López-Montiel, *The Military, Political Power, and Police Relations in México City*, 27 LATIN AM. PERSP. No. 2, at 79 (2000); Diane E. Davis, *State Implosion, Social Fragmentation, and the Dark Side of Police Reform: Lessons from Mexico* 5, (last visited Apr. 6, 2005) (noting budgetary constraints as a factor inhibiting law enforcement and judiciary's ability to properly respond to crime) at [http://www.newschool.edu/gf/centers/janey/conf04\\_Diane-Davis.pdf](http://www.newschool.edu/gf/centers/janey/conf04_Diane-Davis.pdf).

<sup>277</sup> López-Montiel, *supra* note 276, at 86.

manipulated by international financial institutions and transnational corporations.<sup>278</sup> Economic globalization that transfers profit on exports out of México has made it all but impossible to acquire and redirect wealth to the state institutions upon which victims rely for effective law enforcement.<sup>279</sup>

These conditions have produced a mass exodus of law enforcement from city and state police agencies, and the situation is expected to worsen.<sup>280</sup> As the crime rate increases, the criminal justice system remains incapable of providing protection to residents. Resources with which to train staff in the use of forensic laboratory equipment and to pay for the crime prevention technology are insufficient.<sup>281</sup> Crime investigators have been laid off and the police academy for training new recruits for Cd. Juárez has been closed since 2001.<sup>282</sup> The low pay for law enforcement officials creates ideal conditions for widespread corruption among police officers.

Moreover, police privatization schemes are proliferating throughout México.<sup>283</sup> This has led to gaps in policing authority as

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<sup>278</sup> See *supra* notes 163-165 and accompanying text; Alicia Ely Yamin & Ma. Pilar Noriega García, *The Absence of the Rule of Law in México: Diagnosis and Implications for a Mexican Transition to Democracy*, 21 LOY. L.A. INT'L & COMP. L. REV. 467, 473-474 (1999) (noting that improving the compensation systems, for example, for judicial police, produces results in combating corruption). The Inter-American Commission on Human Rights noted that "[t]he lack of adequate physical resources and the low salaries result in glaring inefficiencies and create incentives for corruption to take place in the day-to-day tasks performed by the agents and to become the rule rather than the exception." *Id.*

<sup>279</sup> William I. Robinson, *Global Crisis and Latin America*, BULL. OF LATIN AM. RES. 135, 149 (2004).

<sup>280</sup> Alfredo Corchado & Ricardo Sandoval, *Juárez Police Leaving Force in Drove*, DALLAS MORNING NEWS, May 1, 2004 (noting that in May 2004, over 500 state and local police serving Cd. Juárez left the force), available at <http://www.thestate.com/mld/thestate/news/world/8569131.htm>.

<sup>281</sup> AMNESTY INT. USA, MÉXICO: ENDING THE BRUTAL CYCLE OF VIOLENCE AGAINST WOMEN IN CIUDAD JUÁREZ 9, at [http://web.amnesty.org/library/pdf/AMR410112004ENGLISH/\\$File/AMR4101104.pdf](http://web.amnesty.org/library/pdf/AMR410112004ENGLISH/$File/AMR4101104.pdf) (Mar. 8, 2004) [hereinafter BRUTAL CYCLE].

<sup>282</sup> Corchado & Sandoval, *supra* note 280; Debbie Nathan, *The Face Maker*, THE TEXAS OBSERVER, Feb. 13, 2004, available at <http://www.texasobserver.org/showArticle.asp?ArticleID=1565>.

<sup>283</sup> Jorge Regalado Santillán, *Public Security Versus Private Security*, in TRANSNAT'L CRIME AND PUBLIC SECURITY 181, 184 (John Bailey & Jorge Chabat eds.,

well as violence and corruption in the absence of public accountability.<sup>284</sup> On the other hand, police security among the *maquila*-owned factories is state of the art: the areas are fenced in and guarded around the clock by police and private security guards.<sup>285</sup>

Certainly, difficulties with police practices are not new. There is a history in México of police complicity with criminals in a range of illegal activities.<sup>286</sup> Yet, it would be unduly facile to describe the current situation in México as one that wholly emerges from this experience. Current economic policies that reduce public funds for training and police salaries and that have replaced corporatist policies with authoritarianism as well as the increased militarization of society have contributed to the present crisis of corruption in law enforcement agencies.<sup>287</sup> As the authority of the state has weakened, corruption has increased and organized crime has developed an "alternate state."<sup>288</sup> Militarization, repressive police tactics, and state impunity in response to the increased violence are not only a consequence of

2002); Davis, *supra* note 276, at 23-25 (noting that the emphasis on free trade and open markets has led to the rise of private security forces employed by foreign companies which have found easy profitability).

<sup>284</sup> INTERAMERICAN DEV. BANK, VIOLENCE AS AN OBSTACLE TO DEVELOPMENT: TECHNICAL NOTE 4 5-6 (noting privatization of police as an inhibitor in the efforts to combat violence and crime), at <http://www.iadb.org/sds/doc/SOCTechnicalNote4E.pdf> (last visited Mar. 6, 2005); Davis, *supra* note 174, at 17; Davis, *supra* note 276, at 25; see WASH. OFFICE ON LATIN AM., DEMILITARIZING PUBLIC ORDER: THE INTERNATIONAL COMMUNITY, POLICE REFORM AND HUMAN RIGHTS IN CENTRAL AMERICA AND HAITI 40 (Nov. 1995) (observing that the low budgets of police agencies in Central American countries leads to corruption and the privatization of policing, linked in turn to repression of worker organizations), available at [http://www.wola.org/publications/pub\\_security\\_int\\_assistance\\_demilitarizingpuborder\\_nov95.pdf](http://www.wola.org/publications/pub_security_int_assistance_demilitarizingpuborder_nov95.pdf).

<sup>285</sup> Arriola, *supra* note 122, at 762 (noting that warehouses and assembly buildings are surrounded by chain link fences and guarded twenty four hours a day by security forces).

<sup>286</sup> Davis, *supra* note 174, at 23.

<sup>287</sup> INT. COUNCIL ON HUM. RTS. POL., PERFORMANCE AND LEGITIMACY: NATIONAL HUMAN RIGHTS INSTITUTIONS 55 (2000) (noting the increasing role of the army in responding to the post NAFTA drug trafficking and crime epidemic as well as in the repression of social movements), available at <http://www.ichrp.org/ac/excerpts/4.pdf>; Corchado & Sandoval, *supra* note 280.

<sup>288</sup> Pereira & Davis, *supra* note 225, at 3 (describing the shrinking and decentralization of the state along with increased repression).

the growing insecurity occasioned by current economic policies, but are also a result of the reduction in the police force.<sup>289</sup>

Demanding that the state act while ignoring challenges to economic policies masks how poverty and crime are generated, and fails to recognize that the state's efforts to respond to the problems have been severely undermined. Strategies for crime prevention and human rights protections can thus no longer be linked to the political project of a state whose authority often falls short in its ability to solve problems created by actors and circumstances outside its boundaries.<sup>290</sup> Transnational corporations that contribute to the conditions in which human rights abuses are committed may act in ways that avoid the reach of traditional state governance.<sup>291</sup> Such institutions often exact conditions from host countries that facilitate the maximization of profit with little regard to costs to the environment or human rights.<sup>292</sup> The dependency of the state on transnational economic actors weakens government incentives to prevent and seek redress for human rights violations.<sup>293</sup> Under these circumstances, demands to enhance law enforcement without combating the

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<sup>289</sup> See Ochoa & Wilson, *supra* note 221; Stefano Varese, *The Territorial Roots of Latin American Indigenous Peoples' Movement for Sovereignty* (May 2000), at [http://coulgar.ucdavis.edu/nas/faculty/varese/articles/territorial\\_roots.htm](http://coulgar.ucdavis.edu/nas/faculty/varese/articles/territorial_roots.htm).

