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### BUILDING CAPACITY FOR THE TRANSNATIONAL REGULATION OF MIGRATION

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Two significant conceptual errors frame the public debate concerning labor migration and the related phenomenon of illegal immigration. Each error stems from lawmakers' failure or refusal to recognize the ongoing and transnational nature of migration. First, the immigration debate occurs largely within a domestic political framework, and the assumption that the United States can address immigration issues, particularly illegal immigration, through the perfection of domestic enforcement mechanisms pervades the discourse. But migration is inherently international, and its management requires engagement with other governments and with social facts beyond U.S. control. Second, the rhetorical emphasis placed on "fixing" our broken regime reflects a conception of immigration as a problem to be solved. But migration is a cross-border phenomenon produced by structural and historical factors that will only evolve, rather than disappear, and it therefore requires transnational *management*, rather than a one-time comprehensive legislative solution.

Regulating immigration ultimately requires lawmakers to reach beyond a unilateral "gatekeeping" strategy defined by efforts to stop migration through law enforcement and economic coercion. Because states cannot effectively manage migration in isolation from one another,<sup>1</sup> the United States must approach the issue by prioritizing cooperation with actors outside the United States. In their contributions to the policy debate, scholars increasingly have emphasized the importance of addressing labor and illegal migration through bilateral and transnational frameworks<sup>2</sup>—through accords that would recognize

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1. Bimal Ghosh, Managing Migration: Interstate Cooperation at the Global Level, *in* *Interstate Cooperation and Migration* 109, 111 (2005).

2. See, e.g., Jorge A. Bustamante, Mexico-United States Labor Migration Flows, 31 *Int'l Migration Rev.* 1112, 1112 (1997) (noting that outmigration in Mexico is perceived as economic and labor phenomenon from which United States reaps benefits, whereas in

the interdependence of the United States and Mexico and engage our neighbor to the south directly through joint efforts to channel migratory flows.

In this Essay, I seek to contribute to this strand of commentary by focusing on the actual mechanisms of transnationalism and the avenues they open up for advancing a meaningful bilateralism. I demonstrate that the cross-border administrative law space created by these mechanisms is occupied not just by international entities, but also by entanglements between the domestic institutions of different countries. I emphasize the importance of identifying and then building the mechanisms of bilateralism, or the cross-border institutional capacities needed for managing migration, in a manner that promotes burden-sharing, or that ensures that both sides of the bilateral relationship reap benefits and bear costs, in rough proportion.

Many transnational mechanisms of governance already exist, and I use this space to advance the conversation about transnational regulation by mapping some of them and then offering initial suggestions for their development. For the sake of simplicity, I focus on the U.S.-Mexico relationship, not least because immigration to the United States is overwhelmingly Mexican (twenty percent of the authorized population and fifty-six percent of the unauthorized population),<sup>3</sup> and because ninety-eight percent of Mexico's out-migration is to the United States.<sup>4</sup> Our shared border is also itself the source and site of many of the pressures that make immigration a significant public policy issue.

Bringing to light existing institutional frameworks might also help to calm the passions that arise from the popular assumption that the United States and Mexico are locked in an adversarial relationship in

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United States, same migration is perceived as law and order or public safety phenomenon); Jennifer Gordon, *Transnational Labor Citizenship*, 80 S. Cal. L. Rev. 503, 509 (2007) ("I propose an opening up of the fortress of labor and of the nation-state to accommodate a constant flow of new migrants through a model that would tie immigration status to membership in organizations of transnational workers rather than to a particular employer."); Alejandro Portes, *The Fence to Nowhere*, Am. Prospect, Oct. 2007, at 26, 28 (arguing that United States and Mexico must develop means to manage massive flow of migration); Marc Rosenblum, *The United States and Mexico: Prospects for a Bilateral Migration Policy*, *Border Battles: The U.S. Immigration Debates*, Mar. 8, 2007, at <http://borderbattles.ssrc.org/Rosenblum/printable.html> (on file with the *Columbia Law Review*) (detailing fraught history of U.S.-Mexico bilateralism and laying out agenda for bilateral accord). For discussion of the history of U.S.-Mexico bilateralism and its limitations as reflected in the World War II-era Bracero program, see Mae M. Ngai, *Impossible Subjects: Illegal Immigrants and the Making of Modern America* 138–47 (2005); Adam B. Cox & Cristina M. Rodríguez, *The President and Immigration Law*, 119 Yale L.J. 458, 485–91 (2009).

