

**CONVERGENCE  
and DIVERGENCE  
in NORTH AMERICA**  
Canada and The United States

Edited by Karl Froschauer,  
Nadine Fabbi, and Susan Pell

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CENTRE FOR CANADIAN STUDIES  
SIMON FRASER UNIVERSITY

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CANADA AND THE UNITED STATES

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# Preface

THIS BOOK is the result of an interdisciplinary colloquium entitled *Convergence and Divergence in North America: Canada and the United States* held on October, 29–30, 2004 at Simon Fraser University, Harbour Centre Campus in Vancouver. This scholarly event grew beyond the size of a colloquium to become a conference. The Centre for Canadian Studies at Simon Fraser University and the Association for Canadian Studies in the United States (ACSUS) organized this event as the “fifth biennial Colloquium in Canada” in partnership with the Canadian Studies Center, Henry M. Jackson School of International Studies, University of Washington, and the Center for Canadian–American Studies, Western Washington University.

This book includes Canadian, U.S., and other perspectives on divergence and convergence in North America. Rather than addressing issues from a single academic perspective, this conference provided a forum for interdisciplinary critical analysis, intellectual re-assessment, and debate about the emerging perspectives on how *two neighbouring nations* can take various paths to improve their societies, hold dissimilar ideas about policy, and interrelate unilaterally or multilaterally with other countries. In this volume, Canadianists emphasize that an innovative examination of North American convergence and divergence needs to advance, for example, a conceptual complexity beyond comparison of countries, an assessment of free trade relations, an examination of cross-border asymmetries, a review of cross-border (in)securities, an understanding of Aboriginal concerns,

an examination of recent societal developments, and a recognition of Canadian uniqueness.

The program of the conference was conceived and organized primarily by Karl Froschauer, Nadine Fabbi, Don Alper, and Alex Netherton. Karl Froschauer and Susan Pell lightly edited and coordinated the layout of these proceedings and wrote the introduction. Nadine Fabbi helped select and coordinate the presentation of the papers and co-authored the Preface. All contributing authors are responsible for the content of their papers, and all had the opportunity to review and revise them. Some authors made substantial changes, whereas others made changes only in style. We have decided to incorporate the keynote addresses thematically.

As Director of the Centre for Canadian Studies, Karl Froschauer supervised the final stages of the book’s preparation, including the book design and layout by Robert MacNevin. In addition to the authors, session chairs, discussants, editors, and the designer, we would like to thank the key funding institutions, Simon Fraser University, and numerous individuals, without the support of whom neither the conference on *Convergence and Divergence in North America: Canada and the United States* nor the publication of this edited volume would have been possible.

External funding support by the Social Sciences and Humanities Research Council of Canada (SHRRC) grant helped fund the attendance of the core participants, graduate students, and the publication of proceedings. We have also received support for the conference from

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the Canadian Embassy in Washington, D.C., the Association for Canadian Studies in the United States, and a publication grant from the Canadian Studies Center, Henry M. Jackson School of International Studies, University of Washington. Simon Fraser University financial support also originated from the Centre for Canadian Studies and the office of the Vice President, Academic.

In addition, we would like to thank John Pierce, Dean of Arts and Social Sciences, for his support of the Canadian Studies Program, Ian Angus, Stephen McBride, Gary Teeple, Luc Bonenfant, and Katherine McManus, for their help as steering committee members, Lynda Erikson, then Chair of the Political Science Department, for her departmental support, Colette Sauro for her assistance with accounts and correspondence, John Marriott for his proofreading, and Greg Ehlers, the Simon Fraser University photographer, for the use of the cover photo. The welcoming remarks by John Waterhouse, Vice President Academic, Simon Fraser University, by John Pierce, Dean of Arts and Social Sciences, Simon Fraser University, and by George Sulzner, President of the Association for Canadian Studies in the United States successfully launched this conference. We are also grateful for the support of the staff of the American Consulate in Vancouver, the opening address by Paul Cellucci, then U.S. Ambassador to Canada, the warm welcome and incantation by Leonard George, former Chief of the Tsleil-Waututh First Nation, and the address by Andrew C. Charles, elder of the Musqueam First Nation, in the Museum of Anthropology.

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CONVERGENCE AND DIVERGENCE  
IN NORTH AMERICA



# *Introduction: An Interdisciplinary Approach to Convergence and Divergence in North America*

Karl Froschauer and Susan Pell

Neighbouring nations can take different paths to developing their social well-being, they can hold different ideas about how to analyze recent changes in their societies, and, they can view their relations with other countries as multilateral or unilateral. However, divergence in these matters can be overstated, for paths, ideas, and relations that countries pursue can also converge. Such has been the case in North America. Simon Langlois (1995) finds in industrial societies a mixture of *convergence and divergence* in processes and trends, such as in labour disputes, matrimonial models, self-destructive behaviours, military conduct, skill acquisition, and occupational levels, among others (Langlois 1995). In determining distinctness in Canada, Chad Gaffield and Karen Gould claim that “it is necessary to focus on the future from the perspective of the past and the present” (Gaffield and Gould 2003:7). For instance, Eduard Grabb and James Curtis (2005) uncover that through historical and sociological processes British-derived continental communalities, such as political principles of liberty, legal equality, popular sovereignty, and pluralism have also been marked by *continental divergences* among the regions of English Canada, French Canada, the American North, and the American South. On the other hand, Michael Adams (2004) demystifies converging social values be-

tween Canada and the U.S. through comparing the results of survey research in both nations. He finds, for instance, that young Canadians and young Americans differ greatly on ideas of patriarchy.

In contrast to these scholars, Canadianists in this volume probe *contemporary continental convergence and divergence* by advancing seven interdisciplinary themes: (1) a conceptual complexity beyond comparison, (2) an assessment of free trade relations, (3) an examination of cross-border asymmetries, (4) a review of cross-border (in)securities, (5) an understanding for Aboriginal concerns, (6) an examination of societal developments, and (7) a recognition of Canadian uniqueness. The discussion that follows introduces these seven themes in turn.

## **Conceptual Complexity**

As mentioned, Curtis and Grabb assume that the shared British-derived political principles and the regions of English Canada, French Canada, the American North, and the American South provide for a good analysis of North America. In this book, however, contributors move beyond these conventional conceptions and propose that in North American analysis, political traditions need to be re-conceptualized, that the West and the Arctic North need to

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be emphasized, that multiformity of borderland links be illustrated, and that trans-governmental networks extending into Canadian and U.S. institutions be mapped.

In other words, how the two nations pursue convergent or divergent development paths, international relations, societal ideas, political cultures, and government policy calls for new analytical complexity. For instance, **Ian Angus** argues that “national political traditions allow for, and depend upon, continuous renovation by re-interpretation and critique.” He critiques comparative analyses of political traditions such as U.S. independence, individualism, and a-historicism seen as rooted in the U.S. *revolutionary* break from Britain with traditions of Canadian communitarianism, diversity, and identity seen as rooted in Canada’s *non-revolutionary* break. He argues that such comparisons of unique political traditions are inadequate and need to be re-interpreted within a relational context of both countries’ constitutional acts. Moving also beyond comparative analysis, **Randy William Willis** provides a new complexity in analyzing convergence in areas that straddle the U.S.–Canada border by focusing on the multiformity of links, networks, and relationships that create hybrid identities in borderlands and the flow of goods, ideas, and capital that transform landscapes in borderlands (for instance farmland in the prairies).

The regions not emphasized by Curtis and Grabb are the West and the Arctic North. It is precisely an analysis of North America that includes the modern West as a “unique geopolitical space, which is neither Canadian nor American, but Western” that **Joseph Taylor** advocates. In particular, the way western residents, bureaucrats, environmentalists, and property right advocates relate and argue about nature is a consequence of their regional history, which includes ‘rugged individuals,’ ‘expansionist states,’ and ‘transnational corporations’ which have transformed western North America in novel ways. **Ken Coates** sees that beyond national histories, Western Canada’s economy, political culture, and social attitudes increasingly converge with that of the western U.S., a phenomenon that could increase instability in Canadian unity. Moving up the continent, **Lassi Heininen** and **Heather Nicol** suggest that the Arctic North is critical to Canada’s national and sovereign territoriality, because it provides both a divergent frontier with the U.S. and also shows a convergence in approaches, as in the new ecological, security, and resource utilization issues that transcend borders. They also point to the need for a new international relations policy in the circumpolar North with the European Union and the United States. Some Canadianists, however, suggest that international relations should be seen as more complex and involving

more than just relationships at the national level. **Nadia Karina Ponce Morales** and **John Higginbotham** suggest a mapping at the subnational level of decision makers embedded in transgovernmental networks that address how issues are resolved through consultation, exchange of information, informal communication, and mutual trust.

### Assessing Free Trade and NAFTA

Despite Canadian efforts to generate multilateral trade, Canada predominantly trades with the U.S., as seen in the signing of the North American Free Trade Agreement (NAFTA), a reality that **Mark Kasoff** sees as an outcome of Canada’s inability to extricate itself from its trade dependence on the U.S. and the failure of its option to sell Canadian goods outside North America (particularly in Asia and Japan). The implementation of NAFTA, however, shows little convergence on wages, prices, and investment returns in both countries because, according to **Paul Storer** and **Steven Globerman**, non-tariff trade barriers remained in place. Similarly assessing the after-free-trade changes in Canada’s economy and industry, **Martin Andresen** argues that this trading block has benefited Canada. Nevertheless, in both economies **Robert Finbow** finds, while there may be pressure to conform to common definitions of interstate/provincial trade barriers and subsidies, that U.S. and Canada are likely to diverge in other areas where the U.S. maintains its distributive federalism and Canada its (reduced) redistribution—an outcome, he argues, that is rooted in the legacy of their respective national policies.

Free trade agreements, however, in their various provisions may allow for the defining of legal subjects, such as corporate entities other than states, and dispute resolution that may be inadequate. That is the case in NAFTA, particularly under chapter 11, as **Noemi Gal-Or** argues. Such provisions may well be adopted in the Free Trade Agreement of the Americas (FTAA). In addition, being so closely tied economically to the U.S., may well prove to be costly when Canada seeks more independence, especially in foreign policy. Given economic integration pressures from NAFTA and regionalization under neo-liberal influence, **Daniel Cohn** argues that market forces will make it more costly to diverge from both the international policy and much of the domestic regulatory policy set by the U.S.

### Cross-Border Asymmetries

The Canada–U.S. border was a historic determinant that influenced settlers’ and Aboriginals’ divergent identity formation. In addition, it created real and perceived asym-

metric outcomes from natural resources development (bi-national water falls, power plants close to the border) and from river and air pollution that has resulted in recourse to law suits or regulation. Furthermore, these divergent outcomes can be understood when considering the complexities of such specific industries as the forest sector, energy sector, and fisheries that are best approached through employing insights from sustainability, cross-cultural values, and multi-level government analysis.

In the nineteenth century, both the implementation of a national Canada–U.S. border and the signing of treaties of the Hudson Bay Company’s Oregon Territory divided First Nations and left an historical legacy of nation formation that have cross-border implications in Canada and the U.S. to this day. An analysis of rhetoric about national identity, statistism, and sovereignty in historical documents demonstrates that subsequent to drawing the Canada/U.S. border, Aboriginals on both sides of the border formed mostly divergent identities, as **Lisa Philips Valentine** and **Allan K. McDougall** claim. In a second article these authors focus on the various outcomes during settlement where statist rhetoric of sovereignty won out over corporate rhetoric through the use of law, trade, and settler community practices that thereafter determine divergent developments across the borders. In addition, **Daniel Boxberger**’s study shows that the variant wording in trade and subsistence clauses in the Stevens Treaties regarding the Washington Territory negotiated from 1854–1856 have impacted on twenty-first century socio-political concerns, including a rise in ongoing intra-U.S. litigation. Nevertheless, restriction of Hudson’s Bay Company trade fostered the creation of the myth of monolithic Indian identity and today raises questions of national and cultural identities. However, analysis needs to include more than rhetoric; **Christopher Flack** argues that the changes in modes of production, in demography, ideology, and legal trade and subsistence clauses also influenced divergent identity formation of Straits Salish people in the San Juan Islands.

To what extent do real or perceived asymmetrical cross-border benefits in natural resource development (energy and fisheries) have divergent federal and provincial regulatory implications? Real asymmetrical benefits from cross-border resource development can lead to significant conflict and to a Canadian reaction of engaging in legal or regulatory action. For instance, inappropriate results from electricity export that causes industrial stagnation, from power plants at the border that can cause Canadian polluted air-sheds, and from the introduction of foreign fish species that affect westcoast fish habitat show that asymmetrical relations may be overcome through

national regulation. **Karl Froschauer** finds that in 1887–1929 a reversal from privatization to nationalization of the Canadian Niagara Falls water power rights occurred because private owners exported the electricity to the U.S. and failed to supply electricity to small manufacturers in the southwest of Ontario. As a result, electricity exports became highly regulated through the establishment of the National Energy Board. **Patrick Buckley** and **John Belec** analyze the dispute between Abbotsford, British Columbia, and Sumas, Washington State, over the SE2 power plant located in Sumas and the potential air-shed issues. Because all the benefits were assumed to accrue to the U.S. investor in Sumas and the burden of pollution from the fossil fuel plant would be disproportionately borne by the people in Abbotsford, the people affected have appealed repeatedly to the National Energy Board to regulate the import of U.S. electricity. Public regulatory policy concerning shared international resources was also examined by **Gabriela Pechlaner** and **Murray Rutherford**, whose study focused on the management of escaped farmed Atlantic salmon in British Columbia and Washington State. Domestic pressure and cross-border learning between the two governing bodies was instrumental in previous policy convergences; however, recent emphasis on ‘research and monitoring’ over ‘compliance and enforcement’ has led to divergences in regulatory response.

How Canadian and American decision-makers have dealt with air pollution and waste disposal in areas that straddle the U.S. and Canadian border shows both common and different national approaches, as can be seen in several areas of environmental policy. For instance, policy convergence in automotive air pollution depends on the jurisdiction and on factors determining environmental policy. **Suna Bayrakal** argues that, whereas differences in jurisdictional approaches and degree of industry involvement in policy formation result in divergence in air pollution policy, trade agreement provisions (e.g., MMT gasoline additive), unclear science, and auto technologies have led to their convergence. Providing another example, **Stephen Rybolt** maintains that policy convergence on marine vessel emission will likely occur because of mutual concern for air quality and other environmental concerns and that there would be a benefit from a harmonizing of regulations in the Georgia Basin and Puget Sound region.

**Terry Simmons** examines a case whereby Canada obtained the economic benefits from a smelter, whereas in the U.S. the Columbia River received the pollution. Teck Cominco Metals Ltds., a Canadian corporation, charged with polluting the Columbia River, has been held responsible by the United States Environmental Protection

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Agency (EPA) for its clean up. Simmons argues that the disagreement comes down to liability and who will have to pay for the river's clean up because of the jurisdictional ambiguities when pollutants in the Columbia flow across the border. The complexity of cross-border policies can also be seen in the relationship that stems from the free trade agreements between Ontario's importing toxic waste while exporting its solid waste to Michigan. **Micheal Unsworth** finds that subsequent to NAFTA, "Michigan and Ontario have adopted laws and rules that have made each other magnets for different types of waste: Michigan ships most of its hazardous/toxic waste to Ontario while Toronto relies on Michigan landfills for its solid waste."

Furthermore, cross-border trade in forest products is one of Canada's major exports and both countries can gain from its analysis. Both countries' forest sectors can learn from a number of ideas: (1) that, according to **Brian Peter, Sen Wang, Brad Stennes, and Bill Wilson**, management trends towards sustainability could mitigate climate change and reduce forest fires and insect infestation, (2) that, as **Dorothy Paun** indicated, cross-cultural business value analysis of the forest product industries can bring new insights, and (3) that, according to **Cecilia Lei**, employing a multi-level governance analysis allows us to understand better the softwood lumber dispute.

### Cross-Border (In)Securities

Cross-border security concerns are not new, and several authors examined such concerns. Two authors raised the question to what degree Canada's policy towards Cuba differed from that of the United States. On the one hand, **Adam J. Green** found that newspaper content and editorial cartoons from 1962–1967 reflected that Canada was becoming more critical of the U.S. Cuba policy; on the other hand, **Kalowatie Deonandan** suggests that in the post-1996 strengthened embargo (U.S. Helms-Burton Legislation) against Cuba, Canadian and U.S. policies have converged more than they diverged. For example, **Deonandan** writes that Canada supports U.S. hegemony, shares interests with the U.S. in protecting the global trading regime, and supports U.S. positions in the Organization of American States vis-a-vis Cuba.

Issues of security increased after the events of September 11, 2001. Some authors investigate whether post-September 11<sup>th</sup> cross-border movement was sustained because of shared regional histories and cooperative experiences, whereas another contributor asked what is the role of local residents in the solving of security concerns. **Victor Konrad** and **Heather Nicol** find that,

in the post-September 11<sup>th</sup> period, national leaders and policy makers in both countries, mindful of the constantly increasing trade and traffic across the border, relied on the pre-September 11<sup>th</sup> risk management and heightened technological survey techniques to serve as a toolbox for establishing new border management structures. Looking directly at the borderland between Canada and the United States at the Point Roberts Peninsula, Washington State, and Zero Avenue, British Columbia, **Rod Fowler's** paper argues that the predominance of local imagery over political and strategic concerns in this frontier zone poses a challenge to security issues for each nation; he suggests that to increase security, local residents will need to be included in the consideration of this boundary. By examining cross-border collaboration, **Philippe Lagassé** suggests that while post-September 11<sup>th</sup> concerns that Canada's participation in the bi-national Northern Command planning group would lead to Canadian participation in the missile defence shield and to a loss of sovereignty were exaggerated, the group's plans could have an impact on Canadian maritime security policy.

Canada–U.S. cross-border insecurities extend to a number of additional concerns. For instance, **Bradly Condon** and **Tapen Sinha**, identify the issue of whether money laundering for terrorism could be made easier, not only by the NAFTA provisions intended for foreign investment flexibility, but also by each country's divergent financial regulations that could ease illicit money flow between Canada, the U.S., and Mexico. In addition, **Greg Anderson** is concerned whether the new post-September 11<sup>th</sup> security institutions hinder North American economic activity which needs urgent empirical research using standardized methods in qualifying such effects.

Others have investigated the worries that immigrants and refugees may pose security problems. For instance, because the September 11<sup>th</sup> suicide pilots were foreign nationals aided by students from Muslim countries, the U.S. has felt more uncertain about immigrants and has targeted this group for increased border security. As a result, **Richard Mueller** suggests that the divergence in immigration restrictions could benefit Canada by having more foreign students, particularly those from Muslim countries, selecting Canada over the United States as a location of study, and that they may then remain and contribute their knowledge to Canada after their studies end. Another concern since September 11<sup>th</sup>, according to **Michael J. Churgin**, is that the Canada–U.S. policy that refugee status should be claimed in the first country of arrival has not been harmonized completely and has not been fully implemented.

## Aboriginal Concerns

Aboriginal matters of interest and importance have included self-government, repatriation of artifacts, and media representation. Considering different pathways to self-government is important because, if implemented, each path would structure relationships within Canadian political communities in different ways. In their review of models of mini-municipalities, third order of government, and nation-to-nation relations, **Frances Abele** and **Michael J. Prince** pay particular attention to the values and assumptions regarding sovereignty, citizenship, and Canadian federalism in order to understand the various positions that have been taken in regards to Aboriginal self-government. A key example of self-government has been the transfer of power to the people in Nunavut. In his keynote address, **Donat Savoie**, from the Department of Indian and Northern Affairs, illustrates the “unique and innovative” transfer of power from the federal government to the Inuit. The two main driving forces behind Inuit self-governance arose from the self-administrative form of self-government the Cree obtained in their struggle over Québec’s James Bay development and the strengthening of the cooperative movement in the North. **Jessica Shadian** adds further to the discussion about Aboriginal self-government by examining the changing conceptions of Inuit identity construction in light of larger Canadian and global political processes. She analyzes the change from colonial relations to those of Inuit sovereignty that has been manifested currently through ideas of sustainable development in the North and the right of the Inuit to direct this process. Moving from the specific case of Canada, **Erich Steinman** argues, however, that the federal governments of the two countries have received differential ‘policy feedback’ which has contributed to more substantive governmental powers for federally-recognized tribal governments in the United States and to the acceptance of Indigenous self-government as more of a feature of the public discourse; but not of more political power, for Aboriginal groups overall in Canada.

The difference in the degree of sovereignty Aboriginal communities attain in either country is also reflected in the divergent paths that U.S. and Canadian decision makers take in repatriating human remains and cultural objects to Aboriginal communities. In his keynote address, **James Nason** has identified Canada’s practice as that of allowing federal and provincial governments more or less to determine the objects that will be repatriated and when. That practice diverges from the American government practice that has created a policy that has made it manda-

tory for museums to provide lists to tribal groups of the objects that they have in their possession in order that the Native Americans can, then, tell the government agencies and museums what it is that they want repatriated; repatriation must occur promptly under penalty of law. Nason suggests that this difference in approach reflects differences in sovereign status of Aboriginal communities in each country.