<sup>290</sup> See Saskia Sassen, *Toward a Feminist Analytics of the Global Economy*, 4 IND. J. GLOBAL LEGAL STUD. 7, 29-30 (1996) (urging the need for feminist scholarship on international law that focuses on the question of the sovereign state and its transformation under globalization).

<sup>291</sup> David Weissbrodt & Muria Kruger, *Norms on the Responsibilities of Transnational Corporations and Other Businesses with Regard to Human Rights*, 97 AM. J. INT'L L. 901, 901 (2003) (observing that nonstate actors such as transnational corporations have been successful in avoiding any human rights responsibilities); see also Beth Stephens, *The Amorality of Profit: Transnational Corporations and Human Rights*, 20 BERKELEY J. INT'L L. 45, 51-54 (2002) (detailing modern day abuses such as environmental degradation, sweatshops, and collaboration with and underwriting repressive forces); William A. Wines et al., *The Critical Need for Law Reform to Regulate the Abusive Practices of Transnational Corporations: The Illustrative Case of Boise Cascade Corporation in Mexico's Costa Grande and Elsewhere*, 26 DENV. J. INT'L L. & POL'Y 453, 456-458 (1998) (alleging abuses by a logging company in México, including environmental degradation and harassment of protestors).

<sup>292</sup> See Cass, *supra* note 22, at 603 (noting criticisms of transnational corporations' demands for complete freedom of investment, capital goods, and services).

<sup>293</sup> See Stephens, *supra* note 291, 56-59 (observing the difficulties in regulating multinational corporations who have both economic and political clout).

economic conditions that contribute to corruption and malfeasance may only serve to encourage the development of a police state with excessive and unregulated powers and use of torture.<sup>294</sup> In the end, it may be that the term "impunity" ought not simply describe the state but also the multinational corporate actors who act contrary to the interests of the majority of Mexicans.<sup>295</sup>

## 2. *Economic Liberalization and the Rule of Law*

The murders in Cd. Juárez have been largely attributed to the shortcomings of México's legal system.<sup>296</sup> Mexican courts have been described as weak, and corruption and malfeasance have plagued judicial processes.<sup>297</sup> As a result of the pressures of local and international human rights groups, a federally appointed Special Prosecutor was assigned in January 2004 to examine the legal system's handling of the criminal cases, and federal police were authorized to share responsibility for security in Cd. Juárez.<sup>298</sup> Within six months, the Special Prosecutor issued a report with findings of at least eighty-one instances of official misconduct within the justice system.<sup>299</sup> Judicial processes have since been professionalized, but victims' families have been less

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<sup>294</sup> See Cass, *supra* note 22, at 604 (noting the ironic and dangerous efforts to root out corruption in developing states for the purpose of aiding market interests which created conditions for corruption in the first place); Ochoa & Wilson, *supra* note 221, at 6 (describing the militarization of Mexican society as a response to rising crime).

<sup>295</sup> See ELDA LORENA BECERRA & MARCO ANTONIO FERNÁNDEZ, ATTITUDES TOWARD PRIVATIZATION IN MÉXICO: THE CASE OF THE ELECTRIC SECTOR 9 (2004) (noting the high numbers of persons in México opposed to privatization); de Sousa Santos, *supra* note 189, at 1051 (noting that both the state and international relational actors may become fascistic). Most Mexicans view NAFTA as having negative effects on their country. Peter Costantini, *NAFTA and After*, (Jan 1, 1999) at <http://www.speakeasy.org/~peterc/nafta/nafta5.htm>.

<sup>296</sup> See Yamin & Garcia, *supra* note 278, at 505.

<sup>297</sup> See *id.*

<sup>298</sup> See Richard Boudreaux, *México Sends 300 Agents to Probe Killings*, L.A. TIMES, July 24, 2003, at A3 (noting the use of federal agents to assist local police).

<sup>299</sup> In July 2003, President Vicente Fox announced a plan to enhance law enforcement efforts in Cd. Juárez that included the appointment of a Special Prosecutor and Special Commissioner, both of whom have released reports after initial investigations. *Primer Informe, Fiscalía Especial Para La Atención de Delitos Relacionados Con Los Homicidios de Mujeres en El Municipio de Juárez, Chihuahua*, (June 2004), available at <http://www.almargen.com.mx/archivo/fefuno.pdf>.

reluctant to work with the federal prosecutors in the role of *coadyuvantes* or joint assistants.<sup>300</sup> There have also been improvements in the state penal code to address crimes against women.<sup>301</sup>

Although activists have had some success in applying a human rights framework focusing on civil and political rights to reform the legal system, these measures alone have not reduced the occurrence of violence, and the murders have continued.<sup>302</sup> Thus, new rounds of recommendations have followed, calling for increased authority for the Special Prosecutor, the incorporation of gender perspectives into policing and judicial practices, and judicial review of those cases that have already been prosecuted.<sup>303</sup>

The legal system continues to be criticized for the failure to treat the murders as a pattern of violence against women, rather than as individual criminal acts.<sup>304</sup> The legal system's failure to provide redress has been described along gender fault lines with little reference to the relation between the rule of law and economic globalization.<sup>305</sup> While these proposals advance important and necessary themes in ending violence against women, they do not address the relationship between the legal system and new economic policies that are at the root of the social costs of economic inequalities and other conditions that give rise to the murders.

#### *a. Transformation of México's National Laws*

México's legal system has undergone significant transformation since the 1980s. During the mid-1990s, legal reforms were implemented pursuant to World Bank directives to assure the responsiveness of México's judicial system to economic liberalization strategies.<sup>306</sup> The reforms urged a strengthened

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<sup>300</sup> See BRUTAL CYCLE, *supra* note 281, at 13.

<sup>301</sup> See *id.*

<sup>302</sup> AMNESTY INT'L USA, MÉXICO: JUSTICE FAILS IN CIUDAD JUAREZ (Mar. 2, 2005), at <http://www.scoop.co.nz/stories/WO0503/S00055.htm>.

<sup>303</sup> See BRUTAL CYCLE, *supra* note 281, at 15.

