

Whose Consensus? What Grounds for Optimism?: Global Environmental Policy and NAFTA: A Gramscian Critique

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Editor's Note

EOPs will normally be by 3rd level undergraduate students who have obtained a 'first'. To kick off the series, however, this was originally an essay by James Tomlinson for the MA-IR of 1998. After some editing by Lloyd Pettiford, the essay was further developed by Chris White who studied FIR319 in 1997/98 (its first year) and obtained a 'first' both for the essay and his degree. This inaugural paper is as much a discussion piece as fully developed argument but will hopefully provide its readers with some interesting food for thought.

Introduction

Recent work on NAFTA, especially from the United States, has tended to accept a (neo-)liberal agenda. It has focused on constraint, compromise and co-operation. When talking about the environmental side of the agenda a green lobby of mainstream groups representing 80% of the environmental movement is compared to an unacceptable face of extremist nonsense. In fact, this 80% is, in any case, 80% of the US environmental movement not 80% of the environmental movement. This article takes a more critical approach to the development of the environmental agenda; an agenda which allows 80% of the population of a country of consumption addicts to claim themselves to be environmentalists. It does so by looking at NAFTA. We are not promulgating an eco-Utopia since we are well aware of problems with the idea and how to get there; social chaos would likely ensue from any attempt to move to bio-regional subsistence communities and the human suffering entailed would likely be unprecedented. Equally though, the environment/trade consensus 'spin' needs a more questioning attitude.

Multilateral trade agreements (MTAs) have at least four significant effects on the environment. Firstly, MTAs, can encourage a higher volume of production and consumption which leads to greater unsustainable production and use. Secondly, multilateral trade rules usually override domestic environmental regulations in order to allow access to resources and productions. Thirdly, actors such as transnational corporations can use multilateral trade rules to protest to third parties such as WTO in order to challenge domestic environmental regulations. Fourthly, lower environmental standards in some states lead some industrial states to call for unilateral trade restrictions and raise issues of 'protectionism or a level playing field.' (Porter and Welsh-Brown 1996, p.129-30). The accuracy of such observations is doubted by the most enthusiastic apologists for, and prophets of, neo-liberalism but they are, nonetheless, the most commonly levelled accusations.

The North American Free Trade Agreement (NAFTA) is an MTA between Canada, Mexico and the United States of America (USA) and has wider implications since it is the blueprint for the OECD's Multilateral Agreement on Investment (MAI), the subject of much concern amongst, what we can call for now, the environmental movement. Furthermore, recent conferences involving North America, Central America and Latin America (especially Chile) have had preliminary discussions about expanding NAFTA to include all the Americas. Despite the suggested environmental consequences of MTAs, negotiations over NAFTA are sometimes presented as a constructive process of negotiation and compromise, if shrouded in rhetoric and a fair amount of name calling, ultimately leading to the greenest trade agreement ever. (Hufbauer and Schott, 1993, p.93). Lobbyists for free trade and for the environment are both said to have 'created a common ground which made supporting NAFTA acceptable to both parties.' (Benton, 1996, p.215).

This article firstly examines the details of the NAFTA 'green' consensus. To the extent that it is limited to 'both parties' questions are raised regarding how broad this consensus is and what it might exclude. The consensus is, in fact, between business-

orientated government and the visible environmental movement; as such it is very powerful but does not tell the whole story. It will then be argued that NAFTA is based on a particular understanding of the environment which has developed in the wake of the UNCED conference of 1992, and which constitutes a hegemonic position developed with the help of, and in support of, transnational business. At this point it is important to highlight the interaction between material capability and ideology. Effectively UNCED constructed a 'common sense' approach to trade and the environment, which attempts to build coalitions with environmental organisations that support the status quo while claiming to represent the environmental movement as a whole. (see Tooze in Baylis and Smith, 1997)

We do not make the claim that the moderate environmental movement 'rolled over and played dead.' In the case of NAFTA a particular set of historical and political events 'created a *unique* opportunity for environmental groups to modify the political agenda for trade policy negotiations to include environmental issues.' (Audley, 1997, p.3, emphasis added). More we suggest that the visible environmental movement was used to obscure some fundamental debates. As a way of demonstrating that it was only an inadequate and shallow environmentalism which was incorporated into NAFTA, case study material is presented which questions the environmental credentials of the agreement. If NAFTA is being expanded and is to provide a model for MAI then the results could be highly detrimental for the cause of environmental protection.

NAFTA: The Environmental Consensus?