3. Andrew Selee, Woodrow Wilson Ctr., *More Than Neighbors: An Overview of Mexico and U.S.-Mexico Relations* 5 (2007), available at <http://www.wilsoncenter.org/topics/pubs/Mexico.More%20Than%20Neighbors.pdf> (on file with the *Columbia Law Review*).

4. David Fitzgerald, *A Nation of Emigrants: How Mexico Manages its Migration* 5–6 (2009).

relation to migration. This relationship is not without its tensions, of course. Actors on either side of the border have different sets of priorities. Both the United States and Mexico have interests in controlling smuggling, drug trafficking (and the associated extreme violence), and other criminal activity around the border. But on the subject of immigration, Mexico's objectives revolve primarily around protecting the interests of its nationals abroad and facilitating remittance traffic back to Mexico,<sup>5</sup> whereas the United States's interests focus on simultaneously serving the country's labor market needs and preventing immigration from having adverse effects on U.S. workers and federal, state, and local budgets. This divergence of interest makes efforts to cooperate fraught and gives rise to collective action difficulties. The asymmetrical nature of the relationship between the United States and Mexico further complicates the matter; the United States possesses superior bargaining power and economic strength.<sup>6</sup> But it is precisely because of these asymmetries that developing institutional frameworks for cooperation is vital to meeting the regulatory challenge posed by the shared border, and the shared interest in managing migration creates crucial commonality.

### I. THE MECHANISMS OF BILATERALISM IN THE U.S.-MEXICO RELATIONSHIP

The mechanisms of bilateralism exist in at least three forms: (1) diplomatic and information-sharing networks that involve consultation and conferencing among cabinet officials and agency heads in both the United States and Mexico; (2) actual cooperative ventures between administrative officials on both sides of the border; and (3) civil society networks (many of which do not involve state actors) developed to serve the needs of Mexican migrants inside the United States. These frameworks are defined by different degrees of formality and thus have varying relationships to the hard legal regimes of the United States and Mexico. Most of them do not have legal regulatory authority, though they do reflect how the sovereign power and local interests of each nation project across the border. In addition, these mechanisms make

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5. In 2005, remittances amounted to approximately twenty billion dollars. See *id.* at 63. Though the current recession has led to a decline in this traffic of late, see Joel Millman, *Remittances to Mexico Fall More Than Forecast*, *Wall St. J.*, Jan. 28, 2009, at A3 (noting that amount of money sent home by Mexicans working in United States dropped by 3.6% in 2008—first decline recorded since Mexico began tracking remittance traffic thirteen years ago), the decline in remittances to Latin America may be “bottoming out,” Dilip Ratha, Sanket Mohapatra & Ani Silwal, *Migration and Development Brief 11, Migration and Remittance Trends 2009*, at 2 (2009), available at <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/MigrationAndDevelopmentBrief11.pdf> (on file with the *Columbia Law Review*) (“Remittance flows to Mexico declined by 13.4 percent in the first nine months of 2009 . . . . However, the decline in flows appears to be bottoming out in most countries across the region.”).

6. Selee, *supra* note 3, at iii; Ghosh, *supra* note 1, at 121–22.

clear that migration management depends on activity—sometimes collaborative, sometimes isolated—by officials at all levels of government and in the private sector.

A. *Diplomatic and Information-Sharing Networks*

The U.S. Department of State and the Mexican Foreign Ministry clearly communicate over issues of mutual concern, but it is also the case that almost every agency head deals regularly and directly with his or her counterpart on the other side of the border.<sup>7</sup> Perhaps the most prominent example of such interaction is the U.S.-Mexico Binational Commission (BNC), originally established in 1981 and envisioned as a forum for cabinet-level officials to meet once or twice a year to discuss regulatory issues related to the binational relationship. Over time, the BNC has become a one-day conference chaired by the U.S. Secretary of State and the Mexican Secretary of Foreign Relations and attended by cabinet-level officials and heads of administrative agencies. The Clinton Administration, in particular, invested heavily in this project,<sup>8</sup> and migration and border security have become prominent among the Commission's agenda items.<sup>9</sup> The governors of border states in both countries have developed a similar network of their own,<sup>10</sup> and mayors in neighboring towns maintain close working relationships. State and local officials in both countries increasingly reach across the border to attract new forms of investment. In the United States, state and local officials also work to respond to the transnational interests of their new popular constituencies of Mexican origin, by facilitating trade, investment, and cross-border traffic.