<sup>304</sup> See *id.*

<sup>305</sup> See *id.*

<sup>306</sup> See MARIA DAKOLIAS, THE JUDICIAL SECTOR IN LATIN AMERICA AND THE CARIBBEAN: ELEMENTS OF REFORM 3 (World Bank, Technical Paper No. 319, 1996);



constitutional court system, more independent judges, efficient administration of justice, and improved access to the justice system.<sup>307</sup> Implementation of legal reform, however, has been driven by market needs, primarily concerned with defining and enforcing private rights, investment and expropriation disputes, and creating legal mechanisms to facilitate market reforms.<sup>308</sup> In this regard, law-making and legal reform have been undertaken as a crucial project to accomplish the tasks of economic globalization.<sup>309</sup>

In order to attract foreign investors, México has had to alter its national legal processes and commit to binding privatized investor-state arbitration.<sup>310</sup> New laws opened México's natural resources and banking system to foreign investment and control.<sup>311</sup>

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Alexis James Gilman, *Making Amends With the Mexican Constitution: Reassessing The 1995 Judicial Reforms and Considering Prospects for Further Reform*, 35 GEO. WASH. INT'L L. REV. 947, 956 (2003); Thomas W. Slover, *Tequila Sunrise: Has México Emerged from the Darkness of Financial Crisis?*, 5 NAFTA: L. & BUS. REV. AM. 91, 99, 117-18 (1999); Jorge A. Vargas, *An Introductory Lesson to Mexican Law: from Constitutions and Codes to Legal Culture and NAFTA*, 41 SAN DIEGO L. REV. 1337, 1339 (2004); Stephen Zamora, *NAFTA and the Harmonization of Domestic Legal Systems: The Side Effects Of Free Trade*, 12 ARIZ. J. INT'L & COMP. L. 401, 419-20 (1995).

<sup>307</sup> Jorge A. Vargas, *The Rebirth of the Supreme Court of México: An Appraisal of President Zedillo's Judicial Reform of 1995*, 11 AM. U. J. INT'L L. & POL'Y 295, 299 (1996).

<sup>308</sup> See Patrick Del Duca, *The Rule of Law: México's Approach to Expropriation Disputes in the Face of Investment Globalization*, 51 UCLA L. REV. 35, 37-42 (2003) (noting that although México has been described as "generally . . . respectful of private property and private enterprise," historically, it has used takings through the courts as a means to accomplish economic reform and national social welfare policies). México has recently incorporated a new constitutional design aimed at creating mechanisms to resolve investment and expropriation disputes. *Id.* at 35; see also Joseph R. Thome, *supra* note 271, at 692 (describing property and contract rights as crucial factors in evaluating Latin American legal systems' market orientation).

<sup>309</sup> See Ansley, *supra* note 102, at 404-05, (noting significant law-making activity in the realm of the global economy).

<sup>310</sup> See Del Duca, *supra* note 308, at 114 (noting a 1992 law allowing international legal processes to resolve controversies between Mexicans and foreign governments or individuals). Such changes were made to comply with Chapter 11 of NAFTA. See NAFTA, *supra* note 5.

<sup>311</sup> NAFTA partners pressured México to amend its domestic laws and to pass a new Administrative Procedure Law by which transparency in proceedings would be assured, largely to allow foreign investors to affect legal reforms in México. Slover, *supra* note 306, at 117-18; Zamora, *supra* note 306, at 411, 418 n.36.

Similarly, México's once strong consumer protection laws have been weakened.<sup>312</sup>

Labor laws with the greatest potential to provide safeguards for *maquila* workers have been undermined. Labor laws in México are of historic significance and are known as some of the most expansive and progressive in the world.<sup>313</sup> Federal labor laws derive from México's Constitution, which provides comprehensive protection for workers, a focus on class interests instead of individual rights, and worker protection from management.<sup>314</sup> In addition, these laws regulate wages and hours, working conditions, job security, and medical and other benefits, including housing.<sup>315</sup> Laws facilitate union organization, collective bargaining, and the right to strike.<sup>316</sup> Labor laws also target women for specific protection and provide benefits throughout pregnancy and during the breast-feeding period, and provide for the right to day care.<sup>317</sup> Dispute resolution mechanisms are available in the workplace, labor tribunals, and the courts.<sup>318</sup> México has also ratified several international treaties

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<sup>312</sup> Larry B. Pascal, *Reforms Modernize México's Financial Services Sector*, 67 TEX. BUS. J. 46, 47-48 (2004) (noting that in 2000, as a result of pressure from foreign investors, México changed its laws to facilitate foreclosure and hasten collection procedures, including the imposition of criminal sanctions in the event a debtor fails to conserve assets for the benefit of the creditor).

<sup>313</sup> See Jenna L. Acuff, *The Race to the Bottom: The United States' Influence on Mexican Labor Law Enforcement*, 5 SAN DIEGO INT'L L.J. 387, 404-411 (2004); Stephen F. Befort & Virginia E. Cornett, *Beyond the Rhetoric of the NAFTA Treaty Debate: A Comparative Analysis of Labor and Employment Law in México and the United States*, 17 COMP. LAB. L.J. 269, 271 (1996) (noting the comparative strength of Mexican labor laws); Michael Joseph McGuinness, *The Landscape of Labor Law Enforcement in North America: An Examination of México's Labor Regulatory Policy and Practice*, 29 L. & POL'Y INT'L BUS. 365, 369-75 (1998).

<sup>314</sup> See MEX. CONST. art. 123; see also La Ley Federal de Trabajo (L.F.T.) art. 3 (Mex.) (describing a social right and obligation demanding respect for workers and decent working standards); Befort & Cornett, *supra* at 313, at 279 (noting that Mexican labor law prevents workers from bargaining away minimum rights established by law).

<sup>315</sup> See MEX. CONST. art. 123, pt. A; L.F.T. arts. 35-37, 47, 53, 56-57, 60-61, 76, 136; Befort & Cornett, *supra* note 313, at 279-83.

<sup>316</sup> See MEX. CONST. art. 123, pt. A., ch. XVI-XIX; L.F.T. arts 357, 387, 440.

<sup>317</sup> See MEX. CONST. art. 123, pt.A, ch. V.

<sup>318</sup> See Befort & Cornett, *supra* note 313, at 296-97 (describing enforcement mechanisms).

protecting workers' rights.<sup>319</sup>

Nevertheless, these formal rights have not been enforced in México.<sup>320</sup> Since the economic liberalization trend began, new arguments have been made for reforming labor law in terms that suggest that strong labor protections undermine the ability of transnational firms to lower costs and compete effectively.<sup>321</sup> Proponents of economic liberalization and institutions financing such projects have pushed for reform of labor laws and reduction of worker benefits to conform to the new employment strategies of the export zone.<sup>322</sup> Mexican labor law specialists have reported that U.S. labor practices, which serve to discourage union organizing drives, have been adopted with increasing frequency.<sup>323</sup>

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<sup>319</sup> See Roberto Rosas, *Maternity Rights in México: With Reference to Spanish and American Codes*, 6 J.L. & SOC. CHALLENGES 151, 153-54 (2004) (including the conventions of the International Labor Organization, the Organization of American States, and the Convention to End Discrimination Against Women).

<sup>320</sup> There are varied explanations for the historical failure of México's labor laws to live up to their promise: country-wide poverty, the lack of adequate wage producing jobs in the formal sector, and corrupt and inefficient bureaucratic processes. See William F. Pascoe, *Déjà Vu All Over Again? Collective Bargaining And Nafta: Can Mexican and United States National Unions Foster Growth Under The NAALC?*, 19 ARIZ. J. INT'L & COMP. L. 741, 754-55 (2002) (noting poor financial, technical, and human resources affecting México's labor enforcement); see also Carlos A. Heredia, *Downward Mobility: Mexican Workers After NAFTA*, NACLA: REP. ON THE AMS., Nov.-Dec. 1996, at 34, 36 (noting that almost two thirds of working Mexicans are in the informal economy and not eligible for labor protections); McGuinness, *supra* note 313, at 401-08 (detailing employer resistance, inspector corruption, union indifference, and bureaucracy as obstacles to labor law enforcement).