The NAFTA consensus, such as it exists, between advocates of trade and of the environment respectively, is somewhat akin to the neo-neo debate of contemporary International Relations (IR) theory. That is, it is a broad consensus in the context of a declared debate which, nonetheless, revolves around certain shared (and limited) understandings. In IR, neo-realism and neo-liberalism debate furiously the possibility of co-operation in international relations and the importance of absolute or relative gains; but in their eagerness to deal with implications of the fundamental problematic, that is international anarchy, they fail to engage, or even acknowledge, powerful critiques of their approach. This need not be seen as accident. More to the point, they marginalise such 'other' approaches as illegitimate, extreme in some way, and a distraction from 'real' IR. This is especially so in the United States; the mirror of NAFTA negotiations is interesting.

The green consensus, which emerged over NAFTA was effectively between advocates of free trade and those advocates of the environment who believed in the fundamental sanctity of economic growth in bringing about environmental protection. The result can be presented as a genuine compromise but what does it exclude and how did this conception of environmentalism come to be accepted as the green lobby? It is one thing to claim that trade liberalisation and its relationship with the environment 'compel us to face the fact that the earth has limits' but is this what has happened? (Audley, 1997, p.20). Sustainable development, words which buzzed loudly in the 'debate', tend to 'imply a path of development that differs from that which Western society has followed for centuries' (Benton, 1996, p.2161). However, the key word here is *imply*. In actuality the public debate, discourse if you will, was dominated by how to balance environmental protection and economic growth. In other words, it was not a debate between those wanting to abandon 'development' and those wishing to continue with it. It was a 'debate' (if this is the correct word) about how to preserve the status quo; about how to carry on doing the things, which had allowed development to consume resources, and create vast (ecologically destructive) disparities of poverty and wealth. Rather than a debate, it was a case of the trade side seeking alliances with sympathetic or co-optable members of 'the' environmental movement so as to get the agreement they wanted but with their fashionable green credentials still gleaming.

In the end, despite an alleged consensus, negotiators of NAFTA failed to introduce any significant environmental protection measures, or address the concerns of more radical environmental NGOs. Instead NAFTA has an environmental commission, which monitors environmental standards but has no legislative powers. The

environmental commission had recommended and accepted an amendment to NAFTA, which would prevent the lowering of environmental standards in Mexico, U.S. and Canada. Article 1114 stipulates that there should be no decrease in environmental standards. If a state is suspected of decreasing standards there will be an enquiry by the Office of the United States Trade Representative and any law, which decreases standards must be revoked. Also any firm, which flouts environmental regulations can be closed down or fined under Article 1114. The problem though is that existing regulations, or indeed societal structures, are not adequate for the job of environmental protection. I can do no better than Audley (1997, p. 4) in summing this up, though I must add an emphasis that he seems too willing to regard as unimportant; 'Gains in procedural rules and formal roles, that institutionalized and increased informal access, enabled environmental interests to find a niche in trade policy but *not substantially to alter it.*' There seems to be a perception that the United States is an environmental beacon; little attention has been paid to *improving* environmental standards in the US.

So, in the environmental 'debate' over NAFTA it was quite a small step for advocates of free-trade to accept that environmental costs had previously not been taken into account, leading to unsustainable practices, without shaking a basic elite and 'environmentally conscious' public's faith in the growth based model. Similarly, for those environmentalists who had a serious input into the NAFTA process the correlation between wealth and environmental protection implied the need not for environmental protection at any or all costs but for more careful management and/or ensuring the smooth and efficient running of markets. Indeed some of the most vociferous opponents of NAFTA on environmental grounds held, as their primary concern, the possibility of US environmental law being weakened by the agreement as part of a process of a levelling down process. That is, the United States was held up as the threatened environmental beacon, not as the effective leader of an environmentally destructive global economy whose citizens consume a disproportionate and unsustainable proportion of global resources.

The upshot has been a marginalisation of those voices, which have focused on re-evaluating notions of growth and progress (time, space etc), in order to run societies upon ecologically sustainable lines. This in turn has strengthened the idea of an emerging global consensus around 'greening free trade' and environmental protection through growth. This dominant (hegemonic) position is diffused through business and NGOs in the form of a powerfully symbolic sustainable development which is defined as...[and how much paper has been wasted in completing that sentence by quoting the ultimately meaningless definition of Brundtland!...so we will not do it here]; if by some miracle you have not seen the politically benign 'original' try creating your own before referring to it. Alas it is but a 'mediating term that bridges the gap between economists and environmentalists' (O'Riordan, 1989, p.93) but without substance. Like saying that Israelis and Palestinians both believe in religion and history as bases for making claims about their right to have a homeland.