Matters of great interest are also that national support for Aboriginal media indicates divergent practices and that Aboriginally-produced films challenge colonial narratives. **Kristin Dowell** compares the strength of Aboriginal media presence in the U.S. and Canada. In Canada, the conditions for the emergence of multigenerational, diverse, and innovative Aboriginal media differed from those of the United States. Canadian Aboriginal producers and activists lobbied successfully for, and participated in, the formulation of ‘friendly’ cultural policies that allow for access to funding, resources, and institutional support, whereas, their American counterparts have not had the same level of government support and have had to turn to private organizations for it. According to **Kalli Paakspuu**, Aboriginal-produced films and photographs challenge colonial narratives. She analyzes the photography by E.S. Curtis and Harry Pollard and the contemporary Aboriginal-produced films *Atanajuarat* and *Kainayssini Imanistaisiwa: The People Go On* with reference to Indigenous sovereignty and storytelling through an aesthetic and historical perspective. These films have challenged colonial narratives that imagine Natives as a disappearing face; instead, she argues, that photography and film are media sites “where politics around race, class, gender, and place are contested.”

## Societal Developments

Societal development refers to major phenomena and aspects of both Canadian and U.S. society that affect people at different stages of their lives. Some important aspects of these societies are immigrant settlement, social policy, the health care system, abortion practices, the nature of child care, youth participation in politics, participation in unions, and urban re-development policies. For instance, immigrant settlement can occur in ethnic communities that straddle the U.S.–Canada border or in ethnic communities that are as distant as California from Québec. The nature of divergent societal trends is also evident in how progressive individuals, the welfare state, or the non-profit sector provide for social services or progressive social development. Health care policy, the debate about abortion,

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the nature of child care, and youth participation can also reveal different directions countries take in developing their societies. How much a society values workers can be seen in how countries and their corporate leaders respond to union participation and union renewal. Also important to consider are U.S. and Canadian urban development policies to enhance urban economies or to re-vitalize city centres.

**Susan Hardwick** examines immigrant settlement as it is linked to ethnic networks straddling both sides of the Canada–U.S. border, whereas **Rebecca Mancuso** analyzes the attempted replication of the ethnic community as it was imagined in the country of origin but embedded in the cultures of Québec and California. Hardwick, probes how social and religious networks “shape migration decisions, settlement patterns, and identities of Post-Soviet Russian and Ukrainian refugees in western British Columbia, Washington State, and Oregon.” She found that the majority of immigrants participate in ethnic and religious networks on both sides of the Canadian–U.S. border. In studying Danes in North America, **Rebecca Mancuso** examines ethnic identity in Danish communities in Montréal, Québec, and Solvang, California. The way Danish immigrants have attempted to ‘recreate’ their Danish identity and their less than optimal choices in protecting their customs (by integrating in ‘melting pot’ or ‘mosaic’ fashion) has led to an experience of an ‘identity crisis’ in questioning what is ‘authentically’ Danish in their divergently embedded immigrant communities.

The nature of divergent societal trends is also evident in how progressive individuals, welfare states, or the non-profit sector provide the most suitable social service or the most progressive social development. In comparing the ideas of progressive individuals George W. Norris, of Nebraska, and Tommy Douglas, of Saskatchewan, **Frances Kaye** argues that these men were similar in their proposals to mitigate negative environmental and economic impacts in the Prairies; however, she claims that in their approaches both were not radical enough, particularly in not adopting long-term visions for the uses and limits of the Prairie’s physical environment. **Christian Lammert** studied the reforms of welfare policy in Canada and the U.S. during the 1990s. Specifically his concern was whether either of the nations has been able to reduce poverty and make income redistribution more equitable. He finds that, because Canada has traditionally used a social insurance model and offered universal benefits, it has responded to restructuring needs by shifting to a negative income tax (NIT) system, whereas this had not occurred in the U.S. which has had a poor law tradition and lacks a legacy of universal

assistance. While NIT has allowed Canada’s social welfare policies to remain more stable through restructuring, it was not found to reduce poverty. Almost pursuing the inverse of Lammert’s question, **Sam Ladner** asks whether the provision of services by the state impedes or precludes the growth of a robust non-profit sector. He concludes that in adopting the more individualistic policies, with the resulting competition between the state, for-profits, and non-profit organizations, Canadian social policy of this competitive type would disadvantage the non-profit sector and the people that it serves.

Determinants of societal developments that affect people at different stages in their lives are evident in the trends and issues in health care policy, in the debate about abortion, in the nature of child care, and in the political alienation of youth. One trend in health care is that it becomes increasingly stratified, a convergence trend with the U.S. system. **Ida R. Rayson**, in an analysis of U.S. trends in Canada’s health care system, suggests that both the increasing expenses of Canada’s public system and the increasing centralization of the U.S. system may be leading to a more two-tier, privatized approach to health care in Canada. **Dana Lee Baker** and **Shannon Stokes** point out that, although in both Canada and the U.S. science can provide the same basis for the definition of issues in public health policy, political cultures in either country tend to provide substantially divergent bases for the way health policy issues are defined. Regarding the issue of abortion, **Hélène Quanquin** argues that Canada revealed a predominant medical definition of abortion, whereas the U.S. showed a predominant feminist view of abortion which contributed, in turn, to its greater politicization in the U.S. than in Canada.

Societal approaches to child care policies, however, have been analyzed in both countries from a feminist perspective. **Laurel Whitney**, for instance, studied the extent to which neo-liberal governments in Canada and the United States have taken gender equality into account in restructuring and redesigning their child care policies. These have involved a shift towards tax credits for individuals and privatized child care, rather than a move toward a more collective approach in the form of a universal system of child care. This latter approach which recognizes women as the predominant child care-givers would greatly enhance their social citizenship through the ability to be equal participants in society. The practice of political citizenship by youth has been analyzed by **Pauline Beange**. In her analysis of civics education in secondary schools in Ontario, she probed the question whether there was a significant decline in youth’s political participation and

political interest. She found that emphasis on participation in civil society and social movements over a perspective that favours participation in traditional political institutions and government did not contribute to “an initiating or sustaining of youth political literacy or political engagement objectives;” rather, “civic education may have in fact fostered a lack of deference and greater cynicism regarding political processes and political involvement.”

Labour policies that favour a large number of employees benefiting from union membership in the hospitality sector and strategies for union renewal are an important indicator of societal developments in the U.S. and Canada. Concentrating on hotel industry employees, **Dan Zuberi** studies how different labour policies have affected levels of unionization in hotels in both Vancouver, British Columbia, and Seattle, Washington, and how, in turn, such policy differences have influenced the quality of life of the working poor in either country. His study shows that diverging labour policies in Canada and the U.S. directly and indirectly result in greater job security, benefits, and working conditions for non-salary employees in the hotel industry in Vancouver than they do in Seattle. The availability of different forms of unionism is also important in understanding this phenomenon. **Stephanie Ross** investigated how two models of social unionism as strategies for union renewal evolved in the United States and Canada. Whereas, according to Ross, the U.S. labour movement, which was more extensive and systematic, focused on new membership organizing that has led to an instrumental approach to union activity, the Canadian labour movement has “paid greater attention to coalition building with the social justice community and has made more politicised interventions in national debates concerning free trade and neo-liberal policies.” Ross argues, however, that because neither model puts forward an alternative vision to neo-liberal globalization which could mobilize working people, “these models of union organizing are insufficient for a renewed labour movement.”

Trends in new developments can also be observed in cities and their re-development. For urban re-development, countries need to consider a variety of policy options. **Laura Reese** and **Gary Sands**, each in his or her own paper, suggest that urban development policies to enhance urban economies in Canadian and U.S. cities are very similar, though public policy initiatives may have only limited potential for achieving urban revitalization goals. **Reese** examines trend data over the past decades from cities in Michigan and Ontario. Whereas U.S. cities tended to move away from traditional policy directed at development, Canadian cities have continued to use public policy

and professional staff within an entrepreneurial approach. Using a similar approach, **Sands** assesses the health of core areas in mid-sized cities in Ontario and Michigan. Comparing examples of successful and unsuccessful cores, his findings suggests that public policy initiatives have only limited potential for immediately achieving revitalization goals and that a long-term perspective that uses a diversity of strategies and approaches is needed in order to bring about the desired changes.

### Canadian Cultural Uniqueness

What can cultural products, such as texts from literature or content of films, and indicators of popular culture, such as sport, reveal about Canadian uniqueness? Countries can show in texts, films, and sport unique forms of, and critiques of, nationalism. For instance, **Alessandra Capperdoni** analyzes the experimental poetics of contemporary writers Phyllis Webb and Roy Kiyooka in order to illuminate a process of Canadian nationalism as it emerged in the 1960–1980s. The perspective of gender/sexuality and race/diaspora, used respectively by these writers, enables them to interrogate the role of language and, therefore power, not only in the formation and maintenance of nationalism but also, in a time of post-nationalism, as a way to display critical rethinking of meanings of nationness and belonging. Also approaching literature critically, **Steven Daniell** illuminates aspects of Québec’s position in the larger North American context by examining the ‘far west’ motif in the context of pre- and post-1980s sovereignty referenda in four texts by Québécois writers, Jacques Ferron, Jacques Godbout, and Jacques Poulin. He found that the frontier aspects of the ‘far west,’ in the sense of a place of opportunity and for breaking with establishment, epitomize Québec’s transition toward a new and different relationship with Canada and within North America. Forms of nationalism also occur through the participation in local popular culture, such as sport, that can go against global trends. For instance, **Reginald Bibby** and **Trevor Harrison** examine the survival of the Canadian Football League (CFL) as a unique popular culture phenomenon that resists globalization. While there may be some sense that Canadian culture and sports are vulnerable to Americanization and to the effects of globalization, their study demonstrates that despite heavy marketing of the National Football League in Canada in recent years, Canadians continued to embrace the CFL, which suggests sport as a site of national cultural distinction.

How social activism is embedded in documentary film and how Canadians see wilderness as ‘awesome’ may

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also be a unique feature in Canada. **Seth Feldman**, for instance, examines social activism evident in recent Canadian documentaries, such as *The Corporation* and *The Fix*. He suggests that there is a well-established documentary tradition in Canada, especially as developed through the National Film Board, and that these films, which are now responding to negative forces such as generic TV values, decreased funding and so forth, are moving in the direction of activism that uses documentaries as a means to engage and motivate viewers to act. **Rebecca Raglon** also investigates the relationship between cultural discourses and social activism. She reconsiders English Canadian wilderness theories in the global era. She argues that in using a discourse of wilderness as 'awesome,' rather than domesticated and socially constructed, the wild is less able to be trivialized, and that, in fact, it might be of great value to emerging environmental discourses.

In this collection of papers, Canadianists from North America and abroad went beyond comparisons of values, trends, principles, and regionalism in their contributions to a better understanding of the divergence and convergence in North America. Instead, they propose conceptual approaches that include themes, such as, the re-conceptualization of political cultures, the New West, the Arctic North, new trans-governmental networks, reviewing cross-border asymmetries, and regulatory responses. Canadianists from other disciplines are concerned about cross-border (in)security by proposing that we learn from the Post-Cuba crisis responses of Canada and the U.S., from the new post-September 11<sup>th</sup> conceptions of borderlands, from potential NAFTA-enhanced money flows to potential terrorists, from a revised defence policy, and from post-September 11<sup>th</sup> immigration decisions. Unlike previous authors on convergences and divergence, contributors to this volume also discuss Aboriginal concerns about forms of self-government, artefact repatriation, and media representation. In addition, contributors made surprising findings when comparing urban development and revitalization in Canadian and U.S. cities. Focusing on select aspects of societal developments, a group of Canadianists found it important to assess Canada–U.S. divergence in immigrant settlements, social policy revision, the work environment and unions. Others sought potentially unique aspects of Canada by reviewing the country's wilderness literature, sports culture, and documentary film. These contributions, it is hoped, will lead to further interdisciplinary examination of social, political, and cultural developments that converge or diverge in North America.

The papers in this book are presented in the seven parts that follow in turn: (I) conceptual complexity, (II) assessment of free trade and NAFTA, (III) cross-border asymmetries, (IV) cross-border (in)securities, (V) Aboriginal concerns, (VI) societal developments, and (VII) Canadian cultural uniqueness.

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PART I

CONCEPTUAL COMPLEXITY

Political Cultures, Multiformity in Borderlands, the New West,  
the Arctic North, and Trans-Governmental Networks



# *Hermeneutic Continuity or Sovereign Performative?*

## *The Difference between Canadian and American Political Cultures Revisited*

Ian Angus

The attempt to define the difference between the political cultures of Canada and the United States has somewhat of a perennial character, continuously renewed in the light of both new political developments and new intellectual currents both within these two countries and also in dialogue with writers further afield. That is as it should be. National political traditions allow for, and depend upon, continuous renovation by re-interpretation and critique. Inability to settle finally the question is not the sign of a failure, but of success, insofar as the capacity of a national political tradition to provide a context for continuous debate determines its continuing vitality. Continuing debate does not invalidate the concept of a national political tradition nor its difference from its neighbour, but rather allows further evidence for a specification of the contextual assumptions that define an internal belonging and the alternatives rejected as absurd that define its outside. The concept of a national political tradition refers to this framework, or context, that cannot be elaborated outside of the various positions in the debate but is nevertheless not reducible to one or another of these positions themselves. Productive history depends upon logical undecidability.

In the case of a comparison of national political cultures, some common denominator is necessary. The com-

mon origin of Canada and the United States in the English political tradition, combined with the difference in the manner in which each achieved a break with the British Empire, provides a relevant axis of comparison in this case. The significance of the American revolutionary break, under the influence of eighteenth century political ideas of natural right, and the consequent influence that this revolution has had on all new world nations, has meant that Canadian political culture has often been articulated in contrast to the pervasive individualism and a-historism of the United States.

I want to revisit this established *topos* in this paper with reference to the recent analysis by Michael Dorland and Maurice Charland in *Law, Rhetoric and Irony in the Formation of Canadian Civil Culture* (2002) that roots Canadian communitarian and diverse political culture in the role and nature of law.<sup>1</sup> My argument will be in four parts: First, I sketch the conventional account of Canadian political culture as an intersection of community and diversity. Second, I consider in general terms the argument by Dorland and Charland for the centrality of law to this conventional account Canadian political culture and note that at a key juncture this argument is supported by relying on an essay by Jacques Derrida on the *U.S. Declaration of Independence* that describes it as a “sovereign

performative.” Third, I rely on J. Claude Evans and Hannah Arendt to point out that the precedent of the revolution was the ‘rights of Englishmen’ and thus not a sovereign performative in the sense of an auto-institution of a new civil society. Fourth, I propose a more subtle analysis of the difference between the two political cultures through an analysis of the specific difference in the performative status of the *British North America Act* and the *American Declaration of Independence*. In conclusion, I will make a general point about what is missing in this sort of comparative analysis of Canadian and U.S. political cultures, an account of the limits and blindnesses of the respective traditions, which can be seen in the different manners in which they camouflage the closure of political alternatives deriving, respectively, from the continuance of Imperial power within the Canadian nations-state and from the denial of political education by a supposedly always-already independent people.

### Community and Diversity

The dream of tory origins  
Is full of lies and blanks,  
Though what remains when it is gone,  
To prove that we’re not Yanks?  
Dennis Lee, “When I Went Up to Rosedale”<sup>2</sup>

It has been commonplace to describe the different character of Canadian identity from the United States with reference to the greater communitarian component of Canadian political culture. Whether this communitarianism is attributed to the influence of a non-revolutionary political tradition, Loyalism, a harsh winter climate, or French-English accommodation, it is widely accepted that, “America reflects the influence of its classically liberal, Whig, individualistic, antistatist, populist, ideological origins. Canada ... can still be seen as Tory-mercantilist, group-oriented, statist, deferential to authority—a ‘socialist monarchy,’ to use Robertson Davies’ phrase.”<sup>3</sup> Of course it is not quite this simple. As Robin Mathews has pointed out, the ideological character of the United States also exists within Canada as one element of the political culture.<sup>4</sup> No doubt, one could find communitarian elements within the United States. However, as I have previously argued, the specificity of a culture cannot be defined by looking for elements within it in that are irreducibly unique. Rather, “what is inside is separated from the outside, not by a unique content, but by a distinctive relation between contents.”<sup>5</sup> Culture is a pattern. Elements from outside enter into and alter that pattern without the

pattern losing its specificity and distinctiveness. Thus, one way to elucidate a cultural pattern is to articulate the resonances that formative historical experiences have to philosophical expressions, resonances which shift when they enter into a different cultural pattern.

The communitarian emphasis has been matched by a particular manner of dealing with cultural diversity. Canadian philosophy has been characterized by what Leslie Armour and Elizabeth Trott have called “philosophical federalism” defined as “a natural inclination to find out why one’s neighbour thinks differently rather than to find out how to show him up as an idiot.”<sup>6</sup> Probably because of a weak national identity, Canadian culture has tended to assume that there is no one overarching identity or community that effectively could subsume the plurality of communities. Thus, multicultural policies, everyday practices, and philosophical articulations tend not only to have a communitarian bias but also to assume a plurality of relevant communities.

Of course, we have been reminded by novelists and empirical sociologists that the United States has never been in actual fact the melting pot that its ideology promoted. The difference can be more precisely stated in terms of the public representations of cultural diversity that form the political culture and reside in institutions. In the United States the substantive ethical commitments of communities to a way of life tend to be barred from public life and thought, whereas in Canada they rather become the content of political culture. In the United States a supposedly a-cultural proceduralism dominates public life, whereas dynamic cultural communities are regarded as the private concern of individuals. Thus, Leslie Armour has concluded that “what we have in common cannot be expressed through a single community ... this pluralism is related to our communitarianism.”<sup>7</sup> This particular mixture of identity and diversity has been much debated politically but it is from a comparative viewpoint the core feature of Canadian political culture around which debates and disagreements have swirled.

### Canadian Constitution and the Enlightenment

The thesis that Canadian political culture is oriented to political representation of diverse communities is given a new twist by Michael Dorland and Maurice Charland by their focus on the role of law. Their account is “concerned with the symbolic dimensions of the transition from aristocratic, landed power to the democratic and bourgeois forms of an emerging public sphere as this was experienced in the Canadian colonial context” (Dorland

and Charland 2002:36). They suggest that the events summarized in the term “conquest” refer to “the sudden bringing together of two separate, already completely formed ‘societies,’ each with its own institutions, and each with its own respective frames of collective reference” (Dorland and Charland 2002:80). British rule was based in a conception of a benevolent paternal sovereign who thus gives reasons for his actions and, at least to a limited extent, thereby gains the consent of the governed. That led to the practice of imperial recognition of established structures of governance that pre-existed conquest and which inaugurated the basic problem of Canada by mitigating the supremacy of English law through a limited recognition of French civil law. Consequently, the “apolitical public sphere” (Habermas) of the French *ancien régime*, in which public speech seeks individual novelty at the service of established hierarchy that predominated in New France, was displaced so that francophones sought subsequently to promote their society by insisting on their rights as British subjects (Dorland and Charland 2002:99). That both gave an importance to law itself that was not present in a society ruled by civil law and situated law as the medium in which political controversy in Canada would be addressed. “The point is not that Canadians are particularly more law-abiding, but that authority remained invested in received law” (Dorland and Charland 2002:152). Thus, the well-known and significant fact that Canada was not in its inauguration, nor has since been, a revolutionary polity is supplemented by Dorland and Charland through the history of incorporation of Lower and Upper Canada into a single polity.

Later than the French and American revolutions, but no less constitutional, the *British North America Act* “marks the moment where Canada falls away from Great Britain, not acquiring sovereignty in a grand gesture, nor exactly finding sovereignty at all, but crafting its own constitution nevertheless” (Dorland and Charland 2002:146). We are living out the late consequences of these debates today as the twentieth century has entered into a *contretemps* with its Enlightenment origins and the then anomalous case of Canada may today have become paradigmatic.

The particular mixture of identity and diversity in Canadian civil culture is from a comparative viewpoint the core feature of Canadian political culture around which debates and disagreements have swirled. Dorland and Charland’s version of this thesis focuses on the role of law such that the gradual universalization of the rights of Englishmen becomes the main characteristic of official Canadian civil culture. How would one characterize the motive force of such a universalization?

It looks initially like a hermeneutic judgment: limited precedent in the past, application to the present, showing of a limitation in purported universality and extension to a more satisfactory universal. Hans-Georg Gadamer has illuminated this aspect of a hermeneutic judgment whereby it enacts a historical continuity unlike an Enlightenment break with the past: “For, within the enlightenment, the very concept of authority becomes deformed.... [T]here is no such unconditional antithesis between tradition and reason.... Even the most genuine and solid tradition does not persist by nature because of the inertia of what once existed.... It is, essentially, preservation, such as is active in all historical change. But preservation is an act of reason, although an inconspicuous one.”<sup>8</sup> The similar focus of tradition, precedent-prejudice and application suggests that unlike Enlightenment political cultures that focus on extra-political natural rights that require an absolute performative beginning and a written constitution, Canadian political culture is characterized by a continuity of hermeneutic interpretation in which claims situated within that continuity may enter into the tradition, but claims that do not, or cannot, find any partial precedent are shunted aside (often with the violence of the state). This conclusion would accord with the Dorland-Charland analysis and also with those many other commentators who have emphasized the conservative and traditional cast of Canadian culture. It resonates with the contemporary hermeneutic rethinking of the Enlightenment.