<sup>321</sup> See John P. Tuman, *Labor Markets and Economic Reform in Latin America*, 35 LATIN AM. RES. REV. 173, 180-81 (2000) (reviewing several scholarly works that advocate labor law reforms to permit more flexibility in work rules at particular factories, and suggesting generally that union gains lead to reduced investment); see also Miguel Jáuregui Rojas, *Toward a North American Economic Space*, 11 U.S.-MEX. L.J. 1, 7 (2003) (calling for law reform to increase the competitiveness of the labor force and to make labor policy "less paternalistic and generally more flexible").

<sup>322</sup> See Carlos Vilas, *The Decline of the Steady Job in Latin America*, NACLA: REP. ON THE AMS., Jan.-Feb. 1999, at 15, 19 (citing IDB, World Bank, and IMF reports calling for labor law reform in Latin America); see also Vargas, *supra* note 307, at 1366-67 (referring to the "Americanization" of Mexican laws, and the influence of "neo-liberal economic philosophy").

<sup>323</sup> See Louise D. Williams, *Trade, Labor, Law and Development: Opportunities and Challenges for Mexican Labor Arising from the North American Free Trade Agreement*, 22 BROOK. J. INT'L L. 361, 390 n.131 (1996) (describing practices such as the use of worker replacement during strikes, alternative dispute resolution methods, and

Such reform has not been easy to accomplish given the constitutional nature of labor law protections, but changes have been implemented that encroach on workers' rights.<sup>324</sup> As advocated by the World Bank, pension systems have been fully privatized.<sup>325</sup> Monitoring of occupational health standards has moved to voluntary compliance mechanisms, and while domestic industries have attempted to cooperate with such programs, *maquilas*, on the other hand, have responded poorly, if at all.<sup>326</sup> Laws governing workers' housing have also been weakened.<sup>327</sup> Mexican President Vicente Fox recently proposed a labor reform package that would curtail workers' rights to strike, to bargain collectively, and to call for a vote to gain representational rights or supplant a pre-existing union.<sup>328</sup> The proposal has been described as "a major assault on the basic rights of Mexican workers" and one which "would deal a serious blow to workers' human rights."<sup>329</sup>

Even without formal legal changes, the practice of disregarding existing laws has been invigorated with new

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threats of plant closure).

<sup>324</sup> For example, the Baja California state and Mexican federal courts ruled that strikers at the Han Yuong *Maquila* in Tijuana were acting in conformity with their rights under Article 123 of the Mexican constitution and the L.F.T. See David Bacon, *Free Trade Endangers the Rule of Law on the Border*, at <http://www.washingtonfreepress.org/41/trade.html> (last visited Mar. 6, 2005).

<sup>325</sup> Raúl Madrid, *The Politics and Economics of Pension Privatization in Latin America*, 37 *LATIN AM. RES. REV.* 159, 160, 166 (2002).

<sup>326</sup> See Siobán Harlow et al., *Occupational and Population Health Profiles: A Public Health Perspective on the Social Costs and Benefits of Export-Led Development*, in *THE SOCIAL COSTS OF INDUSTRIAL GROWTH IN NORTHERN MÉXICO* 167 (Kathryn Kopinak ed., 2004).

<sup>327</sup> BUREAU OF INTERNATIONAL LABOR AFFAIRS, U.S. DEPT. OF LABOR, FOREIGN LABOR TRENDS REPORT, MÉXICO, 1991-1992 16, 21 (1993) (noting that new regulations modified housing benefits for workers so that employers no longer paid into a worker's housing fund for the construction of new homes, but instead would pay into individual accounts for housing loans, with the additional consequence of undermining labor power).

<sup>328</sup> See HUM. RTS. WATCH, MÉXICO: WORKERS' RIGHTS AT RISK UNDER FOX PLAN (Dec. 9, 2004) (describing the terms of the proposals that would make certifying union registration much more difficult and would require strikers to publicly disclose their names inviting retaliation), at <http://hrw.org/english/docs/2004/12/09/Mexico9814.htm>.

<sup>329</sup> See *id.*

strategies formulated by transnational corporate management.<sup>330</sup> Rights to maternity leave and child care have been undermined by corporate policies that seek to reduce labor costs.<sup>331</sup> Mostly U.S. *maquilas* have defended their discriminatory hiring practices against pregnant female job applicants by claiming that Mexican laws only apply to current employees. This distinction is disavowed by Mexican labor lawyers and is an analysis at odds with U.S. labor laws.<sup>332</sup> Other protections, such as overtime and the legal work week, are rendered inapplicable because workers are forced to work excess hours to earn sufficient wages on which to survive, and thus have no incentive to seek redress.<sup>333</sup>

*b. NAFTA and the Rule of Law*

In addition to domestic labor reforms, supranational legal developments have altered legal rights for Mexican workers. Although NAFTA does not incorporate new substantive labor law standards, its corresponding labor side accord, the *North American Agreement on Labor Cooperation* (NAALC), does address such issues.<sup>334</sup> NAALC, which is said to encourage parties to enforce their own domestic labor laws, has been criticized as an administrative labyrinth that fails to bind private employers and provides workers with no tangible solutions for labor law violations.<sup>335</sup>

<sup>330</sup> Marley S. Weiss, *Two Steps Forward, One Step Back — or Vice Versa: Labor Rights Under Free Trade Agreements from NAFTA Through Jordan, Via Chile, to Latin America, and Beyond*, 37 U.S.F. L. REV. 689, 717-18 (2003); see also Acuff, *supra* note 313, at 400 (noting that transnational corporate employers calculated higher profits by paying fines for labor law violations than by complying with such laws).

<sup>331</sup> Harlow et al., *supra* note 326, at 141.

<sup>332</sup> HUM. RTS. WATCH, INT'L CORPORATIONS VIOLATE WOMEN'S RIGHTS IN MÉXICO (Dec. 29, 1998) (pointing out that women *maquila* workers have been abandoned by the Mexican government in favor of corporate concerns), at <http://www.hrw.org/press98/dec/mxwmn.htm>.

<sup>333</sup> Vilas, *supra* note 322, at 17.

<sup>334</sup> North American Agreement on Labor Cooperation, Sept. 14, 1993, art. 27-41, 32 I.L.M. 1499, 1502 (entered into force Jan. 1, 1994) [hereinafter NAALC]. For an analysis of NAALC, see Joaquin F. Otero, *The North American Agreement on Labor Cooperation: An Assessment of Its First Year's Implementation*, 33 COLUM. J. TRANSNAT'L L. 637 (1995).