We do not claim here that a move to radical green society would be easy, in fact it is easier to suggest that the journey would be so fraught with danger as to make it worse than doing nothing. Indeed it is more or less this argument that has been used to co-opt part of the environmental movement and to marginalise the other as unrealistic 'tree huggin' hippie crap'. (Cartman, 1998). However, the comfort of consensus over NAFTA and global environmental policy stand a little critical reflection. This is all the more so when one reads the following; 'Environmentalists were divided on the NAFTA issue, but they all agree on one thing: there remains much to be done to integrate environmental concerns into the international trade regime.' It is ridiculous to suggest that environmentalists all agree upon the need for a problem solving approach including the integration of environmental concerns into the current system. Some environmental groups 'were able to accomplish their objectives *because* their demands were *not a direct challenge* to growth oriented trade policy and because they could control the tone of the environmental agenda *using their ties to pro-trade policy elites.*' (Audley, 1997, p. 148, emphases added). Others were not able to have influence because they sought to challenge growth oriented trade policy and did not have links to pro-trade policy elites.

NAFTA: Part of a Neo-Liberal Environmental Consensus/Hegemony Post UNCED

We now move to look at exactly why the non-radical green position has come to dominate discourse in such a way that it has been judged as *the* environmental position. The way this has been controlled has sought to weaken a potentially strong challenge to growth oriented society by rendering it invisible. This paper asserts that the 'green movement' represented a coalition of radical social forces whose ideological nature challenged the premise of consumption maximisation and capitalist social forces. Groups such as Friends of the Earth and Greenpeace came to represent a critical political movement whose agenda was at odds with unfettered capitalism exemplified by Reaganomics and Thatcherism. In the 1980s green political groups provided a critical consciousness that existed outside the public's perception of the mainstream political process. The move towards greater trade and investment liberalisation would seem to place environmental groups even further on the political margin. The environmental agenda argues for slower economic development, the west taking more responsibility for its use of resources and pollution, as well as global problems such as global warming and rising sea levels. Porter and Welsh Brown (1996, p.132) highlight claims made by environmental NGOs that trade regulations and institutions have been biased against the environment and the emphasis is placed on unrestricted trade.

In a recent article, Krueger (1998) sets out the main competing arguments, which typify the environmentalist .v. neo-liberal economist debate. Many neo-liberal economists have justified greater economic liberalisation by claiming that: 'economic growth and trade are not intrinsically harmful to the environment but that environmental degradation results from market and governmental failure which is best corrected by market instruments (such as correct pricing). Moreover, economic growth creates both demand, as well as the resources needed for, environmental protection.' (Krueger, 1998, p.207). At the heart of a neo-liberal approach towards the environmental is one of resource management and market efficiency. This division between neo-liberal and environmentalist has been perceived as being eroded as mainstream political parties have taken on board environmental policies.

In reality though, since 1992, the mainstream of politics has marketed itself as environmentally aware and proactive and therefore environmentally responsible. In a world of post-Rio treaties and negotiations it would be expected that responsible attitudes towards the world's environment would be in the minds of trade and investment negotiators when negotiating processes such as NAFTA and the Multilateral Agreement on Investment (MAI). When we place NAFTA within the context of the political consciousness, which emerged from United Nations Conference on the Environment and Development (UNCED) it becomes apparent that issues of the environment became interwoven with the political and ethical leadership of neo-liberal social forces.

At Rio in 1992, states, transnational corporations and non-governmental organisations met to discuss a global environmental plan that was designed to agree global plans of action to regional and international environmental problems. While UNCED should have started a process of examining, defining and debating environmental problems and issues it became a process of entrenching a neo-liberal hegemony which sought to solve problems rather than institute radical reform. The fact that states, transnational corporations and non-governmental organisations representing a wide range of radical and conservative interests were invited to the conference would seem to indicate a form of liberal pluralism, which encouraged debate. The organisation of UNCED delegates did more to stifle debate instead of encouraging it. Finger (1995, p.47) claims that in order to promote environmental management rather than protection, the delegates were organised on a technocratic basis and placed into constituencies that allowed debate to be directed towards management. For example constituencies were divided into youth groups, environmental non-governmental organisations, women's groups, trade unions, indigenous peoples and business and firms. As a mirror to this constituency, state governments also debated the issues raised at UNCED. The idea of

environmental management develops from the neo-liberal belief in the market, while environmental protection highlights the activities of transnational corporations and operations, which would be potentially damaging to the eco-system.