To clarify the specificity of the Canadian constitution, Dorland and Charland turn to an essay by Jacques Derrida entitled “Declarations of Independence” in which he addressed the question of how a people constitutes itself as such through an analysis of the *American Declaration of Independence*. Such a declaration, Derrida claims, necessarily contains an undecidability as to whether the act is performative or constative, whether it *accomplishes* independence in declaring it or whether the declaration *describes* an independence already underway. Representatives sign the declaration in the name of “the people,” which must therefore exist prior to the act of signing, but the act of signing brings “the people” into existence, since before the declaration they were not “the people” of the United States but only British subjects. He calls this speech act a “sovereign performative” in which “the signature invents the signer” (Derrida 1986:146). Derrida aims to show that “this obscurity, this undecidability between, let us say, a performative structure and a constative structure, is *required* in order to produce the sought-after effect. It is essential to the very positing or position of a right as such

... I would even go so far as to say that every signature finds itself thus affected.”<sup>9</sup>

However, the constitution of Canada as a dominion occurred quite differently. Dorland and Charland identify that difference as the submission to an authority that is other in contrast to self-proclamation, a submission which invests “the principle of legality itself” (Dorland and Charland 2002:147) with metaphysical significance by arguing that the principle of legal continuity constitutes an authority based in prior political history in which race, religion, and language are of public significance. Whereas Derrida argues that constitutional authority is deferred into the future perfect tense since Jefferson is only a representative of ‘the people’ that the declaration itself constitutes, the deferral of authority in the Canadian constitution occurs as a deferral to established authority by the signer himself (John A. Macdonald). Thus, “law as sanctioned procedure is held against the ‘sovereignty’ of unhindered will” (Dorland and Charland 2002:149) that would be unleashed by a revolutionary beginning. Apparently, Canada is to the U.S.A. as hermeneutics is to deconstruction.

### Revolution as Sovereign Performative?

Explicating their law-oriented version of the conservative and traditional constitution of Canada by a critique of Derrida’s specification of the self-constituting logic of declarations of independence that limits it to revolutionary declarations illustrates the relevance of the Canadian case to current international debate concerning the foundation of law. Elsewhere Derrida has explicated the paradox of performativity in the act of foundation: “Since the origin of authority, the foundation or ground, the position of the law can’t by definition rest on anything but themselves, they are themselves a violence without ground.”<sup>10</sup> That refers not to the violence of the Revolutionary War, which depends on the opposition of another constituted force (the British Empire), but the violence that continues down to our own day because of its inherence in the exercise of state power as such because of its foundation in a self-constituting act that recognizes no precedents.

Nonetheless, Derrida’s argument cannot simply be taken at face value. J. Claude Evans has distinguished two aspects of Derrida’s argument that are treated as virtually equivalent. First, the constitution of the people and, second, the fact that signing occurs through representatives of the people.<sup>11</sup> It would seem that the second aspect is dependent on the first, that the people must be constituted as such in order to be represented. However, this is one of the assumptions about the constitution of a people that

Derrida seeks to question. The implication, or assumption, of his argument is that a people is constituted as such only when it represents itself by choosing representatives. Criticizing this implication, or assumption, Evans points out that the people existed prior to the Declaration in the framework of a colony, including representative institutions that functioned within that framework. However, the Declaration does not limit the people to the colonial framework but rather appeals to “the Laws of Nature and of Nature’s God” to support their claim for entitlement—which had been exercised in some fashion by the representatives to the various continental congresses since 1774 and in the prior (by two days) Resolution of Independence. Thus, says Evans *contra* Derrida, it is not that there was no people prior to the signing of the Declaration. Rather, “there was indeed a ‘self’ prior to the signing of the Declaration, and that ‘self’s’ right to declare independence is the topic of the Declaration.”<sup>12</sup> The constitution of the people in the framework of a colony preceded the declaration of its right to independence.

The *Declaration* is indeed a performative act, but not a self-constituting one exemplifying a necessary undecidability since “the issue was transformation, not creation.”<sup>13</sup> That transformation appealed to the Nature and God of the eighteenth century Enlightenment to justify its independence, but the constitution of the people as such was the work of colonization practices of the British Empire. Hannah Arendt agreed with the tenor of this analysis. She attributed the “surprising stability” of the American revolution in comparison with all other modern revolutions to the fact that “the act of foundation, namely the colonization of the American continent, had preceded the Declaration of Independence, so that the framing of the Constitution, falling back on existing charters and agreements, confirmed and legalized an already existing body politic rather than made it anew.”<sup>14</sup> While Arendt recognizes that a new beginning must “carry with itself a measure of complete arbitrariness,” which cannot be based in an absolute such as God, Nature or reason and thus falls into “the vicious circle in which all beginning is inevitably caught,” nevertheless, “what saves the act of beginning from its own arbitrariness is that it carries its own principle within itself, or, to be more precise, that beginning and principle, *principium* and principle, are not only related to each other, but are coeval.”<sup>15</sup> Thus, the element of arbitrariness that occurs in self-foundation resides in the act of declaring oneself to be independent, not in the act of the constitution of the people itself which is prior to the act which declares its independence. “Necessary undecid-

ability” must refer to the self-assertion of (the right to) independence, not the existence of the people as such.

If there is merit in this argument, it suggests that the inherent violence of the self-founding state that Derrida specifies also cannot be accepted in the terms that he proposes. Moreover, it bodes ill for a comparison between the American Revolution and the *British North America Act* through the undecidability of a sovereign will—or, deconstructive self-inauguration versus hermeneutic tradition. The point is not the obvious and general one that even a revolutionary break has precedents, but that the specific precedents in the case of the American Declaration trace “the people” back to its prior constitution as a disaffected segment of English subjects. “No taxation without representation,” after all, is a slogan possible only for a previously constituted group with recognized rights. The Americans rebelled as disaffected Englishmen who, at least in their own view, were offered no other recourse and whose rights to representation because of taxation are rooted in the history of regulation of the monarchy that goes back to the *Magna Carta*. While revolutionary break is possible, even for Englishmen, it does not constitute “the people” *ab initio* but only *de novo*. If there is an inherent violence in the state, it does not derive from self-foundation but from precisely this transformation (or from the way in which this transformation continues the violence inherent in the Empire, that is to say, to the extent that it is not a break at all). If Evans’ analysis of the American case holds, then one might further limit Derrida’s logic to the French case. Perhaps a model of popular insurrection in the face of absolutist rule would be the only case of a “sovereign performative”—except by God, of course, who said “let there be light”—but a comparison to the French case is outside the present purpose.

If Jefferson’s signature does not defer to a people understood in a future perfect tense as Derrida claims, then it refers to a people in the process of self-constitution in which the Declaration is an important punctual point but not a point of origination as such. The wholly self-constituted people in the future perfect refers to partial precedents based on the rights of Englishmen. But this begins to sound like the Canadian case in which constitution is an act within an ongoing tradition of a people—a hermeneutic judgment rather than a self-constituting performative. The specific historical difference is that the American case does not ask the British parliament to authorize its independence; rather, the *Declaration of Independence* authorizes it to perform its own independence, but in both cases ‘the people’ who undertake this break were constituted prior to that break.

## The Revolution of Englishmen

In what, then, does the revolutionary break consist? Precisely in the judgment that the monarch has lost his benevolence and his reasons become sufficiently devoid of persuasive ability to win consent. It is not an “absolute” judgment in the sense that it might be the *in principle* locus of all legitimacy, but one possible for all Englishmen if they are forced to conclude that the monarchy has strayed from the ancient constitution of his legitimacy. Thus, the American revolutionary break is not a product of straightforwardly human will but a temporal product of a people with constituted right that have come to the judgment that they have a right to independence. That right, to be sure, is buttressed by an appeal outside of traditional authority to God and Nature. From our twenty-first century viewpoint we may say that whereas the American Revolution did present itself in eighteenth century Enlightenment terms as the constitution of society itself from a state of nature, it was, in fact, a historical judgment. The judgment that constitutes the break shifts sovereignty from the monarch to another source. If there were a contending claim to the monarchy, such as in Scotland, sovereignty might be shifted to “our rightful king” and contested in a civil war, but in its absence the necessity to give reasons and provide good government passes over to “the people” as priorly constituted and is buttressed by Nature and God to exceed its colonial limitations in favour of independence.

What does this mean for the Canadian case, which often clarifies itself mainly through comparison to the U.S.A.? Dorland and Charland rest content with the observation that Derrida’s sovereign performative does not apply to Canada, but the previous analysis has shown that it doesn’t apply to the United States either. The temporal structure of deferral seems to remain the same: a future “people” preceded in the past and undergoing a hermeneutic process of transformation. The difference is in the shift in authority that is based in the judgment of the failure of the monarchy to abide by “the law” of the ancient constitution. One could, of course, investigate the difference in historical contexts that gave rise in one case to a polarization (1776) and in the other an acceptance of independence (1867), but the theoretical issue is resolved. It is the action of the monarchy and its inability to persuade the colonists that they are being treated equally to the subjects at home that renders the sovereign illegitimate.

If Derrida is wrong about the sovereign performative that he attributes to the American Declaration of Independence, then the specificity of “the law” as constitutive of Canadian civil culture disappears. Dorland

and Charland's argument for Canadian specificity in this respect depends upon a characterization that ignores the constitutive fact that Americans rebelled as Englishmen and not as de-historicized "sovereign wills." The performance of independence comes down to a difference between being let go and having to insist on the matter. Thus, Canada is not to the U.S.A. as hermeneutics is to deconstruction. Because the self-performative does not genuinely describe the enlightenment constitution, the difference is reduced to two species of hermeneutical judgment.<sup>16</sup> Despite the natural and a-historical language of natural rights, the enlightenment assumptions of the modern constitution do not explain its own dependence on a prior political identity. That dependence is obscured by the fact that modern constitutions are instituted by a unique founding act, rather than accumulated through time, experience, and accommodation. But the founding act is a transformation, not an auto-institution, of identity into an independence previously denied.

### Conclusion: The Limits to Civility

*Did we come for nothing? We thought we were summoned, the aging head-waiters, the minor singers, the second-rate priests. But we couldn't escape into these self-descriptions, nor lose ourselves in the atlas of coming and going.*

Leonard Cohen, *Book of Mercy*, 17.<sup>17</sup>

Canadian political culture appears to take the form of a Gadamerian hermeneutic judgment because of its historical and traditional character. The hermeneutic critique of the Enlightenment suggests that the tradition-oriented character of Canadian culture and law is shared even by the American revolutionary culture despite its enlightenment-oriented misunderstanding of itself. Evans' critique of Derrida made that point: The American Revolution is not as self-founding as it appears. If it is recognized that this break was possible because of the existence of a prior public identity, then the issue is one of transformation, not radical, unprecedented inauguration.

While Canadian history perhaps shows more clearly than others the historical continuity that allows transformation, that recognition is more likely a common property of the twentieth century rethinking of the Enlightenment than a specifically Canadian theme. If the American Revolution was a historical judgment possible for Englishmen, then the key issue within the frame of international social and political theory is to investigate the constitution of autonomous political identities and the origin of state vio-

lence. Let us draw the conclusion from the above account with regard to each of these issues: One, there is no "zero-degree identity" within political culture. All transformations occur on the ground of previously formed identities. The political problem is, thus, not self-constitution, but rather how identities already formed under imperial power can assert a right to independence. Two, the origin of the violence of the state is not to be found in the assertion of its sovereign will in self-foundation, as Derrida claims, but, one must conclude, stems from elsewhere.

Since the performance of independence comes down to a difference between being let go and having to insist on the matter, it devolves upon the continuities and breaks established by each. The deferral to authority in being let go maintains a continuity of law, authority, and respect for good government. It confirms that a pre-existent identity can attain independence under the law. The break is thus focused exclusively on the transition to independence itself. A revolutionary break, to the contrary, while it accomplishes precisely the transition to independence, does so through a break with law, authority, and respect for good government. It thus grounds a cultural tendency to confuse independence with rebellion toward government as such, a tendency which I would suggest that we can see in popular and political culture south of the border up to our own time in which infantilism is invested with political significance.

The corresponding confusion on the Canadian side would be to suppose that independence could be established without any threat to the order of Empire. More exactly, one tends not to ask what identities have not been so benignly blessed by the Empire. There must be something wrong with them that they have not also been let go; they cannot be ready for independence. Thus, the focus on law, authority, and good government established by the continuity with Empire grounds an official culture of disdain for the unready and unwashed, making it a very difficult task to probe the limits of civility, of the Crown's paternal concern.

With respect to the violence of the state, I suggest that there are two corresponding blindnesses. In Canada, the left-out and marginalized are reckoned incapable of independence, though their existence is not open to doubt. It is the mantle of official existence that is in question. In the United States, everyone is reckoned independent—not capable, but already so—and the rigours of independence are concealed beneath the presupposition of the political significance of infantile rebellion. Thus, the violence of the state in Canada consists in the denial of a place in official culture, and the goal of many marginalized groups is to

achieve such a place. They must prove themselves worthy of self-rule. In the United States, such violence is always arbitrary because every rebellion is, in principle, an assertion of independence. One is drawn to suspect that there is no such thing as good government, that it could only be the violence of the victor.

Thus, in conclusion, the law-oriented version of the thesis that Canadian culture is oriented to a communitarian representation of diversity as presented by Michael Dorland and Maurice Charland constitutes an apology for official culture in Canada, an apology which fails to probe effectively the limits of civility. An investigation of Canadian political culture which fails to investigate denials of independence consequently fails to encounter the significance of its constituting act.

## Notes

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- 2 Lee, Dennis. 1979. "When I Went Up to Rosedale." In *The Gods*. Toronto: McClelland and Stewart. P. 17.
- 3 Lipset, Seymour Martin. 1989. *Continental Divide: The Values and Institutions of the United States and Canada*. Toronto and Washington: C.D. Howe Institute and National Planning Association. P. 212.
- 4 Mathews, Robin. 1988. *The Canadian Identity*. Ottawa: Steel Rail.
- 5 Angus, Ian. 1997. *A Border Within: National Identity, Cultural Plurality and Wilderness*. Montréal and Kingston: McGill-Queen's Press. P. 107.
- 6 Armour, Leslie and Elizabeth Trott. 1981. *The Faces of Reason: An Essay on Philosophy and Culture in English Canada 185-1950*. Waterloo: Wilfrid Laurier University Press. P. 4.
- 7 Armour, Leslie. 1981. *The Idea of Canada and the Crisis of Community*. Ottawa: Steel Rail Publishing. P. 109.
- 8 Gadamer, Hans-Georg. 1975. *Truth and Method*. Translated by Garrett Barden and John Cumming. New York: Crossroad. P. 248, 250.
- 9 Derrida, Jacques. 1986. "Declarations of Independence." *New Political Science* 15 (Summer):9-10.
- 10 Derrida, Jacques. 1992. "Force of Law: the 'Mystical Foundation of Authority'" In *Deconstruction and the Possibility of Justice*, eds. Cornell, Durcilla, Michael Rosenfeld, and David Gray Carlson, 3-67. New York and London: Routledge. P. 14.
- 11 Evans, J. Claude. 1990. "Deconstructing the Declaration: A Case Study in Pragmatology." *Man and World* 23: 181.
- 12 Ibid., 183.
- 13 Ibid., 184.
- 14 Arendt, Hannah. 1976. "What is Authority?" In *Between Past and Future*. Harmondsworth: Penguin. P. 140.
- 15 Ibid., 1965. *On Revolution*. New York: Viking. P. 207, 205, 214.
- 16 Note that the important distinction between modern and ancient constitutionalism does not affect this analysis. According to James Tully, "the language of modern constitutionalism which has come to be authoritative was designed to exclude or assimilate cultural diversity and justify uniformity" and has succeeded by replacing and denigrating the ancient constitution whose adherents were "defenders of diversity," custom and the myriad accommodations from which a tradition has emerged. I do not doubt that this difference clarifies political cultures in Canada and the United States at least until the *Canadian Constitution Act of 1982*. My point is that even a modern constitution does not itself performatively bring into being the identity of the people whose independence and rights it seeks to guarantee. This identity is previously constituted through the Empire operating under the ancient constitution. Tully, James. 1995. *Strange Multiplicity: Constitutionalism in an Age of Diversity*. Cambridge: Cambridge University Press. P. 58.
- 17 Cohen, Leonard. 1984. *Book of Mercy*. Toronto: McClelland and Stewart. No. 17.



# *The Historical Geography of the Canadian–American Borderlands, 1784–1989: Conceptual and Methodological Challenges*

Randy William Widdis

## **Introduction<sup>1</sup>**

The objective of my current enquiry is to enhance our understanding of Canadian-American relations by focusing on the regional dimensions of interaction across what has been termed the northern borderlands. This research focuses on the variable nature of the Canadian-American borderlands during the period 1784 to 1989, exploring the flow of people, goods, ideas and capital across the border, the creation of hybrid identities, and common transformations of landscape. What I am attempting in this project is an enormous synthesis and it is impossible in the time I have here to review all the relevant theoretical, conceptual and methodological approaches that will inform, guide and challenge this investigation. Therefore, I will be selective in my discussion.

## **Context**

I will begin by putting this research into some context. Although a number of scholars have reflected on the nature of cross-border relationships, there exists, as Donald Worster emphasizes, “no real school of northern borderlands history, no Herbert Bolton or John Francis Bannon for these parts.”<sup>2</sup> This leads us to question why the Canadian-American borderlands have been so neglected,

particularly when compared to the attention given towards the borderlands the United States shares with Mexico.

Canadian-American relations have been studied fairly extensively within regional and national contexts for quite some time, but it wasn’t until the late 1980s that the Borderlands approach, developed years ago by Herbert Bolton and applied in other North American and European settings, was adopted by a small group of academics. At that time, Lauren McKinsey and Victor Konrad<sup>3</sup> issued a bold challenge to scholars on both sides of the border to focus attention on trans-border issues and to work towards developing a research methodology based on the borderlands paradigm, a worthwhile albeit polemic framework in which to view the complexity of the Canadian-American relationship. Their now dormant project produced a number of compelling studies and initiated a new chapter in the scholarly investigation of Canadian-American relations. Yet no study has attempted to produce a comprehensive synthesis that recognizes the historical and geographical diversity of the borderlands. The landmark Carnegie series of the late 1920s and 1930s omitted such a volume, and its monographs on several regions and topics of borderland relations are now dated in perspective. Indeed, the belief expressed in these volumes that,

despite dissimilar forms of government, people on both sides of the border shared a common culture and similar values reflects what Buckner calls “a rather simplistic geographic determinism.”<sup>4</sup>

The missing comprehensive synthesis is what I propose to undertake. It will be a formidable task, but I believe three considerations make such an effort both possible and valuable. Firstly, the existence now of a considerable body of multidisciplinary research on borderland interactions provides both secondary material and theoretical and methodological guidance for my research. Secondly, I have discovered primary sources, which I will review briefly later in this paper, that offer greater insight into those borderland interactions that both integrate and differentiate regions on either side of the border. Thirdly, the time is right, I believe, for an historical synthesis that will provide perspective for those who question the relevance of borders at a time when the intensification of a world economy and the internationalization of popular culture have prompted some to believe that boundaries of all types—geopolitical, economic, cultural—are no longer relevant or desirable.

### Challenges

The major task is to construct a conceptual and methodological framework to illustrate the multiformity of borderlands links, networks, and relationships and to avoid oversimplification into a tedious review of observational differences. A number of challenges must be faced, not the least of which is inherent in the definition of the borderland concept itself.

#### *Definitional Challenges*

##### *Borderlands and Frontiers*

The concept of borderland is flexible and is sometimes used interchangeably with frontier, particularly by Europeans who equate both with the peripheral zone between states in which societies intermingle.<sup>5</sup> In the North American context, the recent realignment of frontiers as borderlands by the so-called “new western historians”, in Adelman and Aron’s opinion, has “enriched our understanding of the complexity and contingency of intercultural relations.”<sup>6</sup> And yet, they maintain, much of this work downplays changes in favour of continuity. They view borderland evolution, instead, as a continuum along which one can distinguish between frontier, which they define as “a meeting place of people and cultures in which geographic and

cultural borders were not clearly defined,” borderlands, defined “as the contested boundaries between colonial domains,” and bordered lands, which they consider as “a region differentiated by a formal border marking the territorial dominion of both nations but characterized as well by international coexistence.”<sup>7</sup> As Haefeli notes, “the unanswered question at the root of their thesis is: what do borderlands do that frontiers do not?”<sup>8</sup> By introducing frontier to the concept of borderland, Adelman and Aron argue for the temporal nature of the frontier, suggesting that regions may change from frontier to borderland and perhaps even back again. In this way they adhere to the traditional view of frontier as a settlement zone at the edge of a state’s territory in a colonial situation. The frontier thus represents a particular type of borderland that is specific to place and time.

But borderlands and frontiers are dynamic concepts, redefined as issues of principal and peripheral space interact in both central and liminal areas. Borderlands are organic; they evolve beyond the frontier stage over time to become different kinds of places or regions. It is somewhat ironic that the borderlands perspective and, by implication, the examination of the impact of Canadian-American relations on the development of both countries, has been significantly overlooked because of the dominance of the frontier thesis in the United States and of the metropolitan and staples theories in Canada. Yet the borderlands concept offers so much more potential to the study of Canadian-American relations than any of these theories. The borderland is a physical, ideological and geographical construct, a region of intersection that is sensitive to internal and external forces that both integrate and differentiate communities and areas on both sides of the boundary line.