The tangible accomplishments of these gatherings are few. But formal networks of this kind at least promote information sharing across governments, as well as the articulation of joint priorities. Most

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7. Selee, *supra* note 3, at 13.

8. Augustin Escobar, *Interstate Cooperation: The Americas, in Interstate Cooperation and Migration*, *supra* note 1, at 65, 80.

9. See, e.g., K. Larry Storrs, Cong. Research Serv., *Mexico-United States Dialogue on Migration and Border Issues, 2001–2005*, at 5–6 (2005), available at <http://www.fas.org/sgp/crs/row/RL32735.pdf> (on file with the *Columbia Law Review*) (discussing meeting of November 25–26, 2002, during which talks addressed importance of forging bilateral migration accord and joint border security initiatives).

10. The first border governors' conference took place in Ciudad Juarez in June 1980 and resulted, in part, from the efforts of Governor Clements of Texas, who had promised during his campaign to improve relations with Mexico. John Kincaid, *The American Governors in International Affairs*, *Publius: J. of Federalism*, Fall 1984, at 95, 111. The conference is designed to enable governors to develop proposals for reform on border-related matters that can be submitted to their respective state and national governments, but through consultation with their counterparts on the other side of the border. The conference consists of thirteen working groups focused on issue areas that include agriculture, border security, crossings, economic development, education, emergency matters, energy, environment, health, science, tourism, water, and wildlife. See *Border Governors Conference, Worktables*, at <http://www.bordergovernors.ca.gov/worktables> (last visited Jan. 12, 2010) (on file with the *Columbia Law Review*).

important, when taken seriously, these networks can build and sustain the political will necessary to advance bilateral cooperation through the creation of actual legal regimes. They can also help project the particular interests of the United States and Mexico into the domestic political debate of the other country, to ensure that the interests of U.S. and Mexican citizens receive recognition in the national decisionmaking processes over which they have no direct control.<sup>11</sup>

The Partnership for Prosperity—a public-private partnership initiated by Presidents Bush and Fox in 2001—offers another example of an information-sharing network created by high level officials to advance a tangible reform agenda through reliance on cooperation between bureaucrats and the private sector. The Partnership promotes development in Mexico, particularly in areas with high rates of out-migration to the United States.<sup>12</sup> Former Secretary of State Colin Powell has listed the Partnership's accomplishments as including lowering the fees for transferring money between the United States and Mexico, developing innovative methods for funding infrastructure projects, and establishing an Overseas Private Investment Corporation in Mexico to provide over \$600 million in various types of financing to U.S. businesses operating in Mexico.<sup>13</sup>

#### B. *The Cross-Border Work of Administrative Agencies*

Administrative agencies on both sides of the border, particularly in the areas of law enforcement and public health, work together to develop actual practices that advance mutual goals, as well as to streamline operations that involve officials from both countries. With respect to border security, cooperation by state officials has been a longstanding practice. Again, this relationship has been complicated by different priorities, with Mexico focused on matters of internal security and protecting the lives and rights of its nationals at the border, and the United States focused on terrorism-related screening and intelligence gathering, as well as drug interdiction.<sup>14</sup> But Presidents Clinton and Zedillo poured considerable effort into formalizing bilateral

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11. Another such network is the Regional Conference on Migration (RCM), a multilateral regional meeting that has occurred annually since 1996. The RCM is attended by eleven member states, including the United States, Mexico, and Canada, and its objectives include promoting the orderly movement of persons and respect for the human rights of migrants. Reg'l Conference on Migration, Conference Description, at [http://www.rcmvs.org/pagina\\_n.htm](http://www.rcmvs.org/pagina_n.htm) (last visited Jan. 5, 2010) (on file with the *Columbia Law Review*).