<sup>335</sup> See Benjamin Holt & Michael Waller, *International Trade and Workers' Rights: Practical Tools for Reading Labor Rights Provisions of Free Trade Agreements*, 11

NAALC's jurisdiction covers eleven enumerated areas of labor law.<sup>336</sup> Nevertheless, it is nearly impossible to ascend NAALC's administrative levels where enforcement powers may materialize.<sup>337</sup> At the higher levels of the dispute mechanism, worker protections narrow and certain categories of protection are eliminated from review.<sup>338</sup> Moreover, the most progressive of Mexican labor laws, which are not recognized in the United States, lose their utility as only "mutually-recognized labor laws" may be reviewed.<sup>339</sup> There is no jurisdiction to adjudicate violations related to the rights to form a union, to strike, and those against unlawful termination or employment discrimination.<sup>340</sup>

Of the two dozen cases that have been submitted alleging serious violations, from a denial of the right to unionize, to wage claims, hazardous working conditions, and discrimination against pregnant women, none have made their way through all of the enforcement levels of the NAALC process.<sup>341</sup> Women workers have not benefited from NAALC because it limits claims regarding employment discrimination and equal pay to the second tier of labor rights and, therefore, renders them ineligible for the

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HUM. RTS. BRIEF 42, 43 (2004) (describing the various administrative steps involved with NAALC).

<sup>336</sup> NAALC, *supra* note 334, annex 1.

<sup>337</sup> Most claims cannot proceed past the first administrative level where reports may be issued. Revised Notice of Establishment of U.S. National Administrative Office and Procedural Guidelines, 59 Fed. Reg. 16660, 16661, Section G (Apr. 1, 1994) [hereinafter *The Guidelines*]. If a claim reaches an arbitration panel, the panel may, but is not required to, impose a fine upon finding a violation of labor rights which would be paid to a labor rights enforcement fund rather than to aggrieved workers. Holt & Waller, *supra* note 335, at 42. Enforcement procedures under NAALC are available to governments only and workers have no recourse on their own. *Id.* at 43.

<sup>338</sup> NAALC, *supra* note 334, art. 23; Holt & Waller, *supra* note 335, at 43.

<sup>339</sup> NAALC, *supra* note 334, art. 23; Holt & Waller, *supra* note 335, at 43.

<sup>340</sup> NAALC, *supra* note 334, art. 29 (limiting review to three categories: occupational safety and health, child labor, and minimum wage standards).

<sup>341</sup> Holt & Waller, *supra* note 335, at 42-43 (noting that of the 26 cases sent to the NAO, none have moved past the first stage of investigation, report, and non-binding recommendations). For a listing of NAFTA claims filed as of 2001 and their outcome, see HUM. RTS. WATCH, CANADA/MÉXICO/UNITED STATES: TRADING AWAY RIGHTS, THE UNFULFILLED PROMISE OF NAFTA'S LABOR SIDE AGREEMENT Ch.V (Apr. 2001), at [http://www.hrw.org/reports/2001/nafta/nafta0401-05.htm#P652\\_94840](http://www.hrw.org/reports/2001/nafta/nafta0401-05.htm#P652_94840).

imposition of sanctions.<sup>342</sup> Labor issues affecting women, such as family leave, child care, discriminatory treatment by unions, and sexual harassment, are excluded from the agreement altogether.<sup>343</sup> Due to coercion and constraints on time and resources, workers have been unable to avail themselves of the legal process that takes place in the United States.<sup>344</sup> Additionally, they have often been required to settle claims for amounts less than that to which they are entitled because of their dire economic circumstances.<sup>345</sup> NAALC's disappointing results have been attributed to the reluctance of the United States to pressure the Mexican government because of concerns that labor protections interfere with economic liberalization strategies and the needs of transnational corporations.<sup>346</sup>

Law reform has been accomplished not only by the refashioning of state courts and processes which have constitutionalized market driven ideologies, but also by the relocation of adjudication processes to sites outside of the nation-states into realms controlled by private transnational institutions and actors "organized around one great *lex mercatoria*."<sup>347</sup> These reforms have taken precedence during the emergence of the export zone and have contributed to the conditions in which the murders of women occur, indicating the need for context and specificity in making demands for improvements to the law.

#### **IV. There Is an Alternative: Strengthening Labor Laws to Reduce Gender-Based Violence**

It is difficult to set forth blueprints for ending the egregious conditions plaguing Cd. Juárez where the circumstances of

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<sup>342</sup> See Grimm, *supra* note 129, at 221-22.

<sup>343</sup> *Id.*

<sup>344</sup> See Juvenil Obrerea, *supra* note 125, at 189 (noting attempts to discredit workers seeking NAALC relief); Acuff, *supra* note 313, at 422 (noting the need to pursue state remedies before NAALC remedies). Workers were also unable to proceed because of expenses. Juvenil Obrerea, *supra* note 125, at 189.

<sup>345</sup> Otero, *supra* note 334, at 659-60 (noting that the NAO determined it was precluded from making any findings regarding labor rights violations because workers, due to personal reasons related to financial difficulties, accepted severance pay).

<sup>346</sup> See Heredia, *supra* note 320, at 38.

<sup>347</sup> Sassen, *supra* note 290, at 38.

economic globalization are manifested in their most extreme manner. The structural formation of the export economy seems to defy consideration of even modest alternatives.<sup>348</sup> As one scholar has noted, “[a]lmost total saturation of the processes of capitalist domination makes it hard to envision forms of feminist resistance which would make a real difference in the daily lives of poor women.”<sup>349</sup> The difficulty in framing an analysis that implicates political economy in the murders of women in Cd. Juárez is made more challenging by the need to propose legal solutions that might address these concerns.

This is undoubtedly an ambitious project. It requires incorporating current legal scholarship on the effect of economic liberalization on legal systems and the rule of law to gender violence and the murders at issue.<sup>350</sup> It demands attention to existing global governance structures in which transnational corporations have supplanted national governments as the determinants of economic and institutional models as well as their corresponding legal frameworks. Failure to attempt to do so would be tantamount to capitulation to such problems and to abandoning the law as a realm within which to contest these circumstances.

Claims for stronger legal systems in response to the murders must first acknowledge the ways in which law has acquiesced to market forces and thus contributed to the socioeconomic conditions that produce violence. It must also recognize the

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<sup>348</sup> See Alzugaray Treto, *supra* note 96, at 47 (referencing the phrase “there is no alternative” used with such frequency by Margaret Thatcher to reinforce the idea of the liberal order of the market which earned her and her program the acronym “TINA”); see also de Sousa Santos, *supra* note 189, at 1049 (noting the current obstacles to considering alternatives). *But see* Timothy A. Canova, *The Disorders of Unrestricted Capital Mobility and the Limits of the Orthodox Imagination: A Critique of Robert Solomon, Money on the Move: The Revolution in International Finance Since 1980*, 9 MINN. J. GLOBAL TRADE 219, 230 n.52 (arguing that “we have other alternatives” in response).

<sup>349</sup> Chandra Talpade Mohanty, *Women Workers and Capitalist Scripts: Ideologies of Domination, Common Interests, and the Politics of Solidarity*, in FEMINIST GENEALOGIES, COLONIAL LEGACIES, DEMOCRATIC FUTURES 3, 4 (M. Jacqui Alexander & Chandra Talpade Mohanty eds., 1997).

<sup>350</sup> See Sassen, *supra* note 290, at 29-30 (noting that feminist scholarship on international law has not focused on the impact of non-state actors on questions of sovereignty and the state).



governance deficits that exist as a result of the authority transnational corporations have gained that exceeds the power of states. The task must be to invigorate the debate about the relationship of law to economic globalization and develop approaches that will raise the prominence of gender, poverty, and inequality in the search for legal solutions. Advocates must use the framework of human rights law not only to criticize the role of the state, but to hold accountable transnational corporations and international financial institutions as violators of such rights.<sup>351</sup> In doing so, it is not sufficient to engraft gender perspectives into the current laws that govern market relations without questioning the premises that underlie economic liberalization.