##### *Borderland as Periphery*

In Europe and along the Rio Grande, the concept of borderland is often associated with the idea of peripherality. The borderland is viewed as a geographical region where states are united not only by their contiguity but by their marginal positions as well. Julian Minghi in *The Geography of Border Landscapes*<sup>9</sup> states that borderland geographers, unlike regional geographers, focus on edges, not the cores of regions. Many borderlands both in the past and today as well have been associated either with hinterlands or frontiers, but such designations are not appropriate for the Canadian-American borderlands, or at least segments of it. Much of the Canadian borderland has been the Canadian ecumene for a long time. Parts of this borderland comprise the core of the country; other parts

are associated with the periphery. At another level, one could argue that the entire Canadian borderland constitutes a periphery for the United States, although it must be emphasized that such statements have to be considered in the context of change over time. While the northern borderland of the United States cannot be considered as the ecumene of that country, it would be misleading to define it simply as a peripheral edge. It too is diverse in character.

Closely related to this concept is the argument offered by Gibbins<sup>10</sup> that whereas basically all of Canada is a borderlands society, the United States is not. The border is the meeting place between both countries, but it is not necessarily a common edge. For most of its history, the Canadian ecumene has straddled the border, making Canadians a border people, while for most Americans, the border is the back door.<sup>11</sup> Although the core of the Canadian borderlands is spatially confined to a narrow strip, it extends psychologically to include the entire country. For Americans, the national identity is not determined or even affected by the northern border; the idea of America lies elsewhere in a mythical place called the heartland. Further complicating matters is the fact that any criterion selected as determining borderland boundaries is subject to change over time. Thus, it is virtually impossible to delineate objectively the exact boundaries of the borderlands because, as McKinsey and Konrad argue, “the functional ‘width’ of the borderlands as a zone ... depends on which aspects of borderlands life are under investigation.”<sup>12</sup>

### *Borderlands as Regions*

The conceptual dilemma presented by the idea of borderland as region presents a major challenge to this research. All regions are, to some extent, human constructs and wherever identified are subject to criticisms about the criteria upon which they are based. Each region is part of, and reacts to, larger processes and interactions and so is prone to a constant state of change that only makes its conceptualization more difficult. Regions are at the same time more than arbitrary intellectual constructs. In terms of the Canadian-American borderlands, a theoretical rationale for developing a regional schema in which to structure this study of cross-border interactions over time has not been developed. Although McKinsey and Konrad comment on the diversity of borderland experiences over space and time, they do not offer any regional classification beyond that of five broad geographical units—the Atlantic, the St. Lawrence, the Great Lakes, the Plains and Prairies, and the Rockies and Pacific—even though, as we shall see, they do

list a set of specific criteria upon which to define spatially different borderland interactions.

It is impossible to come up with a regional classification that accommodates entirely cross-border linkages that vary spatially and temporally and is also sensitive to the issue of scale. Whereas borders are demarcations between territories, borderlands are regions surrounding the border and vary greatly in extent and nature. As Hakli and Kaplan state: “scale has long figured in the context of geographical research on borders and borderlands ... qualitative differences exist between small-scale interactions close to the border and the interactions between ... national actors directed from the capital cities...interactions across national borderlands cannot be reduced to states’ actions only.”<sup>13</sup> Moreover, the significance of scale as a factor in the development of borderlands extends beyond the differences between local and national realms of action. Transitions in borderlands are the result of changes taking place at local, national and international levels and because of this, the regional understanding as applied to this concept must be flexible. The fluid forces of capitalism and culture complicate the application of the borderland region as an organizing concept when regions are viewed as dependent on fixed places with defined borders.

Any regional schema, no matter what the scale, is a generalization and will not always be the appropriate spatial unit for examining interactions taking place within specific areas. Yet history and geography provide unquestionable evidence of the diversity of cross-border linkages over space and time, and thus it is imperative to develop a spatial and temporal delineation of borderland regions. The Canadian-American borderland is not a singular homogeneous region but rather is a complex heterogeneous zone composed of several international regions that, while sharing functional similarities stemming from trans-boundary interaction, nevertheless retain distinct identities arising from local settings. The configuration of these units can be comprehended only with reference to particular historical and geographical contexts. Any reliance on physiological criteria alone to define spaces in which cross-border economic, social, political, and cultural relationships are taking place smacks of determinism. But that is not what McKinsey and Konrad had in mind when they suggested their five regions. They serve simply as structures in which to frame more detailed investigations of cross-border interactions.

### *Borderlands and Comparative Approaches*

What makes this project particularly valuable is that it goes beyond comparison to focus on the complex interaction between two variable national systems. To that end, armed with a conceptual camera with what I term horizontal and vertical lenses, this research employs both comparative and borderlands approaches. The horizontal lens presents a cross-sectional view of the borderlands that compares and contrasts characteristics which existed within such international regions. The vertical lens employs the regional concept as a tool with which to focus on north-south flows that integrated and differentiated peoples, communities and societies on both sides of the border.

The borderlands approach by itself is not sufficiently nuanced to include all that is important to a synthesis of changing Canadian-American relations, but it does yield a more process-oriented and, therefore, contextually reflective perspective than the comparative approach. That results in borderlands theorists asking different questions than comparative theorists. Yet comparative work, despite issues associated with several data sets and multiple audiences, is valuable because it paves the way for scholars to challenge and compare institutions, myths and ideals. It also forces intellectuals to challenge their own assumptions and put their work in a larger context. Employing both perspectives, this research will adhere broadly to three conceptual themes.

### **Conceptual Challenges**

#### *Paradox*

My research and subsequent book will develop three mutually interdependent themes. The first theme concerns the *paradoxical* nature of the Canadian-American borderland. Like the border, the borderland is full of contradictions. Regionally speaking, the Canadian and American sides of the border are broken up into sections that are simultaneously differentiated from other areas by economic, physical and cultural divisions, unified by shared processes and characteristics, and, at the same time, integrated into larger national systems by broad structural forces. Such regional, national and international forces of integration and differentiation, changing over time, are *juxtaposed* against each other to create a complex conceptual zone that contradicts our traditional ideas about the unity of region. W.H. New provides another perspective on this theme when he argues that the 49<sup>th</sup> parallel is “itself a synecdoche, a rhetorical part

for the rhetorical whole—at once join[ing] and divid[ing] two nation-states, permit[ing] contact, influence, choice, trade . . . and difference as well.”<sup>14</sup>

Perhaps the greatest conceptual paradox associated with the borderlands is the fact that over time centralizing tendencies within each society, and more particularly between the two countries, have eroded the meaning and relevance of the borderland concept. The argument is presented that in such a new world order, regional differences are increasingly diminished in the face of homogeneous economic forces and a global culture. Although regional circumstances continue to shape the impacts of broader forces, a gradual convergence is taking place, and regional identities, and by implication, borders and borderlands, are vanishing. That may be true to some degree, but place, regional identification and borders will continue to be important for states and people who continue to occupy peripheral positions because such boundaries symbolize theoretical sovereignty in a world increasingly dominated by economic superpowers and giant trans-national corporations. Indeed, it may be argued that underneath North American consumer culture there resides a significant, and perhaps an increasing, degree of localism.

#### *Asymmetry*

Another important and closely related theme is the *asymmetrical* character of the Canadian-American borderland. One can view this transcontinental zone as a system composed of arteries pulsating with the circulation of persons, goods, money, and messages and as a network connecting a series of nodes where decisions are made, policies applied, transactions negotiated, and goods exchanged. Yet the borderland is not a single system but instead consists of several systems, interlocked in various ways and complicated by numerous subsystems. These systems have varying spatial extents, are open, and are subject to economic and political forces that create imbalance. Uneven economic development has produced differences both within and between borderland regions. At various points in time, adjacent Canadian and American regions have experienced different rates of growth and varying degrees of connection, although many argue that over time the relationship has become increasingly asymmetrical in nature, with underdeveloped Canadian peripheral regions serving as pools of resources for American core regions. This disequilibrium has in turn stimulated flows of capital and labour that have been mainly unidirectional, although there are notable exceptions to this trend.

### *Parallax*

It is this paradoxical and asymmetrical nature that has in turn produced a conceptual region that is in itself a *parallax*, my final theme. The ideological positions from which the Canadian-American borderland and its constituent regions are viewed certainly influence the ways in which they have been conceptualized. Proponents of the Borderlands Thesis view integration as being determined largely by geographical proximity, migration and capitalist forces. They concentrate on similarities occurring within such regions, selecting those features that are evidence of “resistance to an artificial division imposed by a political border.”<sup>15</sup> To a significant extent this argument is valid: geography and capitalism have produced linkages that have resulted in considerable synthesis. These theorists also go so far as to contend that the major physiographic regions “are the primary evidence that North America runs more naturally from north to south than from east to west.”<sup>16</sup>

Critics of the Borderlands Project see history and geography shaping a country very different from its southern neighbour. Following the arguments of Innis and Creighton, Harris<sup>17</sup> maintains that the emergence of Canadian regions, regional identities and even a national consciousness had more to do with the east-west transcontinental expansion of trade and settlement than proximity to American regions. Regional borders in Canada, he insists, are more the result of distinctive European encounters with different Canadian settings than simply being peripheries of American core regions.<sup>18</sup>

Both Borderlands proponents and critics overstate their case; the truth lies somewhere in the middle of this dialectic. Harris and others cannot deny the importance of integrative forces within trans-border regions. The fact that borderlands, zones of interaction, mediation, and variable degrees of integration exist is obvious. At the same time, while Borderlands supporters are justified in emphasizing the importance of cross-border interactions and synthesis, they must also recognize that over time, Canada developed a national economy and political institutions that transcended regional boundaries. Confederation and later the National Policy served to formalize the differences between Canada and the United States, and, accordingly, the border acquired a greater symbolic significance to Canadians. To ignore this significance, Buckner argues, unwittingly promotes continentalism and supports “a variant of an even older American concept—Manifest Destiny.”<sup>19</sup>

I contend that the borderlands perspective is not inherently predisposed towards continentalism; it is in the

interpretation of borderlands where the possibility of bias rests. Therefore, my research will be a multidisciplinary and synthetic treatment that does not adhere to either extreme but more sensitively explores the changing relationships between Canada and the United States as manifested in different borderland regions. Yet it does pose a challenge to, but not a complete rejection of, the prevailing nationalist interpretation of Canada’s development by considering the role that the United States has played in this country’s formation. There needs to be a *corrective* to this prevailing orthodoxy, one that does not reject outright the relevance of the east-west axis, but balances this perspective with one that recognizes the north-south links that played such a crucial role in the evolution of Canadian society. Neither nationalist nor continentalist convictions should dictate borderlands research.

### *Theoretical Challenges*

The complexity of this subject restricts the formulation of a grand theory and instead calls for the adoption of a number of approaches that will direct research. Regional diversity encourages research questions that make it possible, as Donald Meinig states, “for us to compare differences within regions with differences between regions that run east and west in both countries.”<sup>20</sup> Researchers must question the extent to which generalizations that have been made can be applied to borderland regions as a whole.

A number of closely related concepts—metropolis and frontier, core and periphery, and variations thereof—that imply relative degrees of dominance and subordination and illuminate flows of diffusion (political and economic decisions and capital flows) will be employed. Yet borderland relationships are too complex to be structured within simple dualisms. The significance of the development of the borderland regions will emerge only when considered within local, regional, national, continental, and international contexts. Developments within the borderland regions were shaped to a considerable extent by evolutionary processes of national expansion and a maturing global capitalist system, and so an effort will be made to relate developments occurring within this zone to those occurring at the national and international levels. To that end, a number of ideas presented in various theories may be employed.

In this context, the study will address a number of inviting but formidable questions that relate to the three major conceptual themes discussed previously. Whereas, for example, it has been argued by Wynn<sup>21</sup> that the Maritimes were a significant hinterland of New England, can the

same conclusion be made for other Canadian components of transborder regions? How relevant is the borderlands concept for transnational regions not located at the periphery of the two constituent nation-states (e.g. the Great Lakes Borderland)? Were cross-border migrants more likely to travel within specific channels inside designated borderland regions? Did the migration process lead inexorably to greater transborder unity within all of the borderland regions? If the relationship between Canada and the United States became more uneven over time, did the resultant evolution of borderland regions reflect that asymmetry? While borderland regions have a tempering effect on the centralizing tendencies of each society and that of North America as a whole, does the evidence show that such inclinations have diminished in the face of the homogenizing forces of modernity and advanced global capitalism?

Although his laboratory is the U.S.-Mexico border region, Martinez<sup>22</sup> proposes four models of borderland interaction that may be viewed as universally applicable. As he argues: “each model illustrates a different degree of cross-border interaction and prevailing tendencies in a borderland.”<sup>23</sup> The *alienated borderlands* model refers to a situation where tension prevails, the border is functionally closed, and cross-border interaction is almost non-existent. In the *co-existent borderlands*, the border is slightly open and there is a limited degree of interaction. Stability characterizes the *interdependent borderland* as economic and social complementarity promotes cross-border interaction. Finally, the *integrated borderlands* model refers to a situation where the economies of the two states are functionally merged and there is unencumbered movement of people and goods across the boundary. The Canadian-American borderlands today can be classified generally as interdependent with considerable evidence that it may in some ways be headed towards the integrated stage, but at various times in their evolution, the constituent borderlands, it may be argued, adhered to Martinez’s first two models. The strength of this schema is its emphasis on the evolutionary process by which borderlands change over time, and so it constitutes a useful instrument to structure the historical dimension of this research.

Yet the problem remains as to what models or theoretical rationale can structure the geographical dimension. In this context, McKinsey and Konrad propose six models of cross-border cultural transfer that may be applied within the regional frame of the five physiographic units mentioned previously. They view these transfers in terms of cultural landscape types and argue that each of the five geographic regions “actually contains some mixture of the types, be-

cause the cross-border adjustments occur in varying degrees.”<sup>24</sup> Briefly, these spatial models include:

1. *divided cultural enclaves* which are characterized by development and cultural discontinuity (e.g. upper St. John River valley),
2. *cross-border influence zones* where one place serves as a cultural hearth for people on both sides of the border (e.g. Steinbach, Manitoba which serves Mennonites in southern Manitoba and northern North Dakota),
3. *unbalanced influence zones*, where one centre has a much greater and sometimes overpowering influence on communities and areas on the other side of the border (e.g. Montreal and northern New York and Vermont; Detroit and southwestern Ontario),
4. *balanced cultural interaction zones* which are distinguished by cross-border links between comparable centres and areas (e.g. Thunder Bay and Duluth),
5. *twin cities* which serve as crossing points for many and thus “mediate cultural differences where cross-border flows are concentrated in narrow exchange corridors”<sup>25</sup> (e.g. the Sault Ste. Maries, the Niagaras), and
6. *empty areas* which serve as buffer zones with few inhabitants, little cultural interaction, and no focus or core on either side (e.g. the Alaska-Yukon border which will be viewed as a separate borderland region in my study).

Yet while these models may prove effective in defining sub-areas in terms of cultural landscape types, they are only partially successful in addressing a host of other factors, including economic, social, and political interactions that take place on several scales. Further complicating this issue is the fact that much social and economic data on cross-border flows is not collected in a way that corresponds to any definition of a cross-border region.

The “greater” Canadian-American borderlands may be visualized at the broadest level as all the Canadian provinces and all the American states contiguous by land and water to the border, plus a selection of relatively proximate interior states (Oregon, Massachusetts, Connecticut, Rhode Island, and Indiana) deemed historically important in terms of Canadian-American relations. In any such conception, the degree of interaction will be greatest closest to the border, and so distance-decay ensures that such trans-national regions will consist of cores and peripheries. Yet the problem

remains of identifying the criteria for delineation of specific borderland regions. The five trans-border regions identified by McKinsey and Konrad, with the addition of the Alaska-Yukon borderland, are applicable because they are more than just physiographic units. They are also regions unified to some extent by relative location within North America; similar environments, and economic, political, and social forces that have at various times served both to integrate and differentiate the respective Canadian and American components.

### ***Data Challenges***

As stated, what I propose is a work of synthesis, a very formidable task given the fact that much specialist work, particularly in the area of cross-border economic, social, and cultural linkages, remains to be done. An argument can be made that it is premature to advance a synthesis when so much specialist research needs to be accomplished. Nevertheless, important syntheses have been written, even when the specialist literature is thin. Much of the existent literature lacks detailed analysis of flow data for border states and provinces, and the aggregate information that does exist reveals little about the regional dimensions of such movements. That difficulty in securing flow data corresponding to any definition of a cross-border region presents a serious challenge to this study. Therefore, much of my effort will be spent surveying the existing literature regarding the movements of people, goods, capital, and ideas. This means that any borderland interpretation, particularly of themes such as intellectual currents, ideologies, and technologies, will be limited at best and some questions will be beyond the scope of this research.

Yet there remains an important, although subordinate, place for primary archival research in any borderlands study. Investigation up to this point has revealed a number of sources that, although problematic in terms of temporal and geographical coverage, nevertheless present some valuable insights into borderland relationships. My research in the federal, state and provincial archives of Canada and the United States has identified a useful number of sources that provide insight into cross-border links at the national, regional and local levels. A major issue is that much of the data on cross-border relations is aggregated and reveals insight only into general patterns of Canadian-American relations. For example, Meinig notes that “the volume of trade is measured at exit and entry points on the border, but that data, as reported, may not reflect the fact that trade is generated from the interior as well as from the border regions.”<sup>26</sup>

Despite these problems, there are a number of records that reveal specifics about origins, quantities and directions of people, goods, information and capital across the border. The following GIS-produced maps and discussion provide some examples of what kind of information about dynamic cross-border flows can be gleaned from the records that are available.

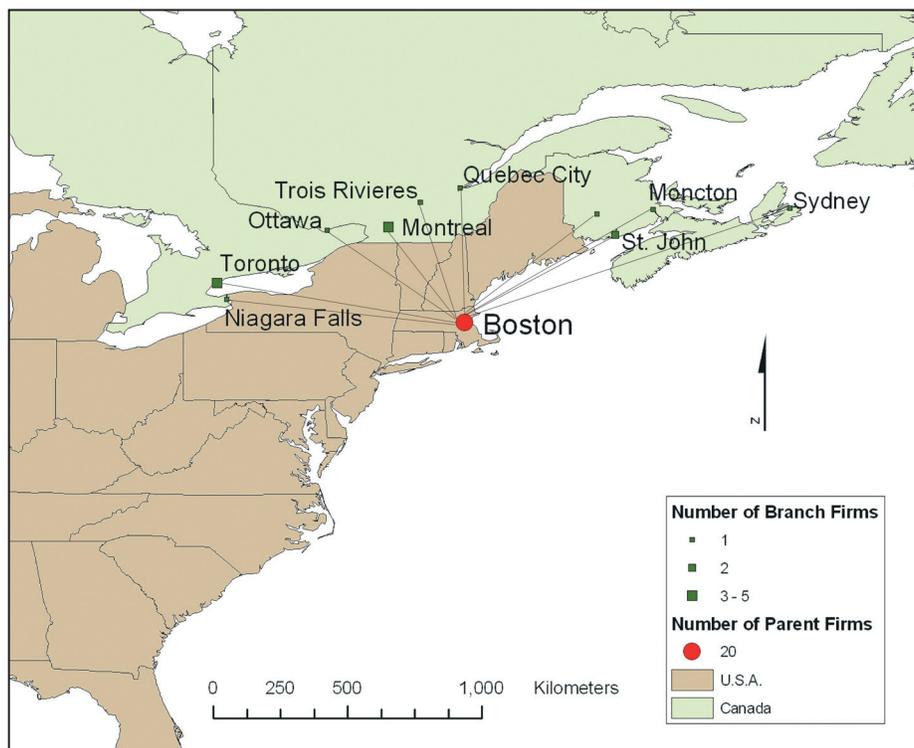
### ***Investment***

From 1841 forward, credit histories of both public and private companies were produced by the Mercantile Agency (later known as R. G. Dun and Company and today by the name Dun and Bradstreet). Their records give the financial viability and payment history of any company that applied for credit or for which a credit check was requested. Coverage initially included American and Canadian companies but has extended to many European and other countries. The R.G. Dun and the Dun and Bradstreet records, which are housed at the Harvard Business School and various federal, state and provincial libraries, are arranged by communities and include data on date of establishment, name of company, headquarters location if applicable (although this is sporadic), capital rating, and credit rating. Data on foreign owned companies in 1880, 1900 (the 1890 records were destroyed by fire), 1910, 1920, 1930, 1940 and 1950 were collected for Canadian centres, and I have begun making maps showing the spatial patterns of American parent companies and their Canadian subsidiaries. In this manner, a temporal and geographical perspective on American investment is offered, one that notes in particular the role of geographical proximity in locational decision-making.