Therefore in order to capture the debate and direct attention away from transnational corporations, neo-liberal interests needed to build coalitions and develop an ethico-political leadership that would present environmental protection as environmentalism. Ultimately, UNCED failed to explore alternative voices to those of the industrial economic ones. Krueger (1998, p.210) argues that UNCED failed to fully examine the implications and links between trade and the environment, while supporting a quick resolution to the Uruguay Round of GATT. Within UNCED there was a move to block or disrupt any debate about the activities and impact on the environment. For example a recommendation by the UN's centre for transnational corporations (UNCTC) was to impose a tough set of regulations on the activities of TNCs. As the proposal was deemed too costly to the activities of TNCs, there was a move to self-regulation and a voluntary code of conduct drawn up by the Business Council on Sustainable Development. Not only did the large corporations work to promote their interests, but leaders from both the North and South also felt obliged to lend support to industrial economic interests. Hildyard (1995, p.29) notes that American support came in the form of trying to generate doubt on the validity of research from environmentalists and arguing that the scientific community cannot make firm conclusions about the effects of economic interests on the environment. As a result of this, UNCED failed to even debate the impact that large corporations have on the environment. UNCED effectively embraced free-market environmentalism and a 'global management' agenda, which reflected the narrow interests of powerful groups and then presented itself as a globally agreed response that had taken expert council from all voices in all quarters.

Here we can see the development of a strong hegemonic base, which dominates both civil and political society. While the states represented the interests of a political society they also represented the dominant interests of firms and markets and so reinforced the orientation towards efficiency and laissez-faire economics. As UNCED was divided into constituencies, transnational corporations managed to dominate civil society. The term 'foxes in charge of the chickens' has been used to explain the United Nations Conference on the Environment and Development (UNCED) process and its after effects. (Hildyard, 1995, p.22). The analogy suggests how free-market environmentalism became the dominant idea and value, while transnational corporations became the dominant dynamic in the UNCED process at the expense of environmental non-governmental actors. Consequently, the economic structure and actors that had largely caused current environmental problems were put in charge of devising solutions. The idea of sustainable development effectively emasculated the radical and critical potential of the environmental movement of the 1960s and 70s by absorbing it into the failed and empty idea of development. For example the UNCED action plan, 'Agenda 21' had sections on the poor achieving sustainable lifestyles, but not the rich. It also contained a section on women but not one on men. Hildyard (1995, p.23) notes that this process avoided important questions about economic expansion and ignored the need for lifestyle changes amongst the rich.

As national government represented the public agenda and industry dominated the private agenda, groups such as women's organisations and environmental NGOs were marginalised and pushed into the public domain or screened out of the discourse completely. The victory of neo-liberalism at UNCED sought to minimise any changes in the socio-economic sector and promoted the interests of the most organised and financially dynamic groups. UNCED concluded that the best means to overcome the systemic problems of the environment and development was for greater industrial growth rather than controls on rapid development and high polluters. This view entails those aspects of relational power which the majority of the masses freely accepts the domination of narrow interests such as industrial capitalism. Within this interpretation of hegemony it includes the features of socially constructed practices, which have become common place in modern global society. As a result it goes beyond the materialist-based interpretations of the world and also includes the normative effects of

culture, ideology and values. UNCED demonstrates the development of a neo-liberal hegemony as part of the discussions which assisted in developing linkages between governments, firms and NGOs which marginalised any dissent or radical opposition and also provided a blue print for 'global management and development.'

Finger (1995, p.46-47) argues that those dominant NGOs that are part of the insider groups supported the dominant voice of greater sustainable development or industrialisation as part of the 'free-market' environmentalism. For example one of the key non-governmental organisations involved in both the Rio conference and NAFTA was World Wildlife Fund (WWF). Audley (1997, p.90) notes that the WWF were central to agreements on environmental provisions within NAFTA. It is also interesting to note that WWF had strong links to the US Republican and Democrat parties, who were generally opposed to any strong environmental provisions at Rio or within NAFTA that would harm or threaten investment and trade. Audley (1997, p.109) continues that in 1994 the Republican controlled congress had rejected any linkages between trade and environmental goals and therefore reinforced the view that without greater investment and trade, the resources would not be available to protect the environment. In the UNCED and NAFTA negotiations we can see the development of 'insider' non-governmental organisations who were willing to negotiate on all provisions and provide an 'environmental' position which legitimised the problem-solving approach of existing social forces. As well as this, insider groups also present the ethico-political leadership of these social forces as environmentally conscious.

Those who stood outside these groups and organised alternative meeting became forced into what Finger (1995, p.46) calls the 'UNCED visibility trap' as they highlighted and legitimised the UNCED process while also marginalising themselves as radicals. As a result of this process, UNCED, state governments and transnational firms legitimised themselves and claimed that there was no alternative to the Rio agreements, while dissenting voices which did not fit into the status-quo became alienated. There is a significant impact on NGOs as well, because for them to be part of, or remain in, any discussions on the environment they had to work within the agreed UNCED framework. This process demonstrates the development of insider and outsider political views, which either confirm or criticise the orthodoxy. The TNCs, the majority of state governments and 'insider' NGOs agreed to the principles of UNCED and legitimised a plan of action, which effectively promotes the interests of the industrial groups and maintains the status quo. While those governments in the South, the environmental NGOs and interest groups, which work against the UNCED agreement are alienated and portrayed as radical outsiders with alternative agendas.