#### A. *Codes of Conduct and the Improvement of Labor Standards*

Codes of conduct – voluntary regulatory schemes designed to improve the types of workplace, environmental, and social conditions that exist in Cd. Juárez – must be considered as one means by which to confront the economic instability and social dislocation brought about by economic liberalization policies. These private governance mechanisms have proliferated and often incorporate specific protections for women workers.<sup>352</sup> The codes have the potential to positively impact corporate behavior.<sup>353</sup> At the same time, they are a reflection of a crisis of public governance.<sup>354</sup> Codes privatize human rights standards, but

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<sup>351</sup> Lance Compa & Tashia Hinchliffe-Darricarrère, *Enforcing Labor Rights Through Corporate Codes of Conduct*, 33 COLUM. J. TRANSNAT'L L. 663, 667 (1995); Gathii, *supra* note 274, at 144-45; see James Bacchus, *Groping Toward Grotius: The WTO and the International Rule of Law*, 44 HARV. INT'L L.J. 533, 540-42 (2003); Keith Ewing, *Human Rights*, in THE OXFORD HANDBOOK OF LEGAL STUDIES 298, 320 (Peter Cane & Mark Tushnet eds., 2003) (arguing that human rights concerns must address activities of multinational corporations).

<sup>352</sup> See Compa & Hinchliffe-Darricarrère, *supra* note 351, at 672-73 (describing, for example, the promulgation of a *Maquiladora* Code for implementation in México's export zone with specific protections for women workers). The Code, however, has failed to bring about meaningful reform. *Id.*

<sup>353</sup> Gereffi & Mayer, *supra* note 270, at 21 (noting that proponents of codes argue that codes provide the basis of improved regulatory frameworks in transnational manufacturing settings).

<sup>354</sup> Steven R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L.J. 443, 532 (2001).

enforcement is left to the voluntary actions of those actors most likely to violate them in the first place.<sup>355</sup> The role of NGOs in monitoring and certifying compliance with voluntary codes has raised concerns about industry bias in enforcement efforts and the undermining effect of the “NGO-Industrialization Complex” on the role of unions, states, and international organizations in tackling corporate misdeeds.<sup>356</sup> International codes, such as the U.N.’s “Global Compact,” have served as a basis for U.N. cooperation with the private sector but have also been criticized as a “blue-washing” process which “allow[s] some of the largest and richest corporations to wrap themselves in the United Nations’ blue flag without requiring them to do anything new.”<sup>357</sup>

This is not to suggest that codes have no use in improving conditions for poor workers. Some firms have yielded to pressure to pass stricter standards and allow independent monitoring groups to measure their actions.<sup>358</sup> The approval by the U.N. Sub-Commission on the Promotion and Protection of Human Rights in August 2003 of the “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” demonstrates further progress in the field of international codes of conduct.<sup>359</sup> The norms are described as “more comprehensive and more focused on human rights than

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<sup>355</sup> Terry Collingsworth, “Corporate Social Responsibility,” *Unmasked*, 16 ST. THOMAS L. REV. 669, 670 (2004) (observing the business communities’ efforts to nullify the ATCA and noting that “the already questionable idea of trusting corporations to self-police compliance with their broad codes of conduct is rendered ridiculous, given the aggressive refusal of these same companies to accept being bound to the minimal constraints of the ATCA”).

<sup>356</sup> Gary Gereffi et al, *The NGO-Industrial Complex*, FOREIGN POL’Y, July-Aug. 2001, at 56, 57.

<sup>357</sup> Joseph Kahn, *Multinationals Sign U.N. Pact on Rights and Environment*, N.Y. TIMES, July 27, 2000, at A3.

<sup>358</sup> Gereffi et al., *supra* note 356, at 61.

<sup>359</sup> *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, E.S.C. Res. 2003/16, U.N. ESCOR Comm’n on Human Rights, 55th Sess., Agenda Item 4, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003). Final approval is pending before the U.N. Commission on Human Rights, which was scheduled to report on these norms in March 2005. See *U.N. Examines Human Rights Responsibilities of Transnational Corporations* (Nov. 5, 2004), at <http://www.euractiv.com/Article?tcaturi=tcm:29-131966-16&type=News>.

any of the international legal or voluntary codes of conduct.”<sup>360</sup> Their legal authority, it is argued, is based in treaties and customary international law, and has been proposed as a restatement of international legal principles with compulsory applicability.<sup>361</sup> Although codes cannot substitute for the state’s responsibilities, they may ameliorate some abuses while also serving as a provisional alternative and an organizing strategy for workers and consumers.

One proposal for making codes meaningful would require retail and brand companies who purchase and sell products produced in export zones to share the burdens and responsibilities of code standards. Oxfam’s comprehensive study on trade and codes concluded that retailers and clothing brands systematically push their costs onto producers who pass them on to women workers.<sup>362</sup> Arguing that codes that focus on the points of production capture only half the story, Oxfam has proposed a radical paradigm shift in the operation of codes by requiring code standards on purchasing practices as well.<sup>363</sup> Retailer practices that demand unrealistic delivery deadlines are likely to be the cause of excessive overtime and sub-contracting.<sup>364</sup> Frequent switching between producers to save costs undermines producers’ commitments to complying with codes.<sup>365</sup> Similarly, retailer demands for improved working conditions in export zone factories without adjustments to price or delivery times inhibits code compliance.<sup>366</sup> Codes that regulate both purchasing and production practices are more equitable and have a greater likelihood of ameliorating the exploitative working conditions that contribute to violence against women.

### *B. International Labor Laws*

The legal lynchpin in any reform efforts that help to bring

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<sup>360</sup> Weissbrodt & Kruger, *supra* note 291, at 903-14.

<sup>361</sup> *Id.* at 912.

<sup>362</sup> OXFAM INT’L, *supra* note 106, at 5.

<sup>363</sup> *Id.* at 56-57.

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

<sup>366</sup> *Id.*

about an end to violence against women in Cd. Juárez is the strengthening of enforceable labor law protections. Such proposals are congruent with the goal of ending the murders of women in Cd. Juárez. The labor movement itself may be best suited to challenge the particular forms of political economy that erode the capacity of communities, households, and individuals to survive.<sup>367</sup> Women's exploitation in Cd. Juárez has been linked to low levels of unionization and support for unions has been indicated as a means to counter violence.<sup>368</sup> Furthermore, labor law protections are co-extensive with political rights. Progressive labor laws run "parallel to democratic governance in society at large" and "provide a countervailing force against abuse of power in the polity as a whole."<sup>369</sup>

The challenges here are formidable. The legal complexities related to the task of strengthening labor laws arise from the configuration of the border's foreign owned export economy.<sup>370</sup> These arrangements require the development of a "comprehensive legal-realist mapping of the interaction along multiple labor law systems and the economic consequence of that interaction."<sup>371</sup> It necessitates the analysis of multinational corporations whose current form has raised new accountability issues.<sup>372</sup> Particular attention must be given to the plight of women workers and the role of unions in defending workers in the context of economic globalization.<sup>373</sup>

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<sup>367</sup> See Stephen F. Diamond, *The Petrochina Syndrome: Regulating Capital Markets in the Anti-Globalization Era*, 29 J. CORP. L. 39, 96-98 (2003) (noting the positive effect of unionization on fair play and social equities).