Figures 1 to 4 show Canadian branch plant locations for firms based in Boston, New York, Chicago and Minneapolis in 1920. Boston firms tended to invest more heavily in Ontario and Québec, particularly in the largest centres of Toronto and Montreal, than in the Maritimes, a pattern that stands in contrast to the significant investment of Boston interests in the Atlantic region during the late eighteenth and nineteenth centuries. New York City's reach extended across Canada, which is not surprising given its dominance in the spatial economy of North America during this period. As was the case for Boston companies, New York City firms concentrated their investments in southern Ontario and southern Québec. Chicago, situated within the Great Lakes Borderland region but connected by land and water transportation routes to the rest of the United States and Canada, was connected by investment to all regions of the Dominion. Yet we can clearly see that nearby southern Ontario was the focus of attention for

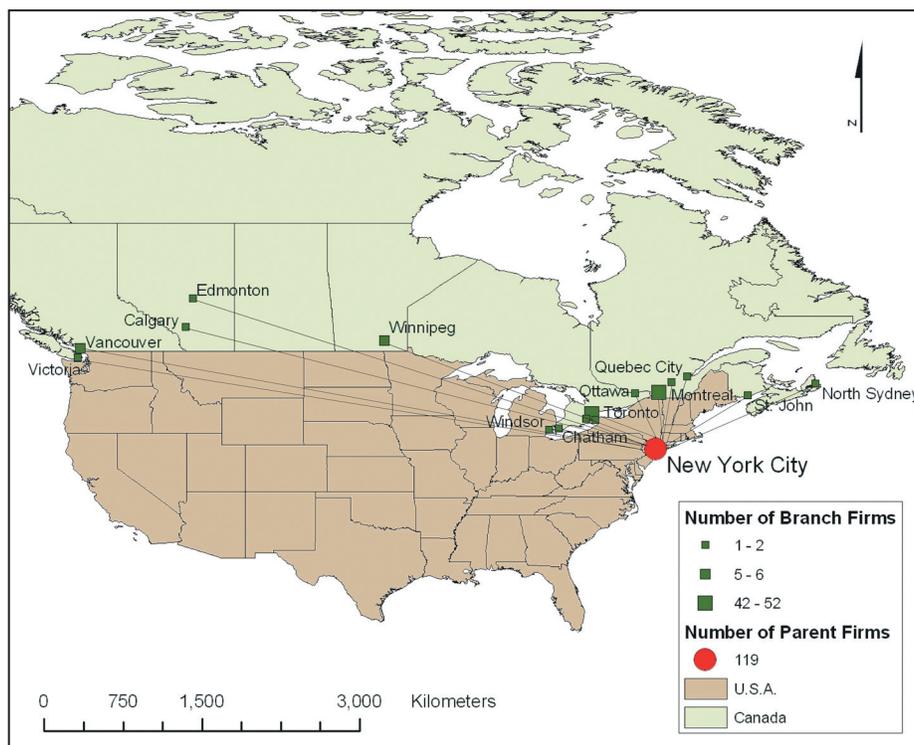
THE HISTORICAL GEOGRAPHY OF THE CANADIAN–AMERICAN BORDERLANDS, 1784–1989:  
CONCEPTUAL AND METHODOLOGICAL CHALLENGES

Figure 1 - Canadian Branch Plant Locations for Firms based in Boston, 1920



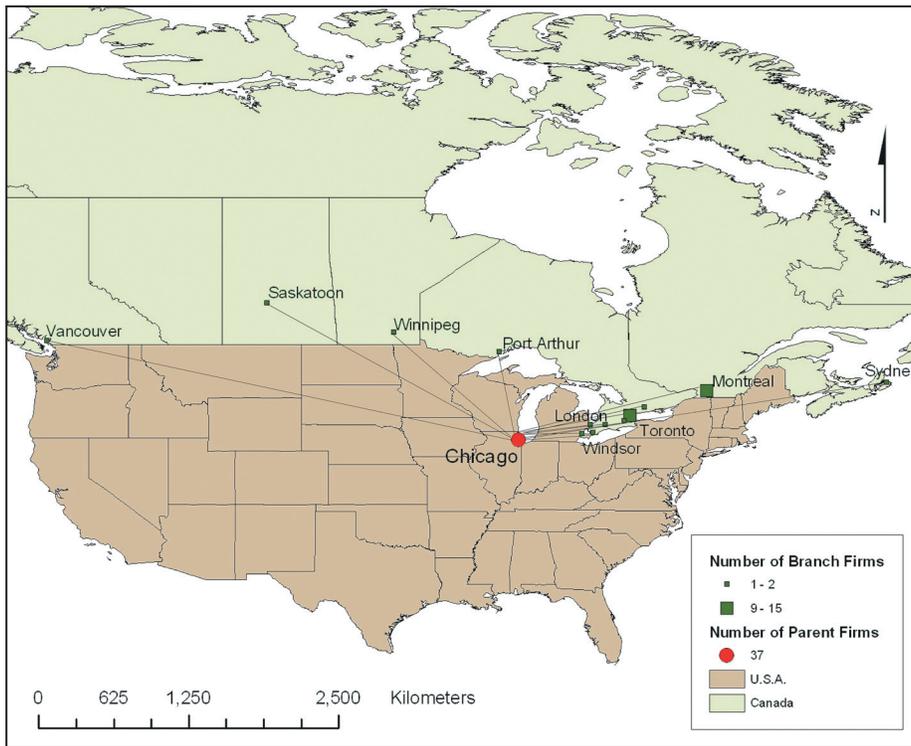
Source: Dun and Bradstreet Records

Figure 2 - Canadian Branch Plant Locations for Firms based in New York City, 1920



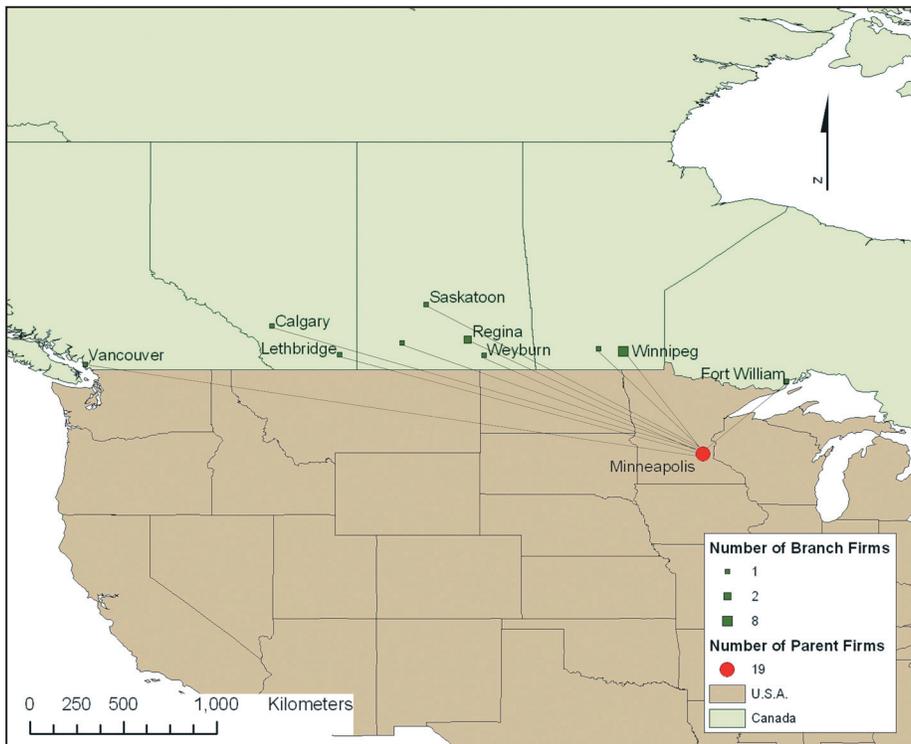
Source: Dun and Bradstreet Records

Figure 3 - Canadian Branch Plant Locations for Firms based in Chicago, 1920



Source: Dun and Bradstreet Records

Figure 4 - Canadian Branch Plant Locations for Firms based in Minneapolis, 1920



Source: Dun and Bradstreet Records

THE HISTORICAL GEOGRAPHY OF THE CANADIAN–AMERICAN BORDERLANDS, 1784–1989:  
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most Chicago companies. Minneapolis continued in its role as the major American metropolis for western Canada as firms based in that city chose to invest primarily in the prairie region. I look forward to comparing these patterns with those revealed in the maps showing the location of investments prior to and following 1920.

*Trade*

Trade statistics for different periods and geographical locations are included in the various customs records in both countries. These sources provide specific information on date of arrival by vessel, type of good crossing the border, origin, destination, quantity involved, and fees paid. I have collected data on 10,000 arrivals and departures from the customhouse records of forty seaboard, Great Lakes, and land ports housed in the National Archives in Washington and information on 2,500 arrivals and departures from Canadian ports and U.S. consulates that are stored in the National Archives in Ottawa. I am still in the process of creating maps based on these records, but figure 5 reveals the spatial patterns of horses from the United States crossing into Canada in 1911 via the entry point at Coutts, Alberta. The Coutts customhouse records housed in the Glenbow Archives include information on livestock exported into Canada for the period 1911 to 1920. Although the “market-sheds” for sheep, goats, mules and swine were limited primarily to Montana as the state of origin and Alberta as the province of destination, the geographical reach for cattle and particularly horses was much greater. It will be interesting to see if these patterns continued throughout the decade.

*Migration*

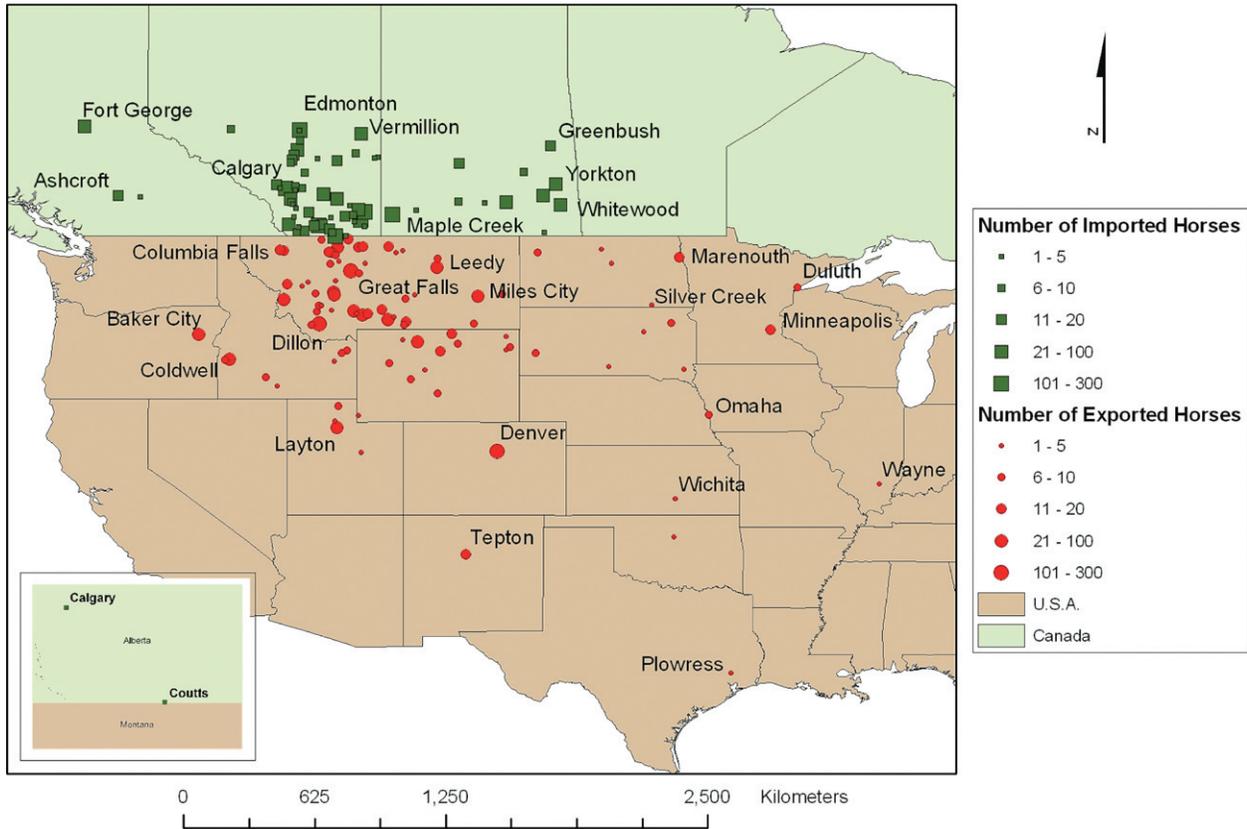
The “sharing” of cultures within the Canadian-American Borderlands is the result of diffusion processes, the most obvious being migration. Information on cross-border migration has been collected from a number of sources, including the Canadian-based U.S. Border Entry Records and the American-based Soundex Index to Canadian Border Entries. From the former, nine random samples of 500, one random sample of 400, and one random sample of 100 migrants entering Canada at eleven different crossing points have been compiled (N=5,000). From the latter, I have collected a random sample of 3,000 migrants from across Canada, stratified by country of birth and age (over fifteen), and two other random samples of 1,000 migrants each based on subsets of the Canadian-born population. The problem of scale complicates the mapping of these data,

as is evidenced in figures 6 and 7 which show the birthplaces and destinations of 3,000 people moving from Canada to the United States. Despite the obfuscation resulting from the mapping of large samples on a large-scale map of North America, some clear patterns are discernible, especially for the Canadian records which are arranged by entry point, thus allowing greater insight into specific migration streams. Figure 8, for example, shows the migration patterns of the sample of 500 people crossing into Canada at Coutts, Alberta.

Prior to 1900 the flow of people across the border was predominantly north-south in direction. A movement that started out as a steady trickle had turned into a raging flood during the last four decades of the nineteenth century, with the greatest loss occurring in the 1880s. It has been estimated that over the period 1861-1931 the net migration of Canadian-born to the United States totalled 2,080,000. The regional dimensions of this southward flow are captured to some extent by the Soundex Index to Canadian Border Entries, which are arranged alphabetically and not geographically. Over 72 percent of the combined border crossing samples were born in Canada, the majority hailing from Ontario, followed by Québec, Nova Scotia and New Brunswick. Twenty four percent of the migrants were born outside North America, the majority from the British Isles and Russia, and 3.6% consisted of Americans returning to their land of birth. Almost half were born in the Ontario-based Great Lakes Borderland Region with almost equal percentages born in the Maritimes and St. Lawrence regions. Very few were actually born in the western borderlands. The Great Lakes Borderland Region takes on even greater importance when considering last residences before migration, for most of the immigrants from other countries and a number of Canadian-born from other parts of the country last lived in Ontario. Significant numbers of those born in both the Maritimes and in Québec and eastern Ontario had moved to central, western and northern Ontario, the Prairies, and British Columbia before emigrating to the United States.

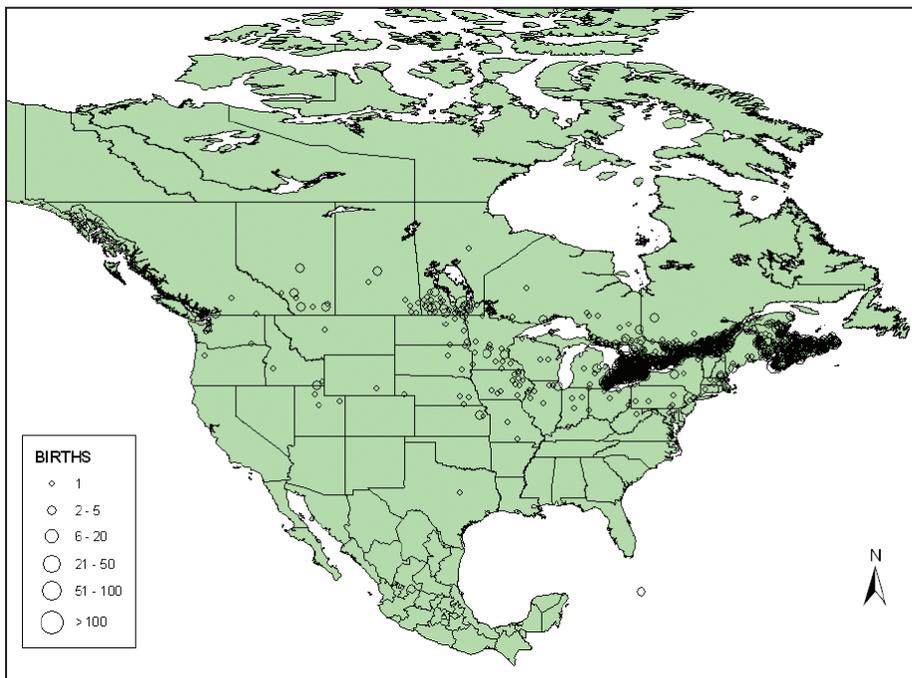
Most Canadian migrants filled out their manifests upon crossing the border, although a significant number chose to do so at American consulates or upon leaving port in Canadian cities such as Winnipeg, St. John, Yarmouth, Montreal, and Vancouver. A few did not complete this task until they reached destinations south of the border, often at points where they disembarked from trains. Places of manifest served as portals into the United States as migrants primarily from adjacent Canadian regions passed through these openings on their way to neighbouring American destinations. Detroit was by far the most im-

Figure 5. Horse Crossing at Coutts, Alberta, 1911



Source: Coutts Customs House Records

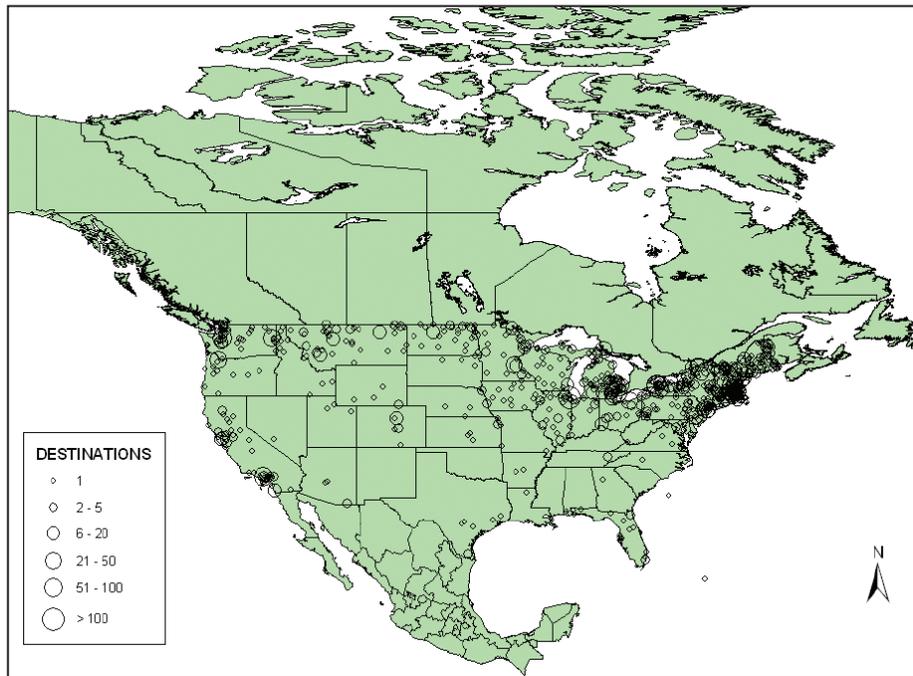
Figure 6. Birthplaces: U.S. Border Records



Source: Dun and Bradstreet Records

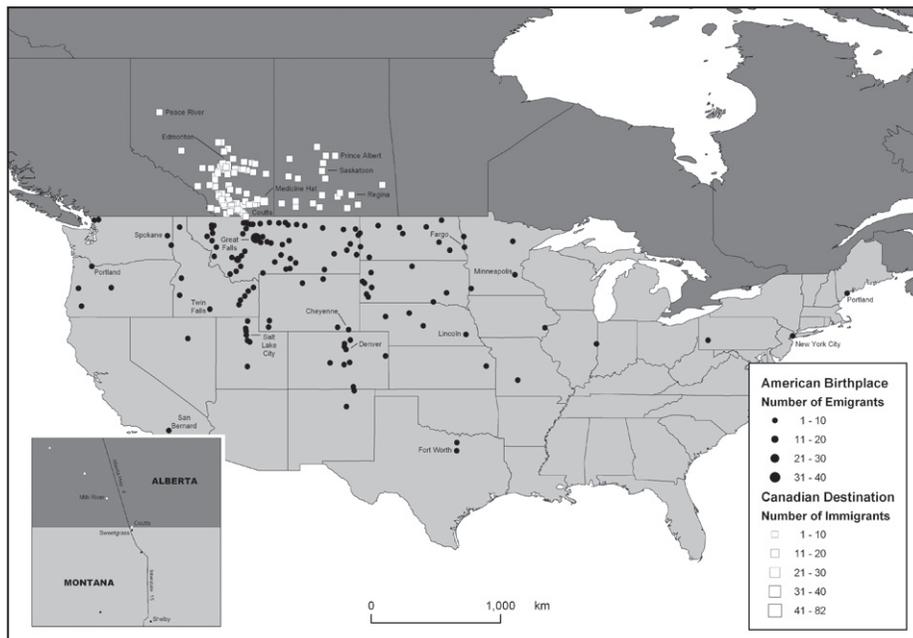
THE HISTORICAL GEOGRAPHY OF THE CANADIAN–AMERICAN BORDERLANDS, 1784–1989:  
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Figure 7. Destinations: U.S. Border Records (N = 3000)



Source: Coutts Customs House Records

Figure 8. Coutts Birthplaces and Destinations, 1908-19 (N=500)''



Source: Canadian Border Crossing Records

portant entrance to the U.S., not only for migrants from southwestern Ontario, but for those from other parts of Canada as well. It served as a portal for migrants journeying to Michigan destinations, as well as to locations elsewhere in the Midwest and farther west. Port Huron served much the same function as its larger neighbour to the south for Canadian-based migrants travelling across the border via the Grand Trunk passed through this city.