12. P'ship for Prosperity, Report to President Vicente Fox and President George W. Bush: Creating Prosperity Through Partnership 1 (2002), available at <http://www.state.gov/documents/organization/16197.pdf> (on file with the *Columbia Law Review*).

13. Storrs, *supra* note 9, at 9–10.

14. Andrés Rozental & Peter H. Smith, Woodrow Wilson Ctr. Mex. Inst., The United States and Mexico: Forging a Strategic Partnership 11 (2005), available at <http://www.wilsoncenter.org/topics/pubs/USMEXenglish%20copy1.pdf> (on file with the *Columbia Law Review*).

consultation between consulates and border agencies. In 2002, the two countries entered into the so-called “Smart Border Agreement” (SBA) designed to increase the number of secure documents for frequent border crossers, improve intelligence sharing, and implement security strategies focused not just on the border, but also on the areas where threats originate. Initiatives also have included simplifying the execution of arrest warrants on either side of the border by reducing the legal obstacles that prevent warrants from either country from being honored in the other, as well as removing obstacles to collaboration between law enforcement officials. Perhaps most important, the SBA has brought attention to the need to regularize migratory flows in order to free up larger amounts of scarce law enforcement resources to address public safety and national security issues.<sup>15</sup>

On the subject of public health, perhaps the most formal existing mechanism of cooperation is the United States-Mexico Border Health Commission, which was established under the auspices of Public Law 103-400 and through a Memorandum of Agreement between the governments of the United States and Mexico.<sup>16</sup> Membership consists of high-level government officials from federal and state health agencies in both countries, as well as political appointees. The Commission’s primary objective is to deal with mobile public health crises and to address the needs for internal and external forms of communication and technical harmonization.<sup>17</sup> The Commission also continues to work toward facilitating binational health insurance to cover Mexican nationals working in the United States and to address legal barriers to coverage, such as a Texas state law that does not permit HMOs to market insurance plans across the border.<sup>18</sup>

Perhaps the most notable initiative to emerge from the Commission is its support for the Ventanillas de Salud program, through which Mexican consulates (there are fifty inside the United States) collaborate with U.S. nonprofit health organizations to provide services and education to Mexican citizens living and working in the United States.<sup>19</sup>

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15. *Id.* at 12.

16. United States-Mexico Border Health Commission Act, Pub. L. No. 103-400, 108 Stat. 4169 (1994) (codified as amended at 22 U.S.C. §§ 290n-290n-6 (2006)); Agreement to Establish a United States-Mexico Border Health Commission, U.S.-Mex., July 14-24, 2000, T.I.A.S. No. 13107, available at <http://www.state.gov/documents/organization/126990.pdf> (on file with the *Columbia Law Review*).

17. For a history of such efforts, see Julie Collins-Dogrul, Managing U.S.-Mexico “Border Health”: An Organizational Field Approach, 63 *Soc. Sci. & Med.* 3199 (2006).

18. See U.S.-Mex. Border Health Comm’n, Annual Meeting of the United States-Mexico Border Health Commission, McAllen, Texas, March 3-4, 2008: Summary, Actions and Next Steps 8 (2008), available at [http://www.borderhealth.org/extranet/files/file\\_1058.pdf](http://www.borderhealth.org/extranet/files/file_1058.pdf) (on file with the *Columbia Law Review*) (reporting on work of H.H.S. Working Group on Binational Health Insurance).

19. See Hilda Bogue, Ventanillas de Salud Program and Community Health Centers, Migrant Health Newsline, Nov.-Dec. 2006, at [http://findarticles.com/p/articles/mi\\_6843/is\\_6\\_23/ai\\_n28465712](http://findarticles.com/p/articles/mi_6843/is_6_23/ai_n28465712) (on file with the

Twelve such programs existed as of 2008, and they provide direct services to 500,000 “consulate clients,” reaching an estimated 1.5 million people in the U.S. A combination of Mexican state funds and private grants provides financial support for the programs, which focus primarily on disseminating occupational health and safety-related information and referring clients for services in Mexico.<sup>20</sup>

### C. Transnational Civil Society Networks

Several transnational civil society networks have taken shape in the last few decades and have created structures for the delivery of social services and the protection of Mexican nationals’ interests abroad.<sup>21</sup> Some of these mechanisms are creatures of the state, such as the Ventanillas de Salud program, and others emerge via networks of private actors. Indeed, emigration countries generally have begun adopting policies to address the rights and interests of migrants abroad, and to provide incentives for them to return home.<sup>22</sup> The attempts by sending societies, such as Mexico, to both provide for and control their nationals abroad simultaneously alleviate some of the burden felt by U.S. institutions and inject the sending state and its civil society into life in the United States.