Therefore the agreement at Rio in 1992 was portrayed to the global public as an agreed set of principles to tackle the environmental problems of the world. UNCED and Agenda 21 becomes part of hegemony of the consciousness as it emerges from the moral and ethical leadership of existing hegemonic social forces. The ethico-political leadership that UNCED sent out was one of pro-trade. Krueger (1998, p.210) notes that Principle 12 of the Rio summit argues that: 'States should co-operate to promote a supportive and open international economic system that would lead to economic growth and sustainable investment in all countries, to better address the problems of environmental degradation.' The language of Principle 12 uses wording such as 'co-operation,' 'negotiation,' and 'supportive' that implies an agreed set of common principles, which seek to work to a higher common goal. The very notion of an open international economic system firmly stamps the mark of a neo-liberal agenda that excludes certain environmental principles and ignores concerns over the actual process of 'sustainable development.'

As Femia (1975, p.32) notes, hegemony provides a common sense ideology, which portrays itself as a compromised position with no other workable alternative. Therefore in the context of UNCED, agreements such as Agenda 21 were publicised as a workable compromise between the working needs of transnational corporations and needs of the environment with a commitment to long term reform. In reality, UNCED gives the green light for transnational corporations to lobby for greater liberalisation, while responsibilities to reform have been firmly placed at the feet of those who are only marginally responsible for environmental degradation such as women and those

with limited access to resources such as the south. The importance of UNCED in relation to NAFTA and the environment cannot be underestimated. UNCED provided not only a common sense ideology which institutionalised environmental protection, but also claimed that greater liberalisation lead to better environmental standards. Therefore the ideological foundation of NAFTA follows this model that greater trade and investment liberalisation would inevitably lead to higher environmental and social standards in states such as Mexico.

NAFTA - A Green MTA?: Case Studies

To summarise so far. The claim is that despite a general understanding that MTAs can be harmful to the environment, NAFTA is presented as a green MTA. The reasons for this, we have argued, are that a hegemonic position has emerged post-Rio which emphasises goals of efficiency and management; furthermore radical voices with critical potential have fallen into the visibility trap. In effect this means their invisibility. What we move to do now then, is to look specifically at NAFTA to show that the actual consequences of NAFTA do tend to support such hypotheses. Our case-studies relate to the state investor dispute mechanism which we first explain.

Porter and Welsh Brown (1996, p.131) argue that US environmental NGOs wanted NAFTA regulations which would address the environmental impact of the agreement, an assessment of the environment and commitments to the environment clean-up process. Audley (1997, p.88-89) notes that in March 1993, a letter was sent to NAFTA negotiators which sought to address the impact of any agreement on the environment and made recommendations for environmental provisions. Here there was a perceived fundamental balance between trade and the environment. On one hand there were the economic interests of trade liberalisation against social forces that identified the need for a strong environmentalist position. The key desire of the NAFTA negotiators was to increase trade and investment between member states by moving towards a free-market system. In order to encourage investment and protect it from state interference the negotiators agreed on a state-investor dispute mechanism. Initially this mechanism could be seen as a way to protect investment and trade from Mexican political forces, which had a history of being more volatile or resistant to free-market economics. For example the state-investor dispute mechanism could have been used when Mexico threatened to refuse debt repayments leading up to the debt crisis. Multinational banks would have been able to pursue both the repayments for loans as well as compensation for non-repayment and losses. Effectively NAFTA represents what Rupert (1995b, p.676) calls the 'post-Fordist agenda of de-regulating a continent.' The American law firm, Appleton and Associates specialise in bringing suits against national governments and they believe that the state-investor dispute mechanism is a valuable process, which protects investment.

The American NGO 'Corporation Watch'² argues that the state-investor dispute mechanism is a danger to the ability of a state to regulate environmental and social laws and so protect the general public. Corporation Watch claim that under NAFTA investment rules, a corporation is given 'private legal standing' for the first time and the ability to directly sue governments for monetary damages. This is different from previous multilateral investment rules as states acted on behalf of transnational corporations. The state-investor dispute mechanism works by the arbitration of an international tribunal rather than a legal court. The panel comprises of a person from the corporation, a person from a regional or national government and a person agreed by both parties. The legal proceedings are carried out in secret and records are not publicly available. There is also no appeal procedure through national legal courts for the losing side. Under NAFTA rules there have been four state-investor disputes, and the two largest have concerned environmental and health matters. The largest is the Ethyl Corporations pursuit of US\$251 million in compensation from the Canadian government and the second is the case of Metaclad Corporation and the Mexican government.