For the most part, Canadian-based migrants planned to settle in U.S. centres in adjacent borderland states, although some were attracted to more distant localities, particularly in California. The major destination states were Michigan, Massachusetts, and New York, the first and third attracting Great Lakes Borderland Region migrants primarily. New York was the major destination for eastern Ontarians and a minor destination for Québec migrants, whereas Maritimers travelled in large part to Massachusetts and Maine. Québec migrants located throughout New England and New York State. Space does not permit me to comment on the many different migration fields revealed in the data, except to say that most Canadian-based migrants continued on well-worn paths to nearby American destinations within their respective international borderlands. Migrants from the Canadian Prairies were more widespread in their location decisions, many moving to largely rural states in the adjacent American plains but others moving to larger cities outside the immediate borderland region or farther west.

Although the vast majority of migrants from the eastern borderland regions were Canadian-born, many leaving western Canada were foreign-born, returning to the United States where most of them, American- and European-born alike, had previously resided. Over 80% of those born in the United States, many living in the Prairie Provinces, returned to their country of birth as Canadian citizens. As expected, males dominated this migration, yet over 31% were female, the majority moving to join husbands or family members who had previously emigrated to the United States. Single women working as nurses, secretaries and domestics were relatively more numerous among those coming from eastern Canada. The majority of single women travelling alone came to the United States to take up positions as domestics, labourers, and nurses. Many of this group were pushed from farms by physically-demanding labour and restricted opportunities and lured to cities such as New York, Boston and Chicago where they anticipated an expanded social life and a greater degree of financial independence.

Kin and kith connections influenced the location decisions of all nativity groups. Over 50% of the migrants were

joining relatives, and close to 20% were joining friends. In terms of occupational profile, Canadian-born more closely approximated patterns exhibited by British- and American-born migrants, but unlike these groups, they did not deviate greatly from the average, neither ranking very high or very low. In general, Canadian-born were most under-represented in the business and unskilled categories and most over-represented in the clerical and farmer classifications. French Canadians were more concentrated in the blue-collar categories and less represented in the farmer, clerical, and professional sectors than Anglo-Canadians. Yet there was considerable variation in occupations across the country, as farmers comprised a much larger percentage of the emigrants from the Prairies and unskilled workers were relatively more numerous among those leaving the Maritimes and the St. Lawrence regions.

Most Canadian-based migrants were young, single (although a significant percentage from all Canadian regions were married), and carried little money (almost 80% of the 1000 Anglo-Canadian sample carried less than \$100), although many of the wives were planning to join their husbands and so did not carry the full extent of the family's capital. The differences among the Canadian origin regions in terms of money carried were not significant. Whereas over 80 percent of the migrants intended to live permanently in the United States, proportionately more Maritimers declared that their stay in the United States would only be temporary. Although the motives of these individuals are unknown, it is likely that some were just visiting friends or relatives while others were just testing the waters of opportunity south of the border before deciding to cut their ties with their homes. Maritimers were also more likely to have previously lived in the United States, migration across the border being seen as a temporary but regular occurrence.

Indigenous policies and external events, too detailed to go into here, stimulated a flood of immigrants, American-, Canadian-, and European-born, from the United States after 1896 and much of this flow was directed towards the newly opened prairie provinces, although there was a significant movement into Ontario as well. And as was the case for Canadian migration to the United States, this northward flow took place primarily within the large-scale borderland regions. However, the movement north was generally more international in character than that from Canada, as American-born amounted only to over 60% of the migrants sample for those crossing into the Prairie Provinces and into northwestern Ontario at Fort Frances. Returning Canadians comprised significant percentages of those crossing at Windsor, the Québec border towns,

and Yarmouth, although there is reason to suspect that many of those in the Yarmouth sample were just returning to Nova Scotia for a visit. A significant percentage of these migrants returned as Canadian citizens, indicating that they originally moved to the United States with the intention of returning home one day.

The migration fields funnelling into western Canada via the selected border crossing points, such as Coutts, North Portal, Saskatchewan and Emerson, Manitoba, were wider than those existing for eastern border communities, although significant numbers of American-based migrants bound for western Canada entered Canada in the east, presumably to catch the transcontinental CPR westward. Yet even within the Canadian component of the Plains and Prairies Borderland Region, differences existed. The migration field for Emerson was more widespread than those of Coutts and North Portal, as many either settled in Winnipeg, the metropolis of the region, or disembarked in that city before heading farther west in the search for land. Certain migration corridors can be identified, such as that connecting the Rocky Mountain states to Alberta, the upper Midwest to northwestern Ontario, and the Pacific coast states to British Columbia.

Males dominated the movement into Canada, but the average age of northward migrants was generally older than that of those moving in the opposite direction. Those crossing into Québec were the oldest of all, many of this group consisting of Québécois, presumably after working in New England for a period of time and making enough money to support their decision to return home. Most travelled alone, although many were married. In general, those moving northwards within borderland regions and beyond carried more money than those from Canada moving south, although a wide variation exists from east to west. Those moving into western Canada carried more money than those crossing at eastern points, a fact explained by the greater amounts of money required by those intent on taking up farming. Semi-skilled, skilled and clerical workers were more attracted to the urban centres of Ontario and Québec, whereas unskilled workers, many of them returning migrants, crossed the border into Québec and the Maritimes. British Columbia seemed to attract the widest range of occupations, a trend perhaps explained by the development of a primary-based economy and an urban sector as well. Indeed, most of those coming to British Columbia disembarked in Vancouver, and many probably decided to reside in this fast-growing centre.

I am still in the process of collecting data from these and other place-specific records but plan to illustrate the differ-

ent flows, which they reveal in a series of GIS-produced maps. With the assistance of Kim Turchenek, a graduate student at the University of Regina, I plan to tackle the conceptual problem of incorporating three-dimensional flow processes within the confines of a two-dimensional medium. Specifically, using computer animation software, Kim will design and experiment with different strategies to break through static cross-sections and capture the flows of people, goods and ideas across time and space.

## Conclusion

As I have emphasized, borderlands are organic; they evolve over time to become different places. The central organizing question of borderlands research is concerned with identifying and understanding the determinants of these evolutionary units. Although there are few primary sources that can be tapped to capture the dynamic nature of these organic regions, I hope I have demonstrated that there do exist some records that, while not perfect, nonetheless provide us with greater insight into cross-border relationships over time.

## Notes

- 1 Some of the issues discussed in this chapter are treated more extensively in John Bukowczyk, Nora Faires, David Smith and Randy William Widdis, *Permeable Border/Transnational Region: Canada-U.S. Connections in the Great Lakes Basin Before NAFTA* (Pittsburgh: University of Pittsburgh Press, 2005) and Randy William Widdis, "Borders, Borderlands, and Canadian Identity: A Canadian Perspective," *International Journal of Canadian Studies* 15 (Spring 1997): 49-66. Portions of this essay originally appeared in Randy William Widdis, *With Scarcely A Ripple: Anglo-Canadian Migration into the United States and Western Canada, 1880-1920* (Montréal: McGill-Queen's University Press, 1998).
- 2 Donald Worster, *Under Western Skies: Nature and History in the American West* (New York: Oxford University Press, 1992), 6.
- 3 Lauren McKinsey and Victor Konrad, *Borderland Reflections: The United States and Canada*, Borderlands Monograph Series # 1 (Orono: Canadian-American Center, University of Maine, 1989).
- 4 P.A. Buckner, "The Borderlands Concept: A Critical Appraisal," in Stephen Hornsby, Victor Konrad, James Her-

- lan, eds., *The Northeastern Borderlands: Four Centuries of Interaction* (Fredericton: Canadian-American Center, University of Maine and Acadiensis Press, 1989), 158.
- 5 See: John Agnew, "The 'Civilisational' Roots of European National Boundaries," in David Kaplan and Jouni Hakli, eds., *Boundaries and Place: European Borderlands in Geographical Context* (New York: Rowman and Littlefield, 2002), 18-33; Julian Minghi, "Changing Geographies of Scale and Hierarchy in European Borderlands," in Kaplan and Hakli, eds., *Boundaries and Place*, 34-49.
- 6 Jeremy Adelman and Stephen Aron, "From Borderlands to Borders: Empires, Nation-States, and the Peoples in Between in North American History," *The American Historical Review* 105, 1 (1999), 814.
- 7 Ibid, 814-15.
- 8 Evan Haefeli, "A Note on the Use of North American Borderlands," *The American Historical Review* 104, 4, (1999), 1224.
- 9 Julian Minghi, "From Conflict to Harmony in Border Landscapes," in Dennis Rumley and Julian Minghi, eds., *The Geography of Border Landscapes* (London: Routledge, 1991), 15.
- 10 Roger Gibbins, *Canada As A Borderlands Society*, Borderlands Monograph Series #2 (Orono: Canadian-American Center, University of Maine, 1989).
- 11 Patrick McGreevy, "The End of America: The Beginning of Canada," *The Canadian Geographer* 32, 4 (1989): 307.
- 12 McKinsey and Konrad, "Borderland Reflections," 22.
- 13 Jouni Hakli and David Kaplan, "Learning from Europe? Borderlands in Social and Geographical Context," in Kaplan and Hakli, eds., *Boundaries and Place*, 7.
- 14 W.H. New, *Borderlands: How We Talk About Canada* (Vancouver: University of British Columbia Press, 1998), 6.
- 15 McKinsey and Konrad, "Borderland Reflections," 2.
- 16 Ibid, 7.
- 17 R.C. Harris, "The Canadian Archipelago and the Borderlands Thesis," in *Association of American Geographers Annual Meeting Program and Abstracts* (Washington: American Association of Geographers, 1990), 152.
- 18 R.C. Harris, *Newsletter for Canadian Historical Geographers* 5 (1990): 1.
- 19 Buckner, "The Borderlands Concept," 158.
- 20 Donald Meinig, *The Shaping of America: A Geographical Perspective on 500 Years of History, Volume 1: Atlantic America* (New Haven: Yale University Press, 1986), 23.
- 21 Graeme Wynn, "New England's Outpost in the Nineteenth Century," in Stephen Hornsby, Victor Konrad, and James Herlan, eds., *The Northeastern Borderlands: Four Centuries of Interaction* (Orono and Fredericton: Canadian-American Center, University of Maine and Acadiensis Press, 1989), 64-90.
- 22 Oscar Martinez, *Border People: Life and Society in the U.S.-Mexico Borderlands* (Tucson: University of Arizona Press, 1994).
- 23 Ibid, 6.
- 24 McKinsey and Konrad, "Borderlands Reflections," 8.
- 25 Ibid, 12.
- 26 Meinig, *The Shaping of America*, 22.



# Keynote Address:

## *Claiming Nature in the North American West*

Joseph Taylor

It has been easy to dismiss the Old West in recent decades. Scholars and the times shredded Hollywood mythology, and the old iconography lost power. Black hats and White hats are as likely now to be ironic foils as signs of vice or virtue. The symbols of good and evil no longer make historical sense, yet in a weird way that archetypal clash may still be germane. In the past two decades there has been a growing belief among westerners that they are moving toward another showdown, this time between *Old* and *New*. Residents are growing fundamentalist about this movement, and contests over western nature are at the center of this crisis.<sup>1</sup>

East and West really are different, and the North American West has become a distinct place for contesting the meanings and uses of nature. It is a region apart, however, less because it is essentially different from the East than because contingencies of time and space have set it on a novel path. The way westerners relate to and argue about nature has been a consequence of their history. Rugged individualists, expansionist states, and transnational corporations transformed western North America in novel ways, and residents, bureaucrats, environmentalists and property rights advocates have made the modern West a unique geopolitical space.<sup>2</sup>

Their environmental battles, products of social and natural forces at peculiar moments in time, also illustrate how unstable the West is as a regional construct. Efforts to claim western nature part the continent both longitudinally and latitudinally. Sometimes the West resembles a transnational space with broad similarities between

Canada and the U.S. Other times the forty-ninth parallel neatly divides events, yet often fault lines are just plain messy. Attempts to claim western nature illustrate that there are few consistent distinctions between the Canadian and American Wests. Residents share many environmental concerns, but their contests divide space in fluid ways. They engage in a common struggle that produces uncommon results.<sup>3</sup>

The reasons lay in the landscape. Debates about why the West is unique range far and wide, but the goal is always to find an essential trait. Some stress open space and monumental nature, others aridity or social diversity. None is universally applicable. The West has lots of unsettled land, but it is also the most urbanized region in either nation. It has the highest mountains, deepest canyons, fastest rivers, and tallest trees, yet it also has more bleak, boring, and just plain ugly scenery. Much of the West is drier than east of the 100th meridian, but the Pacific coast from California to Alaska is the wettest area of the continent. The West is socially and culturally diverse, but not significantly more so than, say, Toronto or New York.<sup>4</sup>

The reliable distinction is historical. The North American West was the first region settled by two newly emergent forces: transnational corporations and strong central governments. The result was a region deeply imprinted by industrial capitalism. Western landscapes were fundamentally shaped by the railroad, mining, forestry, and fishing industries, and by the federal subsidies and foreign capital that made exploitation possible. Conversely, the West also has the most public lands. It has more parks, wilderness

areas, federal forests and ranges, crown lands, and military spaces than anywhere but Canada's Far North. When we restrict our gaze to lands that can be developed (and thus contested) in many different ways, however, the West is not *essentially* different from the East. It is *historically* different because of its public lands.<sup>5</sup>

That difference matters in environmental contests because the nature westerners covet is far more likely to be publicly owned than anywhere else on the continent. For developers, the West is an immaturely tapped resource, its stores necessary for progress and profits and its riches unnecessarily idle. For environmentalists, western nature is more often a wilderness, places that represent vestigial ecologies and romantic landscapes. Trees, minerals, and rivers inspire fundamentally different visions. In the last quarter century we have seen simultaneous efforts to reinstitute offshore drilling *and* to tear down dams, to unleash mineral exploration *and* to create massive habitat zones. In the East the primary mechanism for protecting habitat is the land trust, a legal and economic tool designed to negotiate interests on private lands. In the West the preferred tools are courts and rule-making processes, and agendas operate on grand scales. Instead of land trusts we see the Great Bear Rainforest and Greater Yellowstone Ecosystem, the Southern Rockies Ecoregion and the Yellowstone to Yukon Ecoregion, the Boreal Forest Conservation Framework and the colossal Wildlands Project.<sup>6</sup>

Critical to understanding such developments is recognizing the role of history. Western ecosystems are no less shaped by human history than eastern regions, and western nature is hardly more important than eastern nature. The West is not *essentially* more natural. Rather, the historical convergence of western and federal expansion created landscapes in which a lot of land was reserved for later. That is the ultimate significance of public lands. In the nineteenth century, corporations viewed those lands as fungibles, financial leverage, and market empires; conservationists focused on resources to be stewarded; preservationists saw the sublime. The divergent views persist, yet they also share something in common: All seek a chunk of western nature because they can, because the nature they desire is still in the public domain, still up for grabs. That is what distinguishes West from East.<sup>7</sup>

Although the North American West is a coherent geopolitical unit for discussing environmental contests, it fractures on the details. Take for example the issue of communities. Although Canadians occasionally ignore locals, such as when environmental groups and timber companies secretly divided the central British Columbia coast in 2000, or the debates over salmon farms, gener-

ally Canadians give more attention to local consequences than do Americans. Initiatives such as Simon Fraser University's Centre for Coastal Studies, the University of British Columbia's "Back to the Future" project, and the University of Victoria's "Coasts Under Stress" have placed smallholders at the center of environmental research and policy making. Similar efforts in the U.S. operate only at the watershed scale, and these organizations have few resources, no enforcement powers, and are usually ignored and spurned by corporations, mainline environmental groups and government regulators.<sup>8</sup>

Conversely, and somewhat paradoxically, western Aboriginal peoples enjoy greater support in the U.S. than in Canada. That is partly because Britain did not make treaties in the Far West, partly because the U.S. Supreme Court dramatically clarified Indian treaty rights in the 1970s. That matters because all Aboriginal people face strong opposition when they try to claim western nature. In the Pacific Northwest, non-Indians and the states still oppose Indian treaty fisheries, most spectacularly in 1999 when the Makah asserted their right to hunt whales, but federal courts have been unambiguous about these rights. That is not yet the case in Canada. The 1984 Guerin ruling and 1990 Sparrow case defined some rights for western First Nations, but the proper American analogs to these cases are *U.S. v. Winans* and *Williams v. Seufert Bros.* in 1905 and 1916, respectively. The 2003 Anderson case, in which non-native fishers alleged racial privileges on the Fraser River before a sympathetic judge, underscores the separate paths of Aboriginal rights in the two nations. These arguments died in the U.S. courts in 1979, but they are still very much alive in Canada. Thus while native land claims are moving forward in British Columbia, albeit at a pace slightly slower than the Columbia Icefield, *right now* American Indians are a generation ahead of Canada's First Nations.<sup>9</sup>

Politicians are another destabilizing factor in comparing Canada and the U.S. While administrators enforced environmental laws selectively on both sides of the border, they have done so in no consistent way. In the U.S., fiscal conservatives, anti-government groups, and the just plain venal have sought a fire sale of the public domain since 1980. Each incoming governor and president reinvents the environmental policies and rules of his predecessor, and the current federal administration and Congress have rendered wilderness meaningless with the decision to drill in the Arctic National Wildlife Refuge. Politicians in Canada have been less imperious, yet both the left and right in British Columbia have embraced salmon farming despite a transatlantic legacy of environmental and economic

misery, and both provincial and federal authorities have pushed offshore drilling. Meanwhile, most western states prohibit salmon farms, and drilling has been anathema since the Holly Platform blew out in the 1969 spill off the Santa Barbara coast, a spill that continues to this day.<sup>10</sup>

In many cases westerners have strong views on these issues, and their battle lines now seem like an old western movie—on one side stands Good, on the other Evil. That is often because of deductive positions and a belief that opponents are corrupt or benighted, but keeping score is tricky. The divide shifts from issue to issue. On abstract themes like wilderness and species protection, views often run along party lines, but the terrain gets slippery when it comes to specific issues. In the case of salmon, for example, the urban, educated, and young side with salmon; the rural and old side with dams. Coalitions morph repeatedly, depending whether the battle is over owls, marmots, sucker fish, wolves, trees, or what-have-you. The one constant is opportunity. Opponents are usually adversely affected by species protection; proponents often benefit in some material or cultural way. Each accuses the other of selfishness, but the labels are usually much more extreme: Loggers, irrigators, fishers, and miners are rapists; environmentalists are spoiled; and everyone is irresponsible. As the discourse devolves into fundamentalisms, the Hollywood West seems alive and gunning again.<sup>11</sup>

Pundits in Canada and the U.S. reinforce this dichotomy by portraying contests as collisions between the Old and New Wests. From Banff to Boulder and Sedona to Squamish, we are supposedly seeing a struggle between an extractive past and a playful future. This dichotomy seems to tell us very clearly who stands for nature and progress. The black and white hats are obvious. Unfortunately, they are not very illuminating. For one thing, it is not clear what is new about the New West. Extraction is accelerating to cater to the developments that accompany change, yet the service industry has been around since railroads arrived. Nor is it clear what is western. Similar changes are affecting New England, the St. Lawrence, and Chile.<sup>12</sup>

A better framework for understanding these phenomena is gentrification. The old claims on western nature have not died. People still avidly consume western water, minerals, and timber, but an adjustment is underway as people with more than average education and fiscal resources renegotiate the spaces of work and play. Principled concerns about biological diversity are mixing with desires for recreation in a struggle that stretches from Yellowstone and Banff to mountain biking and ecotourism. What binds these contests and makes them distinctly western is that the vast majority involve public lands, and that everyone

thinks he or she has a stake in, and a right to claim, these resources. The contingencies ensure that this is more than one endlessly repeating story—the details matter—but let us not lose sight of how public lands also make the West a transnational region when it comes to claiming nature in North America. The West is different, and those differences help us understand what is American, what is Canadian, and what is western.

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# Keynote Address:

## *Convergence and Divergence in the Canadian and American West*

Ken Coates

News reports through 2005 have emphasized Canadian and American differences. The USA is mired in an increasingly unpopular military adventure in Iraq; Canada refused to send troops to support the initial invasion and has stayed aloof since. Liberal Member of Parliament Caroline Parrish bitterly attacked President George W. Bush and Americans in general and received only a gentle rebuke, until her criticisms turn on her own Liberal Party leader and Prime Minister Paul Martin. A messy and complex softwood lumber dispute has Canadian politicians considering retaliatory measures—such as selling wood and oil to China instead of the United States—against the American refusal to abide by NAFTA rulings. Michael Moore mocks his own country in a series of popular documentaries, praising Canada for its different approach to contemporary affairs. And so the list goes, of conflicts, controversy, criticism and sniping involving Canada and the United States, although not yet enough to overshadow the fact that Canada-USA trade is the largest commercial relationship between two countries in the world.

The opportunity to reflect on the nature and future direction of relations between the Canadian and American West presents a variety of challenges. Despite the best efforts of a small but enthusiastic band of borderlands specialists, detailed understanding of cross-border influences and connections remains surprisingly slight. Canadian scholars, while professing fascination with the United States, have devoted comparatively little attention to Canadian-American relations. American borderlands specialists—a much larger number—emphasize the Mex-

ican border region and the complex interactions between Mexico and the Hispanic-dominated areas of the southern United States. What follows is very much an overview, a high level reflection on the nuances and nature of interaction along the Canada-USA border. It focuses on two simple questions. Are Canada and the United States drawing together or pulling apart and, related to the first, are there substantial regional variations in the Canadian response to the United States of America? The answer is complex, with elements of both convergence and separation deeply ingrained in the history of western North America.