Two examples of the increasingly vibrant civil society networks that have emerged include nongovernmental hometown associations and the Institute for Mexicans Abroad, which was formed in 2003 to replace the Mexican Communities Abroad Program. The hometown associations and migrant federations have evolved as informal networks that connect migrants in the United States to citizens and organizations in towns in Mexico. They consist of business associations, labor unions, and churches<sup>23</sup> on both sides of the border. In addition to organizing social and civic events, the associations develop positions on binational issues,

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*Columbia Law Review*) (describing goals and benefits of program to decrease barriers to access among consular clients and their families).

20. U.S.-Mex. Border Health Comm’n, NIOSH Information Dissemination on the U.S.-Mexico Border, at [http://www.borderhealth.org/files/res\\_1203.pdf](http://www.borderhealth.org/files/res_1203.pdf) (last updated Mar. 11, 2008) (on file with the *Columbia Law Review*).

21. For a general account of this transnational activity, see Gaspar Rivera-Salgado, Binational Organizations of Mexican Migrants in the United States, Soc. Just., Fall 1999, at 27. For a framing of this civil society activity as political activity and organization by Mexican migrants, see Jonathan Fox, Mexican Migrant Civic Participation in the United States, Border Battles: The U.S. Immigration Debates, Aug. 15, 2006, at <http://borderbattles.ssrc.org/Fox/printable.html> (on file with the *Columbia Law Review*).

22. See, e.g., Fitzgerald, *supra* note 4, at 3, 155–64 (describing ways in which Mexican government has attempted to regulate emigration).

23. The Catholic Church, itself a global, transnational network, has become an important agent for the promotion of migrants’ interests in recent years. The Mexican Catholic Church has abandoned its former policy of discouraging emigration in favor of accepting emigration and maintaining connections to Mexicans abroad via partnerships with U.S. dioceses and a “binational migrant ministry,” simultaneously encouraging Mexicans to retain ties to Mexican culture and society and learn English and American customs. See *id.* at 96.

and their component parts maintain close relations with one another. Some associations actually participate in and help fund development projects in both the United States and Mexico,<sup>24</sup> and the Mexican government finances association projects through its consulates in the United States.<sup>25</sup>

The Institute for Mexicans Abroad similarly exists to provide services to Mexicans living in the United States, while simultaneously promoting understanding of Mexican culture in receiving communities and facilitating immigrant integration. Housed in Mexico's Ministry of Foreign Affairs, the Institute works through the Mexican consulates in the United States and partners with civic actors on both sides of the border.<sup>26</sup> When it was still the Communities Abroad Program, the Institute began the "Tres por Uno" program, through which migrants abroad and Mexican government agencies finance infrastructure projects in Mexico, spending eighty million dollars per year by 2005.<sup>27</sup> Today, the Institute's advisory council consists of Mexican community leaders, Latino organizations in the United States, and officials from the state governments of Mexico.<sup>28</sup> The Institute cosponsors social programs with agencies at all levels of government. In addition to coordinating the Ventanillas de Salud program in the United States,<sup>29</sup> the Institute works with school districts to assess the needs of migrant school children and provides Mexican nationals with financial literacy workshops and English-language and continuing adult education programs.<sup>30</sup> The Institute's objectives also include public diplomacy efforts in the United States designed to enhance respect for the culture and country of Mexico, in order to address the hostility toward Mexicans and Mexican culture generated by illegal immigration.<sup>31</sup> This promotion of understanding helps to create political space for the treatment of immigration as a humanitarian and regulatory issue, rather than as a law enforcement problem.

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24. See Selee, *supra* note 3, at 18 (describing cross-border activities of nongovernmental organizations).