<sup>368</sup> Gloria Gonzalez Salazar, *Participation of Women in the Mexican Labor Force*, in *SEX AND CLASS IN LATIN AMERICA* 183 (June Nash & Helen Safa eds., 1980) (noting the relationship between weak unions and harms to women); see William S. Stokes, *Violence as a Power Factor in Latin America*, in *CONFLICT AND VIOLENCE IN LATIN AMERICAN POLITICS* 156, 180 (Francisco José Moreno & Barbara Mitrani eds., 1971) (linking combating violence with support for unions).

<sup>369</sup> See Diamond, *supra* note 367, at 98.

<sup>370</sup> Mark Barenberg, *Workers*, in *THE OXFORD HANDBOOK OF LEGAL STUDIES* 563, 583 (Peter Cane & Mark Tushnet eds., 2003) (noting that "enforcement of robust labor rights in México law would cause a virtual social revolution").

<sup>371</sup> *Id.* at 584.

<sup>372</sup> Stephens, *supra* note 291, at 55.

<sup>373</sup> Ann D. Jordan, *Human Rights, Violence Against Women, and Economic Development (The People's Republic of China Experience)*, 5 COLUM. J GENDER & L.

A range of legal strategies have been urged in this regard. Scholars and practitioners have argued the benefits of expanded protections of multilateral treaties with enforcement mechanisms that give meaning to human rights and labor protections.<sup>374</sup> Others have discussed the possibility of pursuing remedies under unilateral initiatives, such as the 1984 General System of Preferences labor rights amendment, which deny preferences to countries that trade in goods produced in violation of the law's labor standards.<sup>375</sup> Similarly, there is the prospect of protecting human rights through the enforcement of the *Tariff Act of 1930*<sup>376</sup> which guards against labor abuses as a means to prohibit unfair trade competition.<sup>377</sup> Attention has also been paid to regional trade accords as a site to enhance worker protections and human rights.<sup>378</sup> There is a growing literature promoting the use of the WTO's unfair trade protection provisions as a source to prohibit exploitative labor practices.<sup>379</sup> Pursuing claims under the *Alien Tort Claims Act*<sup>380</sup> has also emerged as a strategy to combat human rights abuses, including sexual violence and workplace sexual harassment, suffered as a result of the practices of transnational

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216, 268-69 (1996) (considering how economic development strategies may increase gender-based violence).

<sup>374</sup> See HEMISPHERIC SOCIAL ALLIANCE, *ALTERNATIVES FOR THE AMERICAS 1* (Dec. 2002), at [www.art-us.org/docs/alternatives%20dec%202002.pdf](http://www.art-us.org/docs/alternatives%20dec%202002.pdf) [hereinafter *ALTERNATIVES FOR THE AMERICAS*].

<sup>375</sup> See Lance Compa & Jeffrey S. Vogt, *Labor Rights in the Generalized System of Preferences: A 20 Year Review*, 22 *COMP. LAB. L. & POL'Y J.* 199, 204-07 (2001) (observing that the GSP's labor protections have had a positive impact in some places where it has been implemented and that it has impacted labor clauses in other laws and trade agreements).

<sup>376</sup> *Tariff Act of 1930*, 19 U.S.C. 1202-1681(b) (2000).

<sup>377</sup> Ellenbogen, *supra* note 27, at 1315 (describing litigation against the U.S. Customs Service for their failure to investigate forced child labor in cocoa harvesting in Côte d'Ivoire).

<sup>378</sup> *ALTERNATIVES FOR THE AMERICAS*, *supra* note 374, at 12.

<sup>379</sup> See Bacchus, *supra* note 351, at 540; Laura Ho et al., *(Dis)assembling Rights of Women Workers along the Global Assembly Line: Human Rights and the Garment Industry*, 31 *HARV. C.R.-C.L. L. REV.* 383, 398 (1996); see also Liane M. Jarvis, *Women's Rights and the Public Morals Exception of GATT Article 20*, 22 *MICH. J. INT'L L.* 219, 219 (2000) (arguing for the use of the WTO's public moral exception as a means to protect women's rights).

<sup>380</sup> *Alien Tort Claims Act*, 28 U.S.C. 1350 (2004).

corporations.<sup>381</sup> Although all of these strategies may be imperfect standing alone to remedy the harms addressed in this article, they express ideals worth debating and may result in tangible improvements in the circumstances for women.

Developments in the area of international labor standards may have the greatest potential to affect public and private standards with regard to human rights and the well-being of communities, especially *maquila* workers.<sup>382</sup> Since the creation of the International Labor Organization (ILO) in 1919, the international community, particularly the countries of the Americas, has recognized the benefits of defining and monitoring international labor standards.<sup>383</sup> These conventions bear on the conditions of women *maquila* workers in Cd. Juárez, especially since the countries of the Americas, even those that have not ratified particular ILO conventions, are bound by them.<sup>384</sup>

The ILO, however, lacks enforcement mechanisms.<sup>385</sup> Yet

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<sup>381</sup> Jordan Paust, *International Legal Sanction Process*, in THE OXFORD HANDBOOK OF LEGAL STUDIES 817, 821 (Peter Cane & Mark Tushnet eds., 2003). For example, the International Labor Rights Fund's *Legal Initiatives for Corporate Accountability* includes several Alien Tort Claims Act cases filed against corporations for corporate labor rights abuses. See <http://www.laborrights.org/>. The suit against Exxon Mobil filed in the Federal District Court for the District of Columbia in 2001 includes claims for sexual violence. *Id.*; John Doe I et al. v. Exxon Mobil Corp et al., No. 1:01CV01357 (D.D.C. filed June 19, 2001).

<sup>382</sup> Juvenil Obrerea, *supra* note 125, at 174 (noting that only the imposition of international labor standards can improve labor conditions in the *maquilas*). A comprehensive listing of labor law related remedies that might benefit trade and labor relationships is found in Ansley, *supra* note 102, at 410-13.

<sup>383</sup> ALTERNATIVES FOR THE AMERICAS, *supra* note 374, at 43 (noting that all 35 countries of the Americas are members of the ILO and have ratified ILO conventions). The ILO's conventions include the abolition of forced labor (Conventions 29 and 105); the rights to collective bargaining, trade union action, and the right to strike (Conventions 87 and 98); equal pay for work of equal value and the prevention of discrimination in the workplace (Conventions 100 and 111); and minimum working age (Convention 138). The ILO Declaration states that "lasting peace can be established only if it is based on social justice." See *Declaration Concerning the Aims and Purposes of the International Labor Organization*, art. I, 15 U.N.T.S. 35, ILO (Oct. 9, 1946).

<sup>384</sup> ALTERNATIVES FOR THE AMERICAS, *supra* note 374, at 45 (noting that the 1998 ILO Declaration binds all member countries, even those that have not ratified its eight conventions).

<sup>385</sup> See generally William A. Douglas et al., *An Effective Confluence of Forces in Support of Worker's Rights: U.S. Trade Laws, Unions, and NGOs*, 26 HUM. RTS. Q. 273 (2004) (reviewing the criticisms of the ILO's lack of enforceability).

these circumstances have created a renewed interest in the ILO, ranging from proposals to incorporate ILO principles into regional trade agreements to proposals to delegate to the organization itself the responsibilities of monitoring and enforcement.<sup>386</sup> Whether and how the ILO is strengthened is a subject of debate and concern.