Ethyl Corporation vs. Canadian Government

On 14 April 1997, Ethyl Corporation brought a US\$251 million lawsuit against the Canadian government because of a proposed new environmental law, which would ban the import and inter-provincial transport of petrol additive Methylcyclopentadienyl Manganese Tricarbonyl (MMT). Earlier Ethyl had sought the assistance of the US Trade Representatives Office in its pursuit of compensation against the Canadian government. When the Trade Representatives Office refused, Ethyl turned to the state-investor dispute mechanism. Ethyl Corporation is the sole producer of MMT and has initiated this legal action under the rules of the North American Free Trade Association. Under NAFTA rules, private corporations have the right to bring legal action against state and provincial governments when investment is threatened. MMT is a manganese-based additive, which is used in petrol to improve octane and reduce engine 'knocking.' Ethyl Corporation says that MMT is a safe substitute for lead in petrol and has been used in Canada for over 25 years. Ethyl claim that MMT will help cut smog and presents no dangers to either health or cars. Canadian legislators became aware of the threat to public health from manganese based products, such as MMT and attempted to ban its importation.

The American Environmental Protection Agency (EPA) and the World Health Organisation claim that MMT has significant effects on both health and the environment. The environmental and health risks of MMT are twofold. Firstly, MMT increases exhaust emissions in cars as automobile manufacturers have shown that MMT damages emissions diagnostics and control systems in cars. The second important consequence of MMT is the significant risk to public health as it is a neurotoxin and has suspected links to liver damage and respiratory disease. The EPA argues that when manganese particles are breathed in, the body has no control over the elements once in the blood stream and vital organs. Canadian action against Ethyl Corporation came after California totally banned all MMT additives and the American Environmental Protection Agency (EPA) banned MMT in 1978 from the use in formulated petrol which accounts for 1/3 of the gasoline market in the United States. As Ethyl Corporation is the sole producer of MMT it became concerned when the last state to ban MMT (Canada) proposed to tighten its environmental laws. The North American Free Trade Association attempted to make governments more responsible towards investment and the rights of private firms.

Under NAFTA regulations, corporations can sue national governments in order to gain compensation for investors when private property has been expropriated or when governments take measures, which are 'tantamount to expropriation.' This means governments become more responsible for actions which harm profits or future profits of private investors. These regulations have allowed Ethyl Corporation to seek compensation from the Canadian Government on the grounds of an a MMT ban would be tantamount to the expropriation of its MMT production plant and the damage done to its company reputation and 'good name.' David Wilson, President of Ethyl Corporation argues that the Canadian government has not banned MMT, but instead banned its import. Therefore, Wilson questions the claims that MMT is harmful to the environment or public health because Canada should ban it out right. This still ignores the fact that American states acting under the advice of the EPA have banned it under health and environmental concerns. Before NAFTA was signed in 1993, only states could bring legal suits against other states and so under pre-NAFTA legislation the Ethyl Corporation would never had been able to sue a national government. Pre-1993 regulations also did not allow for monetary compensation and at most allowed governments to impose tariffs on the offending state. This is the largest state-investor dispute under NAFTA regulations and if the Canadian government fails to win this lawsuit it could set a precedent that state compensation will have to be given every time a government wishes to tighten or change environmental, social or health regulations.

As a result, profits will have equal or greater importance than environmental degradation from industrial waste or health risks from toxins. In the testimony of Public Citizen's director, Lori Wallach³ to the House Committee on International Relations, she notes the changing view of Barry Appleton who initiated the Ethyl case. He has now moved from of position of defending the rights of the investor to calling

this expropriation case 'paying the polluter' rather than the polluter pays. In Washington, 20 June 1998 the Canadian government settled with Ethyl Corporation and agreed to pay US\$13 million as well as lift all restrictions on MMT. This groundbreaking case would seem to indicate that firstly, the moderate environmental insider groups such as WWF made too many concessions and NAFTA is in fact environmentally detrimental rather than unfriendly. Secondly, this case also reinforces the current thinking of rival social forces embodied within organisations such as Public Citizen, Friends of the Earth and the World Development Movement who claim that mechanisms such as the state-investor dispute process gives transnational corporations rights without responsibilities. Rupert (1995b, p.676) notes that

'The North American Free Trade Agreement is not about the commerce of nations.....It is about letting private business reorganise the North American economy without the checks and balances once provided by unions, social movements, or governments. [NAFTA] would roll back one hundred years of controls and restrictions that were placed on private businesses in the interests of the majority of people.'