25. Rivera-Salgado, *supra* note 21, at 30.

26. For a detailed discussion of the Institute's structure, see Lauren Laglagaron, Migration Policy Inst., Protection Through Integration: The Mexican Government's Efforts to Aid Migrants in the United States 10–14 (2010), available at <http://www.migrationpolicy.org/pubs/IME-Jan2010.pdf> (on file with the *Columbia Law Review*).

27. Fitzgerald, *supra* note 4, at 58–59.

28. *Id.*

29. Laglagaron, *supra* note 26, at 29–31.

30. *Id.* at 1–2, 14–28; see also Rodolfo Figueroa-Aramoni, A Nation Beyond its Borders: The Program for Mexican Communities Abroad, 86 *J. Am. Hist.* 537, 539–40 (1999) (discussing educational and cultural activities of Institute's predecessor).

31. See Claudia Keller Lapayre, The Institute of Mexicans Abroad as a Mexican Institution of Public Diplomacy in the United States 24 (Mar. 22, 2006) (paper presented at the annual meeting of the International Studies Association), available at [http://www.allacademic.com/meta/p99314\\_index.html](http://www.allacademic.com/meta/p99314_index.html) (on file with the *Columbia Law Review*) (noting that Institute's programs, though targeted at Mexican nationals, also seek to "improve Mexico's image").

## II. SHAPING THE FUTURE OF BILATERALISM

The existing mechanisms of bilateralism form an intricate constellation of institutions designed to address the multiple needs engendered by immigration between Mexico and the United States. These mechanisms are largely ad hoc, however.<sup>32</sup> Efforts to develop an overarching normative framework could prove stultifying, but some theoretical cohesion will be required to shift the focus of public debate toward bilateralism, given the many different forms of governance needed to negotiate the U.S.-Mexico relationship.

The mechanisms just discussed all embody an ethic of burden sharing and reflect the crucial insight that when countries have large populations in common, both sides of the border should benefit from and bear responsibility for those populations. The civil society networks, in particular, reflect the burden-sharing ethos, demonstrating through actual practice a commitment to treating migration as a binational responsibility requiring transnational mechanisms of governance. The concepts of “burden sharing” (or mutual obligation) and “management” (or regulation) thus offer general but sufficiently substantive umbrella ideas under which to develop the mechanisms of bilateralism. This shared responsibility ultimately can be realized through an agenda that builds the existing institutional capacities described above to (1) address the root causes of migration and (2) manage migration’s effects to promote public health, safety, and prosperity, as well as human rights.

With respect to the first set of priorities—addressing the root causes of migration—the concepts of burden sharing and management ought to be highlighted at the diplomatic level as governing principles for the U.S.-Mexico relationship. The foregoing discussion should make clear that the Mexican government takes the interests of its emigrating nationals and the impact of their movement on Mexico and the United States quite seriously,<sup>33</sup> but it remains crucial for high-ranking U.S. officials to apply consistent pressure on Mexico to address the underlying structural causes of migration, especially limited job opportunities and structural inequalities at home. Perhaps more important, the United States should commit diplomatically to assisting Mexico in this long-term, cause-based approach to stabilizing and reducing migration.<sup>34</sup>

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32. See Ghosh, *supra* note 1, at 115 (observing that existing mechanisms of interstate cooperation act “in an isolated and fragmentary manner and are too narrowly focused to provide an adequate normative framework for a comprehensive approach to migration management”).

33. See Fitzgerald, *supra* note 4, at 155 (noting that Mexico sought from 1900 to 1970 to control “volume, trip duration, skills, and geographic origin of emigrants” through mechanisms such as propaganda, withholding of travel documents, Bracero temporary worker program, and coercion at border, but that failure of such efforts led Mexico to shift strategy to management).