### **Patterns of Convergence**

The western half of North America has long been knit together through a shared geography and a variety of forces of integration. It is useful to begin by recalling that the Canada-USA boundaries in the west (largely the 49<sup>th</sup> parallel and the 141<sup>st</sup> meridian, with a few juts and bumps involving British Columbia) are artificial constructs. The borders were imposed by diplomats who, in turn, were sharply influenced by economic considerations. The use of straight lines for much of the boundary lines ensured that geographic considerations were not taken into account. As a result, the vast western plains were split along an imaginary and otherwise irrelevant line. And the Yukon River basin in the Far Northwest and the Columbia River valley in the Pacific Northwest were divided between Canada and the United States. The boundaries showed no respect

for Aboriginal territories; many indigenous groups have their traditional lands bisected by an international boundary, a decision that subsequently would play a major role in shaping the history of these societies.

Several of the major economic sectors in the West developed across what became the national boundaries. The Hudson's Bay Company (HBC), for example, operated throughout the region for several decades, with company posts located on British territory well south of the 49<sup>th</sup> parallel and on Russian lands west of the 141<sup>st</sup> meridian. Boundaries were gradually enforced, requiring the HBC to make special arrangements with the Russian American Fur Company for access to the Alaska panhandle and, later, to remove their posts from American territory and retreat onto British/Canadian lands. There were close connections in the mining sector, as well, as American prospectors, developers, and trade unions followed the westward and the northward thrust of the continental mining frontier. The British Columbia and Klondike gold rushes were as much American phenomena as Canadian ones, an extension of the American gold mining frontier. So, too, was the rapidly expanding hard rock mining industry in the late 19<sup>th</sup> century. Prairie agriculture followed a similar path; many of those who settled in western Canada came north from the United States. American forest companies played important roles in the development of British Columbia's timber resources, and United States companies were also involved, although not exclusively, in the early stages of the oil and gas industry in Alberta. American capital, workers, and technology figured prominently in the development of Canadian resources (there was a smaller flow in the opposite direction), thus serving as an important force of convergence between the countries.

The military, typically seen as a major source of dissonance between Canada and the United States, has actually served as a significant integrative influence. During World War II, for example, Canada and the United States united against a common foe, and embarked on a series of continental defense projects. The Alaska Highway, Northwest Staging Route and CANOL pipeline and refinery projects never figured prominently in the prosecution of the war effort, which turned dramatically after the defeat of the Japanese fleet at Midway in 1942. What is more significant, perhaps, is that more than 40,000 American soldiers and civilians flooded into the region to work on the projects, transforming large portions of northern Alberta, the Mackenzie Valley, northern British Columbia and the Yukon in the process. After World War II, Cold War militarization resulted in the development of the Pine Tree and Distant

Early Warning lines, linking Canada and the USA once more in the defense of the continent from foreign attack.

The movement of people across the Canada-United States border has long been a key feature in Western life, linking the countries in important ways. Americans migrated North in search of land and prosperity after the era of free land ended in the United States. Miners, loggers and settlers also moved north into British Columbia. From the middle of the 19<sup>th</sup> century onward, a significant stream of Canadians sought greater opportunities south of the boundary. The current anxiety about a Canadian brain drain to the United States, offset by what optimists describe as a brain gain through American migration to Canada, is part of a long-standing national concern about the southward movement of economic migrants. The American migrants brought ideas with them from their country of origin, spreading everything from radical unionism (through the Western Federation of Miners and One Big Union) to beliefs about the rights of women and local political action. More recently, American-style opposition to gun control and support for tax and political reform have found fertile ground in the Canadian West. It is, conversely, not surprising, that support for Canadian-style social welfare programs has long been most pronounced in the border states, fed by migrants, personal cross-border ties and the flow of ideas because of proximity and regular contact.

The region has been linked across the border by a long legacy of law-breaking. Most recently, emphasis has been placed on the Canadian drug trade, including the movement of billions of dollars of British Columbia Bud (marijuana) into the United States. But in the past, migrants passed routinely across the largely undefended western border, most often immigrants to Canada sneaking into the United States. During the post-World War I Prohibition era, rum runners used Canada as a production centre, even though Canadian regulations prohibited the sale of alcohol in the country, and established a vigorous, occasionally violent cross-border trade. In a modern twist on the movement of drugs and alcohol across the border, Americans seeking to avoid high priced pharmaceuticals in the United States routinely cross into Canada (often times electronically, through Canadian Internet pharmacies) to purchase cut-rate generic drugs. And, in the most high profile example of integration through law avoidance, thousands of Vietnam-era draft dodgers crossed into Canada, many spending years in the country before President Jimmy Carter's amnesty program permitted an easy return to the United States.

The Canadian and American West have also been linked through an extensive and long-established tourism trade. Banff, in the Canadian Rockies, was among the first tourist destinations developed in Western Canada and the community attracted a steady stream of American travellers. So, too, did the Yukon River basin, particularly during World War I when vacation cruises to Europe were suspended and when the mystique of the Klondike remained high. In more recent times, the lucrative west coast cruise ship industry, based in both Seattle and Vancouver with many travellers heading to the Yukon and Alaska, or both, has highlighted the region as a whole, with little reference to national differences. The modern ski industry, in contrast, spans the border, with the often wealthy visitors moving freely between prime resorts in the Western United States and Western Canada, particularly to the growing ski mecca of Whistler, British Columbia. If many Americans have come north for skiing, it is hardly surprising that tens of thousands of Canadians have, for decades, traveled south for the winter sun. In many locations in Hawaii, California and Arizona, Canadians make up a significant percentage of the total population and contribute substantially to seasonal tourism businesses.

### **Forces of Separation**

It is equally true, however, that the forces of integration are offset by powerful countervailing influences. Beginning with the path-breaking studies of Seymour Lipset, scholars and commentators have identified profound and important differences in values, assumptions, attitudes and behaviour between Canadians and Americans. Canadians, often point smugly to what they think are American attitudes toward guns, race, and the military, and mock what they see as a minimalist social safety net and excessive violence. Americans, when they spend much time reflecting on the Canadian situation, make fun of Canadian winters, the comparatively limited free enterprise spirit, an overdependence on government, and a significantly lower standard of living. The differences are real, however, and serve as contemporary manifestations of historical processes.

The border itself figures as a force of separation. When the boundaries were established between the United States and what was in 1849 western British North America, little was done to enforce the border. People, goods and resources moved easily. Even after the extension of Canada into the West, the border remained largely unguarded. The vast western plain was overseen by only a small number of North West Mounted Police officers, and the United States devoted few resources to checking movements from

North to South. At times of conflict and uncertainty—during the American Civil War, the Klondike Gold Rush, the turn of the century Asian immigration boom, and the Prohibition era—national governments stepped up border security, but even then at only a minimal level. Avoidance of authorities was easy. After World War II, concerns about military and economic security resulted in a slow expansion of boundary enforcement through the establishment and maintenance of regular border crossings and, as time passed, the use of enhanced technology to prevent unwanted people from moving across the border. The current terrorism-driven improvement of border security and the introduction of a requirement that travellers have passports to enter the United States (effective in 2007) will further highlight the differences between the two countries.

There are many other sources of separation in evidence in the history of the western borderlands. The countries have experienced different patterns of settlement, with Asian migrants figuring more prominently in Western Canada (particularly British Columbia) than most parts of the western United States. Intense inter-regional competition—between Vancouver and Seattle over control of the Klondike trade, lumber companies and, in the current period, movie-making firms—has engendered cross-border rivalries and, on many occasions, antipathy. The very different levels of understanding and misunderstanding between the countries contribute to the sense of difference. Canadians appear to react to American stereotypes as much as American reality; the United States, in turn, simply tends to ignore Canada and Canadians, beyond a benign view of the country as the 51<sup>st</sup> state, though there is increasing hostility of sentiment from the American political right. The political cultures in the two countries are radically different. Canada is as unlikely to produce a George W. Bush as the United States is to produce a Pierre Elliott Trudeau, although a significant number of Western Canadian politicians are clearly influenced by political trends, techniques and values from south of the border. Either, however, might well produce a Paul Martin.

Distinctiveness is highlighted by direct action, in the form of protectionist political measures aimed at the neighboring country and broad patterns of national behaviour, such as the Canadian welfare state and national medical care system. Canadians have long been self-righteous about American race relations, offering sharp criticism of American treatment of African Americans while paying little heed to the legacy of racism directed at Canadian Blacks, Asian migrants, and First Nations people. Separation is encouraged by broad values, such

as American entrepreneurship and Canada's much more risk-averse attitude, by Canadian collectivism and American individualism, by the National Hockey League and the National Football League. In some areas, such as environmentalism, Western Canadians pride themselves on being the birthplace of international protest movements, notably Greenpeace, without recognizing that the United States has, particularly in the West, a much better record of protecting natural spaces and wild species. Separatism can be, therefore, based on misunderstanding and stereotypes as much as reality. Much can be learned from the fact that one of the more popular Canadian television shows in recent years, "This Hour Has 22 Minutes," regularly featured a segment where a Canadian journalist visited the United States to prove how ignorant Americans were of Canada. It proved to be easy pickings—there were Americans willing to protest the polar bear hunts in Regina, Saskatchewan and to complain about the closure of Canada's only university—but that Canadians would laugh uproariously at the ignorance of their country by their dominant neighbour speaks volumes about national insecurities and patterns of misunderstandings.

A decade ago, at the height of the dot.com boom and the globalization euphoria, political scientists earnestly debated the end of the nation-state, an idea that appears to have faded quickly. Nations continue to matter in North America as elsewhere. Borders are being strengthened, not weakened, and fortress mentalities might well be close behind. North American academics have contributed less to the debate than they should have. Scholars tend to work in national circles, funded by national agencies with clear national priorities. Borders, in this instance, become blinkers, blinding researchers to the subtle and powerful cross-border linkages and tensions which are key elements in the history of North America. Cultural globalization is not as one-sided as commentators often believed. Only a short time ago, the ascendancy of the National Football League, with a large following in Canada, seemed to presage the collapse of the unique Canadian Football League. But the CFL survived and has returned to a measure of prosperity. Popular cultural influences, from Starbucks to Survivor to American Idol, feature prominently in Canada, but do not submerge an interest in things Canadian, such as the development of a imitative Canadian Idol program. And Canada exerts considerable influence on American culture, in the form of writers (Margaret Atwood), comedians (Michael J. Fox, Jim Carey and others), musicians (Alanis Morissett, Celine Dion, Avril Lavigne, and Bryan Adams) and numerous actors, producers and screenwriters. Canadians gorge on American television and radio,

but they do not necessarily surrender to it. Few Canadians think that Law and Order depicts a Canadian scene or that CSI is based in Calgary instead of Las Vegas. American programming, from FOX News to Howard Stern, finds a Canadian audience, but perhaps with the effect of reinforcing differences as much as creating convergence.

It is impossible to determine the precise balance between convergence and divergence in Western North America, just as it is difficult to ascertain the power of historical and contemporary processes of separation and integration. The countries are different, they appear different, and they both celebrate their differences; but, to put the matter another way, Seattle is probably closer to Vancouver in many cultural respects than it is to Miami. Calgary is clearly more like Dallas than like Halifax, Nova Scotia. But Whitehorse in the Yukon, a quintessentially Canadian government town, is a markedly different place than Fairbanks, Alaska, and shares much more in common with St. John's, Newfoundland than with Bismark, North Dakota. Geography makes Western North America similar; history has ensured that they are closely connected and, at times, quite integrated; but the imperatives of national culture and national values are very strong and have ensured that Western Canada and the Western United States remain very different places indeed.

### Reflections on the Future

Historians, benefiting from the clarity that accompanies the passage of time, shy away from reflecting on the future. This disciplinary caveat notwithstanding, a few observations on the prospects for the coming decades seem appropriate. It does appear, for instance, that Western Canada will become more American, and less like the rest of Canada. It is in the west that the battle against gun control is the strongest and where opposition to special rights for Aboriginal people is most strident. Educational reform is more advanced in the west through private charter-type schools, the establishment of private universities, and with increased migration between the two countries. While it is well known that there are thousands of Canadians living, permanently or seasonally in the Western United States, less attention is paid to the growing number of American property owners in Greater Vancouver, Calgary, Whistler and the Gulf Islands of British Columbia. The western standard of living, and the expectations about future prosperity, better approximate American conditions than in much of the rest of the country. Finally, Canadian observers are well aware that right of centre politics and ideology is much stronger in Western Canada than East

of Manitoba, and American-style arguments and values increasingly suffuse political life in the region.

While Western Canada, more than the rest of the country, is clearly interested in emulating aspects of the American experience, there is little evidence that the interest runs in both directions. At a time when Canadians continue to obsess about the United States, Americans appear to be losing interest in Canada. Britain has replaced Canada as a favoured ally, because of Tony Blair's unbending support for the Iraq war, and American commercial interests focus on the threats and opportunities present in China. On borderlands issues, Mexico attracts the lion's share of attention, although the American obsession with the threat of terrorism has resulted in the representation of Canada as a haven for those who would attack America. At the same time, American protectionist sentiment appears to be growing, with concerns routinely expressed about outsourcing of professional jobs (largely to India) and competition with U.S. producers. Furthermore, the United States has never had much difficulty getting what it really wants out of Canada—primarily resources and cheaply produced automobiles—and there is little evidence that this will soon change, despite occasional Canadian bravado about retaliatory trade measures.

Perhaps the final piece of the puzzle—stepping well away from historical analysis into political punditry—is that Western Canada appears to be stepping further and further away from the rest of the country. The lines of division are noticeable, particularly as the west enjoys a resource-based boom and doubts circulate about the vitality of the eastern economy, particularly in Québec and the Atlantic provinces. Several polls have identified significant separatist sentiment in the West, higher support in some instances than separatism enjoyed in Québec a decade before the election of the Parti Québécois. The continued political isolation of the West—a region enraged by the revelations in the Gomery Inquiry and perplexed that Liberal support has rebounded in Ontario—does not auger well for the West's place within Confederation. America does not beckon. It is not as though the Americans are looking, as they once did, for a chance to extend their influence northward into British Columbia and Alberta (the social democratic provinces of Saskatchewan and Manitoba would hold little attraction for the USA). And Western Canada, even as it becomes more American-like over time, is still far removed culturally, economically, socially and politically from the United States of America. Clearly, the decade to come promises to bring both convergence and divergence in Canada-America relations, and uncertainty about the place of Western Canada both in Confederation and within North America.



# *The Importance of Northern Issues in Foreign Policy*

Lassi Heininen and Heather Nicol

## Introduction

In recent years, Canada and the United States find themselves increasingly on opposite sides of the fence in the international arena. Canada's opposition to the application of the *Helm's Burton Act* with respect to Cuba and its opposition to the U.S. war in Iraq are obvious examples. There are other places, moreover, in which Canada-U.S. interests are sharply divergent—in the Arctic, for example. Here, some U.S. policy-makers have taken issue with Canada's approach to sustainable development, charging that Canadians have placed undue emphasis on indigenous peoples and have brokered vague ideas about development and civil society which are untenable, even unacceptable, from a traditional state-centered perspective.

In her analysis of divergent U.S.-Canada Arctic discourse and interests, Keskitalo (2004) suggests that the cold war legacy, its resource-utilization and military security discourses, and the divergent frontier and identity myths of Canada and the U.S. are, in large measure, responsible for continuing a legacy, or a clash, of differing visions concerning the definition of the Arctic region environmental protection and security.<sup>1</sup> The reason, she suggests, is related to the changing nature of Canada's engagement with the Arctic. Originally the circumpolar region held significance for Canadians as a symbol of the distinctive northern orientation of Canada's national culture and its history of survival against all odds—not only in a physical world of ice and snow—but also in terms of holding the line against the larger forces played out in

the cold war and even against U.S. military and economic domination. Recently, however, the Canadian perspective has changed, emphasizing Aboriginal rights and indigenous empowerment and, in many ways, the Canadian North has become the testing ground for new definitions of indigenous autonomy. At the same time, however, the north remains critical to Canada's national and sovereign territoriality and has seen renewed currency as a frontier with the U.S. as new ecological, security, and resource utilization issues transcend borders. That has resulted in the need to develop a northern foreign policy which responds not only to indigenous issues, but to the fact that the Canadian Arctic is increasingly part of a more global space.

## The Arctic as a Region for Foreign Policy

It is clear in the twenty-first century that Canadians are not alone in their northern focus. In the 1980s, for example, Mikhail Gorbachev<sup>2</sup> called for cooperation in the Arctic, while in the early 1990s, Nordic countries—especially Norway and Finland—defined their versions of northern policies. As a result of these and other similar initiatives, 1991 saw the signing of the Arctic Environmental Protection Strategy (AEPS) among eight Arctic states (Norway, Finland, Canada, the U.S., Sweden, Russia, Denmark, and Iceland). The AEPS was to meet regularly after that with the view in mind of crafting policies which would increase

the protection of the Arctic from environmental degradation through a process of coordinated cooperation.

The AEPS was clearly an environment-focused initiative which, through the AEPS Task Force on Sustainable Development, was able to expand its activity into other aspects of multilateral decision-making in the North. Indeed, the momentum created by the AEPS consensus on resolving northern development challenges was eventually to create the impetus for the formation of the Arctic Council in 1993. The AEPS Task Force on Sustainable Development was thus transformed into the Arctic Council's Working Group on Sustainable Development, whereas the Arctic Council assumed a new role in overseeing and continuing the work of the AEPS with a broader and continued focus on foreign policy.

All of these events have contributed to a recasting of the politics of the circumpolar region. Not least important, has been the fact that development of the AEPS, the formation of the Arctic Council, and other similar northern initiatives, spurred the EU to develop its own "northern dimension" in foreign policy. The EU's "northern dimension" was to deal with problems specific to its "Arctic Eight" member states (Northern European countries such as Norway, Iceland, Sweden, Denmark, Finland), as well as with neighbouring Russia, Canada, and the U.S. This initiative included EU participation in broader initiatives and agreements covering the circumpolar north, such as the Arctic Monitoring and Assessment Program (AMAP—established in 1991 to "monitor identified pollution risks and their impacts on the Arctic ecosystem"),<sup>3</sup> the initiative for protection of the Arctic Marine Environment (PAME), a program for Emergency Preparedness and Response (EPPR), and an agreement on the need for the conservation of Arctic Fauna and Flora.<sup>4</sup>

The growing importance of the north thus encouraged the EU's recognition of a broader process of globalization in keeping with its other northern neighbours and member states.<sup>5</sup> It was also in keeping with broader developments throughout the North, where the ultimate shape of regionalism and region building within the Arctic is reflective of a new internationalism based upon such issues as sustainable development and indigenous representation, rather than of the old security discourse of the cold war. While it may represent the beginning of a new North-South metaphor concerning dependency and development, it also represents, to some extent, the beginnings of a new East-West dimensionality among the countries of the Western Hemisphere.

The latter is important because there is a propensity for Canada, Russia, the U.S., as well as the EU, to view

internationalism through different prisms.<sup>6</sup> Indeed, in this new circumpolar north, Canada finds itself situated in a political and policy position bridging, yet distinct from, Russian, U.S., and EU initiatives. Speaking from a global perspective, Riftkin, for example, observes that Canadians find themselves geographically and conceptually in the midst of a transatlantic debate between two dominant powers, the U.S. and the EU, where the issues turn on the degree of international engagement which can be tolerated, the structure of internationalism and its relationship to state-centered policy, and the relationship of the EU to the U.S.<sup>7</sup> In this universe, within the Arctic region, Canada's emphasis on indigenous people's rights remains sharply at odds with those of American policy-makers in Washington, and closer, although not yet similar, to indigenous peoples issues in the EU. It is important to recognize, however, that if Arctic cooperation in the twenty-first century is marked by a divergent and contested Arctic discourse, that is not the "fault" of any particular nation, but rather a fact of the comprehensive nature of the new North, of new transnational forces which challenge state-centered initiatives, and of the broader forces of globalization and transnational geopolitics which ripple through the region.

It is clear, then, that if we are to consider Canada-U.S. relations within the Arctic, there is an even larger issue to be considered than the immediate state of the northern binational relationship. More and more, Canada-U.S. relations are nested in the emerging structure of the Arctic as a distinct region in academic and political discourse over the past two decades.<sup>8</sup> Definitions of the Arctic and circumpolar North which have developed since the 1980s situate the North American circumpolar region in relation to the Nordic states and territories (Greenland, Denmark, Finland, Sweden, Norway, and Iceland) and Russia, all places which have sought to reinvent the Arctic as a region in which the north has renewed sovereign, economic, security, and social saliency—or a new geopolitics and new north-south metaphor.<sup>9</sup> So the issue is not so much "how effective is Canada's leadership?" or "how does American state-centered politics raise contestations among the Arctic States?" but how to approach the multi-faceted processes of developing an agenda focused upon building regional institutions to promote sustainable development and how to structure the requisite foreign policy with respect to the broadening and "northernizing" of a transatlantic regionalism. In this sense, the emerging structure and geopolitical discourse of the Arctic region is constitutive of changing post-cold war geopolitical visions and the impact of such

visions upon those spaces which were previously marginalized by security and resource-utilization paradigms.

With this in mind, this paper summarizes and compares the foreign policy approaches of the major actors in the contemporary struggle for Arctic regional definition, exploring both the geopolitical discourse and political structures which underlie each. Questions will be raised about the role of respective foreign policies in promoting stability and confidence building in the post-cold war circumpolar region (including Russia) and in fostering functional cooperation in different fields of activities. In the final analysis, we explore the question of how Canada's foreign policy fits into the broader picture and the significance of its differences, specifically when compared to the "northern dimension" of the United States.