Metaclad Corporation vs. Mexican Government

In January 1997 Metaclad Corporation used the investor-state dispute mechanism when they filed for US\$90 million compensation. Metaclad Corporation is an American hazardous waste management firm, which is based in California. The dispute arose when Mexican officials prevented the opening of a hazardous wastes landfill site, which had been built in 1995 and was awaiting inspection. Environmental inspectors from the state of San Luis Potosi deemed, after an environmental impact assessment, that the site was unsafe for a hazardous waste landfill site. The site was unsafe because it was built on an alluvial stream, which would contaminate ground water used by surrounding villages. In response to the report, the local state governor declared the site part of a 600,000-acre ecological preservation area. This case is an example of the way American corporations have had to look outside of the US for new landfill sites. Hildyard (1995, p.26) argues that pressure groups and popular protests have forced corporation executives to dispose of waste in Europe and the Third World because environmental protection is lower or weaker than the US.

The links between UNCED, NAFTA and the state-investor dispute mechanism highlight two interesting points. Firstly, it shows a direct link between the transnational managerial class who were so dominant in protecting multinational capitalist interests at UNCED and the subaltern classes of regional and state bureaucracies who were willing to accept the UNCED agreements. This demonstrates the complex structures of cohesion and coercion between the elite and social groups that a dominant hegemonic ideology needs to construct a historical bloc. Secondly, it shows the move from one form of historical bloc based on the states-system to an alternate historical bloc based on transnational production and global governance. The state-investor dispute mechanism is an example of how state sovereignty is being challenged. If state sovereignty is a defining quality of a declining historical bloc, for example in the sense of dominant US economic and political status in the Cold War, then the process of giving large corporations private legal standings shows the shift from one historical bloc to another. Rupert (1995b, P.674) makes reference to a pamphlet by AFL-CIO that claims:

'The proposed free trade agreement with Mexico is merely the most recent, albeit, extreme, manifestation of an ideological world view that believes overall progress can only be achieved if the organisation and structure of the economic and social affairs is left entirely to private capital. The damage caused by this approach during the past ten years will be deepened by free trade with Mexico.'

Gramsci (Sassoon, 1987, p.119-121) argued that a historical bloc shows the relationship between structure and superstructure. The structure is the set of dominant ideas, which propose there are no alternatives to those of the hegemonic idea. In this

instance we can consider the ideas of 'free-market environmentalism' established at UNCED as the theoretical structure and the organs of NAFTA such as the state-investor-dispute mechanism as the superstructure. Consequently there is an organic link between the material capabilities of dominant social forces and the ideological cement developed through common sense approaches and ethico-political leadership that reinforce certain norms and values.

Conclusions: The Implications of MAI

Simply because UNCED created a political environment in which liberal values dominated and where the voices of TNCs were heard loudest, but where consideration of the natural environment was, for a time, considered *de rigueur*, does not mean that NAFTA was a green agreement. It was a narrow compromise with certain elements of environmentalism, which in some cases could more accurately be termed a co-optation. The practice of NAFTA reveals the historically contingent nature of even this small coming together. As an MTA, NAFTA does not therefore hold out the prospect of a green informed future. Furthermore, as inspiration for MAI, its state-investor dispute mechanism has much to tell us. Lori Wallach captures the fears that the Multilateral Agreement on Investment poses to democratic-left social forces when she likens it to 'NAFTA on steroids.'⁴ It would seem that a reproduced NAFTA on a global scale would have serious repercussions on the future of green politics and the environment.

The issues raised around the state-investor dispute mechanism lead to a discussion of the globalisation of the local. The process of globalising local issues and responsibilities from a neo-gramscian interpretation can be seen as part of a global neo-liberal hegemony. Issues which would have been resolved by local elite's have under NAFTA rules, been shifted to corporate headquarters or international tribunal. When a hegemonic relationship is developing it can be demonstrated as part of a 'war of manoeuvre' when dominant values and ideology are being conveyed through a globally dominant culture, politics and economic systems. For this analysis, the 'war of manoeuvre' includes the United Nations Conference on the Environment and Development (UNCED) and the dominant values of neo-liberalism incorporating themselves into the dominant environmental solutions of greater industrial development, free market environmentalism and taking a global management approach to local and regional issues. If this case is accepted then processes such as UNCED can be seen as a way for dominant hegemonic social forces to incorporate other social forces and reinforce the perceived legitimacy of a particular historical bloc. Therefore unless social forces which embody trade unionism, environmentalism and public citizens movements can unify and build counter-hegemonic coalitions which can develop moral and political leadership then the contradictions within neo-liberal approaches to the environment will remain unquestioned. Rupert (1995b, p.686) concludes that: 'As a North American Free Trade Area becomes a reality in the form of the GATT's World Trade Organisation, anchoring this kind of vision within a popular common sense will become increasingly necessary-if not sufficient-conditions for effective progressive politics. In this sense, the ideological struggle over free trade is only just beginning.' The first step in this process is to take a critical position to environmental negotiations such as UNCED and the NAFTA provisions and then ask questions about why people have to change their ways and not corporations.