A recent internationally commissioned report issued on “the interaction between the global economy and the world of work” identified the need to integrate the ILO’s core labor standards within development strategies.<sup>387</sup> The report was less concerned, however, with the broader set of workers’ rights that form the basis for organizing efforts.<sup>388</sup> Other concerns with the report’s recommendations relate to the prospects of non-state actors implementing and modifying ILO standards and a retreat from the ILO as the centerpiece of monitoring and enforcement efforts.<sup>389</sup>

In response to these concerns, there have been proposals to revise and strengthen the ILO so that it will have new tools and clear authority to use flexibly and in accordance with the differing levels of development within countries.<sup>390</sup> “Radical pragmatism” has been urged in formulating solutions to the complex circumstances of the internationalization of labor law in order to allow for local, regional, and global determinations of labor standards. This would include fully transparent enforcement mechanisms by which to justify disparate performance before a centralized authoritative body, such as the ILO.<sup>391</sup> Trade agreements should require both the implementation of social

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<sup>386</sup> ALTERNATIVES FOR THE AMERICAS, *supra* note 374, at 45; Phillip Alston, ‘Core Labour Standards’ and the Transformation of the International Labor Rights Regime, 15 EUR. J. INT’L L. 457, 521 (2004) (arguing for more meaningful monitoring and enforcement through empirical oversight of labor practices under bilateral and regional trade accords).

<sup>387</sup> Philip Alston & James Heenan, *Shrinking the International Labor Code: An Unintended Consequence of the 1998 ILO Declaration of Fundamental Principles and Rights at Work?*, 36 N.Y.U. J. INT’L L. & POL. 221, 222, 240 (2004) (critiquing the report of the World Commission on the Social Dimensions of Globalization).

<sup>388</sup> *Id.* at 222, 240 (critiquing the report of the World Commission on the Social Dimensions of Globalization).

<sup>389</sup> *Id.* at 263-64.

<sup>390</sup> *Id.* at 264.

<sup>391</sup> Barenberg, *supra* note 370, at 589.

programs to assist women and an ongoing study of the impact of economic liberalization on women in all sectors of the economy.<sup>392</sup> These proposals, if realized, would have significant impact on conditions in Cd. Juárez, and if implemented with recognition of the politics of gender, may particularly benefit women.

## V. Conclusion

Solutions aimed at the reform of economic institutions, and legal systems of the type that will ameliorate the conditions in Cd. Juárez, are likely to occur primarily as a result of the resistance of social movements that incorporate the leadership of women.<sup>393</sup> Social movements of this sort speak to the promise of an international federation of unions with the ability to check the power of multinational corporations.<sup>394</sup> They offer what may be considered utopian solutions.<sup>395</sup> Certainly, such solutions may reject the predominance of the laws of the market, but they also reject isolationism and the closing off of international trade and investment. Instead, as expressed in the *Alternatives for the Americas*:

[A]lternative rules to regulate the global and hemispheric economies based on a different economic logic: that trade and investment should not be ends in themselves, but rather the instruments for achieving just and sustainable development.

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<sup>392</sup> ALTERNATIVES FOR THE AMERICAS, *supra* note 374, at 48.

<sup>393</sup> The Zapatista movement is one such example. R. Aída Hernández Castillo, *Zapatismo and the Emergence of Indigenous Feminism*, NACLA: REP. ON THE AMS., May-June 2002, at 39; see CHOSSODOVSKY, *supra* note 274, at 27 (observing that reforms are not likely to occur without “an enduring social struggle”); Cass, *supra* note 22, at 603 (noting that economic law institutions have been shaped by the tension between such entities and Third World social movements as opposed to gradual legal change); Gunewardena, *supra* note 163, at 212 (noting the documenting of the resistance of women workers in the globalized workplace).

<sup>394</sup> See Matt Bai, *The New Boss*, N.Y. TIMES MAG., Jan. 30, 2005 (describing the SEIU’s organizing efforts in collaboration with European labor organizers).

<sup>395</sup> Borrowing from Boaventura de Sousa Santos:

By utopia I mean the exploration by imagination of new modes of human possibility and styles of will, and the confrontation by imagination of the necessity of whatever exists, just because it exists, on behalf of something radically better that is worth fighting for, and to which humanity is fully entitled.

de Sousa Santos, *supra* note 189, at 1065.



Our proposal also promotes a social logic that includes areas such as labour, human rights, gender equity, the environment, and minorities—that is, previously excluded issues and people. While our critique and proposal have a technical basis, they also spring from an ethical imperative. We refuse to accept the market as a god which controls our lives. We do not accept the inevitability of a model of globalization which excludes half or more of the world's population from the benefits of development. We do not accept that environmental degradation is the inevitable and necessary evil accompanying growth... A profound ethical imperative pushes us to propose our own model of society, one supported by the many men and women united in hope for a more just and humane society for themselves and future generations.<sup>396</sup>

Utopian solutions have been identified as the transfers of wealth from “high-wage to low-wage countries” as an alternative means of development using a “different form of capital flow (public rather than private).”<sup>397</sup> Such solutions include the implementation of new strategies to end and reverse the effects of discrimination against women.<sup>398</sup> They demand that the state guarantee the protection of human rights and lead a “consensual economic strategy” that promotes the social well-being of its citizens by protecting those who are affected by the inequities generated by the market.<sup>399</sup> They recognize that because women throughout the globe are adversely affected by economic liberalization, decision making processes on global economic policies must include a wide range of women's groups, including women's caucuses in labor unions, women's labor unions, and other grassroots organizations.<sup>400</sup> Such demands are grounded in

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<sup>396</sup> ALTERNATIVES FOR THE AMERICAS, *supra* note 374, at 10.

<sup>397</sup> Mark Barenberg, *Law and Labor in the New Global Economy: Through the Lens of United States Federalism*, 33 COLUM. J. TRANSNAT'L L. 445, 450 (1995) (identifying strategies to prevent the practice of social dumping and the movement of capital from high wage countries to low wage countries); *see also* BENERÍA, *supra* note 109, at 166 (describing the Monterrey Consensus, a series of proposals from the U.N. Conference on Financing for Development in Monterrey, México in March 2002, which called for an international tax organization to develop a system of transfers from the richest to the poorest world regions).

<sup>398</sup> ALTERNATIVES FOR THE AMERICAS, *supra* note 374, at 11.

<sup>399</sup> *Id.* at 60.

<sup>400</sup> *See* Jean Franco, *The Long March of Feminism*, NACLA: REP. ON THE AMS.,

feminist theory and practice and are likely to be a source of social change.<sup>401</sup> Indeed, globalization has brought about the circumstances for improvements in the arena of social justice by creating the challenge to search for solutions for men and women affected by economic injustices while remedying the distinct form of harm suffered by women.<sup>402</sup>

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Jan.-Feb. 1998, at 10, 15 (warning of the danger of the professionalization or transnationalization of NGOs which “raises questions over how women’s roles are being defined in the global economy and who is defining them”).

<sup>401</sup> BENERÍA, *supra* note 109, at 90.

<sup>402</sup> *Id.* at 161.