34. For an argument that substantial investment by the United States in Mexico

At the administrative level, this approach could require diminished reliance by Mexico on remittances as a tool of development, especially since monies sent home from abroad offer only short-term and individualized (rather than systemic) development assistance. It could include devising positive incentives for Mexican migrants to return home, such as business loans or educational grants, to be jointly funded and implemented by Mexico and the United States. Increased funding and technical support from U.S. agencies to arrangements like the Partnership for Prosperity could help expand the reach of preexisting development initiatives. Some commentators also have advocated increased utilization of the North American Development Bank, an institution created in 1994 in a side agreement to NAFTA. To transform the Bank into a collaborative mechanism of development, both its substantive and geographic mandates would need to be expanded beyond their original focus on the environment.<sup>35</sup>

The second set of priorities, which revolves around regularization and management of existing flows, is crucial to creating a climate in which migration is seen as a win-win proposition, rather than as an imposition on the United States and a drain on Mexico. Regularization will require a labor accord of some kind, the details of which are well beyond the scope of this Essay.<sup>36</sup> But at the very least, transnational, interagency cooperation should be part of any new labor regime. For example, federal and state agencies<sup>37</sup> in Mexico can assist in providing crucial data and economic and demographic projections regarding the Mexican labor market and the sources, numbers, and characteristics of likely Mexican migrants.<sup>38</sup> The network of Mexican consulates, which

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represents the best long-term strategy for reducing illegal immigration, see Jorge Durand & Douglas S. Massey, *Borderline Sanity*, *Am. Prospect*, Sept. 24–Oct. 8, 2001, at 28.

35. See Rozental & Smith, *supra* note 14, at 16 (describing expanding the mandate of the North American Development Bank as one approach to infrastructure development). Of course, this sort of measure could be politically unpalatable, given that NAFTA is perceived on both sides of the border as having failed to deliver the growth in Mexico that would prevent the erosion of jobs and wages in the United States. See, e.g., Douglas S. Massey, Jorge Durand & Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* 73–104 (2002) (discussing relationship between NAFTA and illegal immigration).

36. For literature offering various approaches, see sources cited *supra* note 2. For a critique of temporary worker programs, see generally Cristina M. Rodríguez, *Guest Workers and Integration: Toward a Theory of What Immigrants and Americans Owe One Another*, 2007 *U. Chi. Legal F.* 219.

37. State and local governments in Mexico, which have become increasingly independent as the result of the federal government's devolution to them, in the mid-1990s, of authority over education and health care, should not be overlooked as partners in regulation and information gathering. See Selee, *supra* note 3, at 30 ("Most education and healthcare has been decentralized to state governments, and municipalities are responsible for most basic city and county services.").

38. A reform proposal that has gained prominence would create an administrative agency or independent commission to set visa policy on an annual basis, in the interest of creating an agile labor policy mechanism attuned to facts on the ground. Interagency communication across the U.S.-Mexico border will be crucial to the information-gathering work of such a commission. For a discussion of the commission proposal, see Cox &

already focuses on the rights and interests of Mexican nationals in the United States, could be cultivated and enlisted in identifying and helping to satisfy the particular needs of migrants, and perhaps also in monitoring employer-employee relations. Indeed, federal policymakers, as well as state and local officials, should regard the civil society networks that have emerged over the last two decades as crucial resources for providing for immigrant welfare and promoting immigrant integration. The hometown associations' and Mexican Institute's simultaneous focus on promoting attachments to Mexico and encouraging community participation and English-language learning in the United States provides an essential model for addressing the inherent tension between wanting to encourage some migrants to return and ensuring that those who inevitably stay for long periods (or forever) integrate successfully.

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To varying degrees, these transnational schemes amount to the extension of sovereignty across borders and the intermingling of different sovereign regimes. They thus implicate one of the central concerns surrounding global governance: accountability to the public. Migration scuttles the social contract on both sides of the border, making one government's decisions consequential for the citizens of the other state. This discussion thus surfaces a question that must be addressed in the shift toward a burden-sharing and management model of migration: How do we simultaneously address cross-border regulatory challenges and ensure that the publics on both sides of the border have adequate voice in what is done? Crucially, this accountability must extend not just from the state to its own citizens, but from the United States government to the people of Mexico and the government of Mexico to the people of the United States.

Interdependence, which is often invoked in the rhetoric that surrounds diplomacy, must ultimately be a core presumption of actual reform debates, and lawmakers ought to make concerted efforts to solidify bilateralism as a working practice. Building transnational networks with ties to public institutions on either side of the border ultimately will promote accountability in immigration policy by ensuring the participation of representatives from both nations in the myriad decisionmaking processes that involve an increasingly transnational public.

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