The North American Free Trade Agreement (NAFTA) is primarily a free trade process which incorporates the Mexican, American and Canadian economies together and promotes unrestricted trade and investment. The dominant neo-liberal values of NAFTA are part of the 'free-market environmentalism' which is dominant in UNCED. These values have led to the state-investor dispute mechanism, which promotes private investment and the primacy of private economic actors such as transnational corporations over state authority. The main points, which the environmental impact of NAFTA and the state-investor dispute mechanism makes, are:

1. The superstructure of the current historical bloc is characterised by specific dominant material and legal processes. These include the physical bodies of UNCED, NAFTA

and the state-investor dispute mechanism. As the state-investor dispute mechanism is a legal supranational process, and is superior to national legal channels, it is an example of dealing with local regional environmental issues at a supranational or global level. The legal regional authority has shifted away from regional sub-state or state governments to multinational companies and supranational authority.

2. The structure of dominant ideas and values is an integral part of constructing a critical approach to neo-liberal free market environmentalism. As the physical institutions of UNCED and NAFTA provide us with concrete observable processes, the norms and values of these institutions show us the underlining assumptions and beliefs of these institutions. The dominant political and economic culture of international capitalism has been incorporated into global capitalism in the form of governance without government. NAFTA shows that state authority is no longer needed to maintain a political or economic culture. Both UNCED and NAFTA demonstrate how transnational corporations and states have created networks of groups who hold a common neo-liberal ideology and some specialised authority in the form of a legal institution. Hildyard argues that the 'foxes in charge of the chickens' can demonstrate this process. Large transnational corporations (i.e. foxes) have gained an authoritative position, which according to neo-liberal utopianism allows them to regulate the environment (i.e. chickens) and act responsibly towards the regulation and protection of that environment. Unfortunately, the uncritical assumptions of UNCED and organisations such as WWF have encouraged this utopianism and allowed corporations to have rights without responsibilities.

3. The analysis of state-investor dispute mechanism demonstrates how the 'square-peg' of unfettered investment cannot fit into the 'round-hole' of adequate environmental regulation. While article 1114 of NAFTA will not allow states to lower environmental standards, the state-investor dispute mechanism effectively halts any improvement in environmental standards when it threatens investment. This means, attempts to improve the environmental 'public good' lead inadequate public environmental standards to face the challenge of private investment interests. The idealism of orthodox American commentators in condemning Mexican environmental standards while claiming a lead in the world for environmental policy have been proven hollow. Existing environmental standards in both Mexico and the US are inadequate and are generally lagging behind British leadership in climate agreements and strong social democracy in Scandinavia and Germany who are environmentally aware.

Afterword

So, is this classic structural/utopian critique or do we suggest a way out of the invisibility trap for more radical conceptions of environmentalism? Our own research suggests that in countries such as Holland (and indeed the United States) radicalism has tended to be coopted and that environmental consciousness has become diluted as it is difused throughout society. (Pettiford et al, 1997). However, rather than simply arguing that the environment spells the ultimate end of the current world system and that what follows is uncertain (Wallerstein) we would like to argue, with Haywood (1994), that shallow environmentalism's small 'lifestyle changes can be seen as part of a broader strategy to transform and enrich the very concept of the political, and thereby to increase the sense, and reality of empowerment of those hitherto excluded from politics in its mainstream definition.' (p.196) What we take from this is a certain optimism regarding the importance of recycling schemes and other forms of shallow environmentalism. The integration of environmental concerns into everyday life may be part of a process which will change our perceptions of the environment and ultimately of politics itself. Viewed in this light, NAFTA does nothing to prevent a downward trend in environmental quality but its manner of implementation, environmentally speaking, provides fuel for the development of a counter-hegemonic bandwagon which will suggest a positive view of the future based on a greening of spirituality. In this way we hope to follow a path which avoids neo-liberal false optimism but also the

pessimism and cynicism stemming from deep green and/or neo-Gramscian critiques; a way for genuine environmental consciousness, not business allied cladding, to emerge from the shadows and become fully visible.

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Notes

1 Audley is quite heavily used in these opening sections. Certainly his work appears painstakingly researched. However the uncritical style and the need to add emphases to so many of his un-questioned assumptions make him a particularly useful exemplar of the 'isn't US politics wonderfully complex yet efficient' school which seems to characterise debate over NAFTA/the environment.

2 <http://www.rtk.net/preamble/mai/bits.html>

3 <http://www.citizen.org/pctrade/tradehome.html>

4 <http://www.citizen.org/pctrade/tradehome.html>