### **Northern Dimensions**

Part of the reinvigoration of northern issues in recent years has come from an emerging circumpolar perspective which is based upon a new, multinational, geopolitical discourse. Geopolitics have, of course, always played a dominant role in defining the relations between 'North' and 'South'—contributing to the structure of the relationship between the Arctic and the outside world— if by geopolitics we mean both traditional security-policy and military discourses (particularly the "technology model") and the geopolitical discourses of natural resource utilization (the "resource model"). If so, it is important to recognize that the new geopolitical discourse and a new set of foreign policy practices and themes are very specific concerning the need for achievement of the broad goals of "human security" and "sustainable development" within the circumpolar north—that is to say a globalized "human security" geopolitical discourse or model has now emerged.<sup>10</sup>

Correspondingly, over the past decade or so, the idea that there is a distinctive "northern dimension" has gained currency in Northern Europe and the EU, Russia, Canada, and to a lesser extent in the U.S. That is because, in context of a post-cold war period, transboundary cooperation in the North, coupled with a new emphasis upon regionalism, has shifted the basis for international cooperation. We saw that, in Europe, the concept of a northern dimension, initially developed in Finland, gained acceptance as a basis for foreign policy development in the political agenda of the European Union.<sup>11</sup> In Canada, the story is somewhat different. Although the idea of a northern dimension to foreign policy can be traced back to the 1940s, in terms of its development as coherent strategy the concept really remained dormant until the late 1980s and early 1990s, at

which time new attitudes and a new receptivity towards indigenous cultures were incorporated into Canada's political agenda.<sup>12</sup> That culminated in the development a 'northern dimension' for Canadian foreign policy—as an explicit set of ideas and approaches to northern Canada and its neighbours, which were to differ from those of the South.

In the United States, however, the northern dimension was not part of normative geopolitical discourse—except as it was synonymous with Alaska—until the cold war when it assumed geostrategic proportions in the fight to contain "communism" and construct the DEW Line. The heightened geostrategic sensitivities of the cold war were to structure U.S. attitudes towards the Arctic and, indeed, U.S.-Canada Arctic relations for decades to come. Americans looking north tended to see the region as a foreign place rather than a national frontier, a depopulated place synonymous with the ends of the earth. Perhaps that is why, after the end of the cold war, when the first U.S. northern policy "North European Initiative" (NEI) was launched in 1997, it referenced a northern, but "Europe-centred" and "strategic" policy framework. The NEI's goal was to support democratic society in Eastern and Northern Europe, specifically in the Baltic States, rather than within the North American circumpolar regions. Indeed, the NEI was directed toward the Baltic Sea region and Northwest Russia with the aim of supporting the development of democracy and civil society, specifically in Estonia, Latvia, and Lithuania.<sup>13</sup> It was not particularly interested in the circumpolar world of North America, thus giving a slightly different twist to the concept of "northern dimension" and situating it squarely within the realm of a foreign policy for those "out there."

As for Russia and its predecessor, the USSR, the idea of a northern dimension to foreign policy developed somewhat later. Today, in the Russian Federation, a corresponding political discussion of EU-Russian relations in the terms of the EU's Northern Dimension is underway, stressing the importance of the North to the Russian state in the aftermath of the collapse of the Soviet Union. Important to the latter's development is the identification of the need for long-term northern policy by the Federation<sup>14</sup> and a more academic discourse addressing the urgency of redefining the role of the Russian North as more than a geostrategically important resource reserve.<sup>15</sup>

In terms of the degree to which environmental issues and quality of life could be used to develop a sense of the need for urgency and action, the AEPS was perhaps the most important aspect of a northern dimension discourse during the 1990s and early twenty-first century—with its focus on science and technology and its emphasis upon

empirical research. There are few, if any, of the Arctic countries which contest the need for action on environmental issues. The consensus on environmental strategies, forged by the AEPS (particularly from Finland's efforts, when combined with those of Canada), ultimately led to the establishment of an Arctic Council. This consensus on the environment was based upon a variety of considerations, most of which were triggered by a series of new post-cold war security challenges in the region. These include the visible gap between standards in living and environmental quality, environmental concerns raised by global climate change and pollution, including POPs, nuclear waste, and the legacy of the military contamination of sensitive circumpolar environments.<sup>16</sup>

In addition, there has been recognition of the social context and a newly developing view of the region which incorporates indigenous concerns in ways which were eclipsed by the geopolitical concerns of the cold war period. Although there is division regarding the extent to which these issues are of concern to individual countries of the Arctic Eight and the degree to which the EU itself is involved with any specific area,<sup>17</sup> there is, nonetheless, a common geopolitical perspective. The process can be traced back to the impact of Gorbachev's Murmansk speech, which was later incorporated into the AEPS.

### **The Role of the EU in Defining a Northern Dimension**

From the point of view of the European Union, the Northern Dimension (EUND) is a framework and process for continuous dialogue on cooperation between the EU and its neighbours (especially the Russian Federation) and for co-ordination, even management, of cross-border cooperation across the EU borders.<sup>18</sup> Geographically, the EUND targets a broad and diffuse area. It extends from Greenland in the west to Northwest Russia in the east, from the Arctic in the north to the Southern coast of the Baltic Sea. Thus, the European Union's Northern Dimension is a policy toward North Europe and the Arctic among the external and cross-border policies of the European Union.

The EUND is one among the many official external, cross-border policies of the European Union in North Europe whose main aim is to increase stability (defined in the sense of civic security rather than traditional security-policy), to enhance democratic reforms, and to build up positive interdependence and sustainable development. The latter is a particular goal due to increasing awareness of the highly vulnerable state of the Arctic natural environment and the threat posed by pollution and health prob-

lems affecting people living in the high North.<sup>19</sup> Indeed, this EU position has developed from several decades of engagement with the concept of the Arctic and the "North" as a military and environmental problem.<sup>20</sup>

The EUND took as its starting point the external and cross-border policies of the European Union which cover the Baltic Sea and Arctic Sea regions, as well as Northwest Russia—all areas with a significant northern, circumpolar and Arctic environment—and has been implemented within the framework of the European Agreements with the Baltic States, the Partnership and Cooperation Agreement with Russia and the European Economic Area regulations.<sup>21</sup> In intent, it "addresses the specific challenges of those regions and aims to increase cooperation between the EU member states, the EU applicant countries and Russia."

While the "areas for cooperation" under the EU's Northern Dimension include, among others, the environment, nuclear safety, and energy cooperation, the EUND is not the same as the AEPS, nor does it define the Arctic Council and the structure of regional cooperation among the Arctic Eight. Rather, the EUND operates through existing EU's financial instruments, such as PHARE,<sup>22</sup> TACIS,<sup>23</sup> and INTERREG,<sup>24</sup> to finance specific projects which provide "added value."<sup>25</sup> Initially it had as one of its important focal points the Baltic Sea region, but more recently there has been a shift in political focus. With recent rounds of EU enlargement, attention has shifted away from the Baltic Sea Region (except Kaliningrad), towards Northwest Russia, the Arctic, and Greenland. A second EUND Action Plan has been developed and, currently, attention is now on "cross-cutting issues" and "key priorities."<sup>26</sup>

Indeed, five key priority areas have emerged which include: first, economy, business, and infrastructure to promote closer integration of markets and economic integration with the Russian Federation; second, human resources, education, scientific research, culture, and public health to promote the development of opportunities for those who live in the Northern Dimension region, particularly in areas of science, technology, and tourism; third, environment, nuclear safety, and natural resources to meet some of the environmental challenges which are well-identified and beyond the capacity of one country to resolve; fourth, cross-border co-operation to promote economic development and to meet requirements for social, educational, and health goals; and fifth justice and home affairs to promote security in context of fighting cross-border crime, human trafficking, and drugs, and illegal immigration.<sup>27</sup> These key priorities aim at addressing "the special regional development challenges of northern Europe." These include "harsh climatic conditions, long

distances, particularly wide living standard disparities, environmental challenges including problems with nuclear waste and waste water management, as well as insufficient transport and border crossing facilities.<sup>28</sup>

In the final analysis, the EU's ND ensures that EU environmental requirements posed by the AEPS and Arctic Council are met, as well as taking necessary actions to monitor POPs and other environmental threats. That is evident in a heightened interest in building the capacity for cooperation in nuclear safety and environmental issues with Russia and the EU, its focus upon 'sustainable development' in terms of resource utilization, and its interest in 'securing the border' while harmonizing legislation, standards, and procedures in the interests of protecting and promoting civil society and environmental security. The latter is of particular interest in the target area of the Baltic-Barents regions.

So while the process of the EU's ND started in 1997—the First Action Plan adopted in 2000—the EU's Second Action Plan has seen greater focus on energy cooperation, human resources, and social issues, such as education, public health, and the environment. All of these are sectors which are particularly relevant for the Arctic, and potentially useful for sustainable development of its human populations. Clearly, northern considerations now play a more important role than previously, and indeed, the Arctic 'came back' in the Second EU Action Plan in ways which were not present in the first plan.

Moreover, the position of the Arctic dimension seems to be better consolidated and more central to the Second Action Plan and the EU has adopted it as a new item in the political dialogue with Canada and the U.S.A. Thus, the political focus of the Second Action Plan has moved from the Baltic Sea Region more toward Northwest Russia and the Arctic, including Greenland, and has greater implications for transatlantic relations. At the same time, the Second Action Plan has seen the content of the EUND change to better accommodate partner states, each with their particular emphases. In this process the partner countries and Greenland have been given the latitude to make many of their own initiatives. An example of this is the Greenlandic initiative, or the "Arctic Window," intended to make the scope toward the Arctic somewhat broader.<sup>29</sup>

It is important to recognize, however, that there are some very real problems with respect to the EU's new emphasis upon a Northern Dimension. One of the basic limitations of the EUND, which might prove to hinder its implementation in some areas or act as a barrier to deeper international cooperation is the fact that its policies have received limited funding. For example, without permanent

financing the ND depends upon the EU budgetary process and its own or outside financing instruments. This weakness might be solved, at least in principle, with reference to the Northern Dimension Environmental Partnership (NDEP) financing model which is administered by the European Bank for Reconstruction and Development (EBRD) and its Support Fund, particularly since several international finance institutions (IFIs) became involved in the process.<sup>30</sup> If so, the NDEP might become that instrument which will help to realize the much needed implementation of the EUND. Additionally, the EU enlargement of 2004 might mean that the EU will be less interested in the North and more interested in the East. Indeed Poland has addressed its strong interest toward Ukraine and mentioned an idea of a common EU strategy, or an "Eastern Dimension" of the EU, inspired and influenced by the EUND.<sup>31</sup> While the EUND deals with the external policy and transboundary activities of the EU, for the period of 2004-2006, the Union has introduced the new Neighbourhood Programmes for its cross-border cooperation with significantly increased resources.<sup>32</sup>

Another weakness or challenge to the success of the EUND might also be that the EUND itself is more like a long shopping list or key-strategies and goals, lacking strategic priorities. For example, energy co-operation in the Russian North is an important priority; this includes not only oil and gas drilling, and the development of infrastructure, but also the environment and human resources, thus constituting a broad and diverse set of issues. As a result of this lack of prioritizing, the variety of what have been termed "key-priorities" within the strategy creates a degree of vagueness and allows for some very different interpretations. It also raises questions concerning definitions. What does it mean to have the Arctic as a "cross-cutting issue, main-streamed within each key-priority"? What is a crosscutting issue and how would it be "main-streamed"? One possibility would be to have an issue (like human development) defined as a key-priority, while the North (including indigenous peoples' issues) becomes a crosscutting theme. That, for example, is what the Saami Council has proposed as one main area of significance within the EUND.<sup>33</sup>

In spite of these weaknesses, however, and in spite of its short history, a "northern dimension," indicating a new kind of policy for the Arctic Eight states and the EU towards the North, has been attractive, so far, to the EU and North European countries. It has also been attractive to many NGOs and non-governmental stakeholders and interest groups, all of which have offered and developed various interpretations of, and proposals and hopes for, its content.

### Canada and a Northern Dimension Foreign Policy

If the idea of a Northern Dimension for foreign policy was initiated earlier among Northern Europeans, it is true that Canadians have always actively engaged with the idea of a northern dimension to Canadian nationhood. The North has always been important, symbolically, to the definition of nationhood and is embedded within the broader iconography of Canadian nationalism. To a large extent, this engagement was limited during the cold war period to strategic considerations based upon the more widespread view of the Arctic as a frontier, sparsely populated by traditional peoples living ancient lifestyles, and outside of the mainstream of Canadian life—but also a region of rich natural resources, as well as a “frontline” for the cold war theatre. This attitude was to change substantially in the 1980s and 1990s as changing geopolitical concerns and definitions of security, increased attention to environmental issues, and a new sense of the legitimacy of the Arctic as a homeland for traditional societies, replaced cold war concerns. Canada was one of eight countries which signed the AEPS strategy, but already in the late 1980s Canada found itself actively searching to establish international umbrella-type political forum for international cooperation in the Arctic.<sup>34</sup> Although it took longer to establish than initially expected, in 1996 with the support of the other members of the Arctic Eight, the Arctic Council was formed, institutionalizing new attitudes about environmental issues and governance in the Arctic.

That signalled the beginning of a Canadian foreign policy approach to the Arctic which was to culminate in a new, post-cold war emphasis upon environment, human security and sustainability in the circumpolar North, building upon what Keskitalo suggests was a distinctive Canadian approach to Arctic issues. The process continued during the early 1990s, contributing to the development of a new and focused direction for Arctic geopolitics.<sup>35</sup> Indeed, many of the specific protocols and programs of the AEPS were shaped by Canadian concerns; one example is the agreement on *The Conservation of Arctic Fauna and Flora*.<sup>36</sup> Yet it was also clear by the late 1980s and early 1990s, however, that in participating in the AEPS, Canada had assumed a leadership role which suffered from the problem that there was little in the way of foreign policy to fall back on. The Canadian North had never been an arena for the development of international relations, except in reaction to very specific events which saw recognition of the reorganization of Arctic territories. These events included the Alaskan panhandle purchase, Confederation (and its

requirements for territorial legitimacy over crown lands and territories), Britain’s ceding of the High Arctic Islands to Canada in the late nineteenth century, the events of the cold war which prompted closer military alliance with the U.S. in the Arctic and the establishment of the DEW Line, and Canada’s ongoing struggle to assert sovereignty over the High Arctic when challenged by the U.S. and other European governments. These cases, however, where the Arctic entered into Canada’s foreign affairs agenda were limited and punctuated an approach to the North which was otherwise largely determined by neglect. The Arctic was generally incorporated into domestic and defense concerns as a “frontier” or “periphery.”<sup>37</sup> The exception to this was, of course, the interest paid by St. Laurent in developing cooperative measures for promotion of economic and communications development within the Arctic with the USSR, Denmark, and Norway during the 1940s, as well as the proposal for a regional council in the area of the Arctic Basin, launched by Canada in 1970 in conjunction with the *Arctic Waters Pollution Prevention Act* (AWPPA) and the *United Nations Convention on the Law of the Sea Treaty* (UNCLOS) then under negotiation.<sup>38</sup> Such attempts at developing a northern foreign policy were limited, however, until the late 1980s when, after Gorbachev’s Murmansk speech, the Arctic assumed new proportions in foreign policy and new proportions regionally as emphasis shifted away from maritime definitions of the region to a broader political and environmental constituency.<sup>39</sup>

Canada’s 1998 National Forum on international relations, sponsored by the Canadian Center for Foreign Policy Development, was to change this relationship. It focused upon “circumpolar relations” and argued for a foreign policy which would translate environmental concerns into a broader set of understandings about the impact of environmental degradation upon the North. The National Forum observed that ideas concerning sustainable development in the Arctic were by nature difficult to define and translate into policies which would prompt concern at the international level. In answering the ultimate question “just where the circumpolar dimension is supposed to fit in the later scheme of foreign policy,”<sup>40</sup> a consultative process, identified as a series of issues and recommendations, which were focused upon five key questions, was inaugurated. These included does a northern dimension to foreign policy have relevance for all Canadians? Does the creation of an Arctic Council offer opportunities for Pan-Arctic relations or does it simply jeopardize bilateral relations with the U.S.? Should Canada champion the rights of indigenous peoples, even those outside the Canadian Arctic? What is the role for the University of the Arctic?

And should geography rather than demography establish the basis for Canada's foreign policy in the North?

While in 1999 Canada launched the Northern Dimension of its foreign policy, it is clear that even then the answers to all of these questions were not necessarily resolved—or if resolved to the satisfaction of Canadians, would remain important in the sense of bilateral relations with the U.S. That is a point to which we will return in a moment. In the context of Canada's goals, however, the Canadian government observed that a clearly defined Northern Dimension of Canada's foreign policy would help to establish “a framework to promote the extension of Canadian interests and values, and will renew the government's commitment to co-operation with our own northern peoples and with our circumpolar neighbours to address shared issues and responsibilities.”<sup>41</sup> Moreover, it would “demonstrate that our future security and prosperity are closely linked with our ability to manage complex northern issues.”<sup>42</sup> A proactive approach in strengthening Arctic circumpolar relations, drawing on Canada's experiences, traditions and capabilities in both the domestic and international context, will help to shape the nature and thrust of circumpolar affairs, and Canada's central place therein.

The Canadian government asserted that in promoting its Arctic foreign policy, it was continuing Canada's “long-standing foreign policy tradition” of promoting international co-operation “in pursuit of shared objectives, through institution building and pragmatic problem solving.”<sup>43</sup> In doing so, however, it had “taken on, as a new guiding theme, the protection and enhancement of human security.”<sup>44</sup> The Northern Dimension of Canada's foreign policy, in other words, had become the gateway for the incorporation of new ideas about the relevance of human security in the context of environment and civil society. It was to be framed in reference to “the northern territories and peoples of Canada, Russia, and the United States, the Nordic countries plus the vast (and mostly ice-covered) waters in between.”<sup>45</sup> Here, the Canadian government asserted that the challenges “mostly take the shape of transboundary environmental threats—persistent organic pollutants, climate change, nuclear waste—that are having dangerously increasing impacts on the health and vitality of human beings, northern lands, waters and animal life.”<sup>46</sup> *That brings us back to the point raised at the outset of the paper, namely that a new geopolitical discourse has emerged within the circumpolar North which finds its focal point in the Arctic, yet extends to cooperative agreements and institutions outside of this region.* Indeed, according to the Canadian government, the North is now a place

where “opportunities are driven by increasingly confident northern societies who, drawing on their traditional values, stand poised to take up the challenges presented by globalization.”<sup>47</sup> Moreover, whereas the “politics” of the cold war “dictated that the Arctic region be treated as part of a broader strategy of exclusion and confrontation,” it is now clear that “the politics of globalization and power diffusion highlight the importance of the circumpolar world as an area for inclusion and co-operation.”<sup>48</sup>

In keeping with this the tradition of a multilateral geopolitical orientation, the “northern dimension” of Canada's foreign policy rests upon four policy objectives, the ultimate goal being to enhance Canada's leadership role on the world stage, to establish partnerships within and beyond government, and to “engage in ongoing dialogue with Canadians, especially northerners.”<sup>49</sup> These policy objectives are, first, to enhance the security and prosperity of Canadians, especially northerners and Aboriginal peoples; second, to assert and ensure the preservation of Canada's sovereignty in the North; third, to establish the circumpolar region as a vibrant geopolitical entity integrated into a rules-based international system; and fourth, to promote the human security of northerners and the sustainable development of the Arctic.<sup>50</sup> Moreover, in connection with the pursuit of these goals, there are also four key initiatives which the Canadian government intends to pursue. These include the strengthening of the Arctic Council within a broader circumpolar regionalism, principally in connection with promoting dialogue “among the eight Arctic states and Indigenous northern peoples as Permanent Participants come together to discuss and decide on matters of common interest.”<sup>51</sup>

If the goal is to broaden the northern dimension beyond a policy which deals almost exclusively with environment, the Canadian government believes that the Arctic Council is uniquely placed to address not only environmental challenges faced in the circumpolar region, but to go beyond to face the broader challenges of developing new opportunities and enhancing capacity for trade and economic development, “as well as educational opportunities and employment mobility for Canadian youth and children in the circumpolar North.”<sup>52</sup> So too is the University of the Arctic, an initiative which attempts to enhance educational and employment opportunities, as well as “traditional knowledge, using distance-education techniques; and supporting the enhancement of a Canadian and circumpolar policy research network, taking into account the importance of traditional knowledge, that can strengthen policy-relevant capacity to provide assistance to the work of the Arctic Council.”<sup>53</sup> Beyond the issue of

building bilateral relations, Canada's foreign policy within the circumpolar north is also oriented towards Russia and the potential for "developing and expanding opportunities to assist Russia in addressing its northern challenges through strengthened bilateral activities and by working with our circumpolar partners in various regional forums and in the European Union."<sup>54</sup>

The main objectives of the Northern Dimension of Canada's foreign policy are also indicated by the main themes of the recent and current Canadian dialogue and discourse on the North and northern issues such as the role of indigenous governance and geopolitical, legal, and economic implications of climate change as a new reality for Canadian sovereignty and interests in the North.<sup>55</sup>

### Comparing Canada and EU Northern Dimensions

Canada and EU "northern dimension" policies have in common, first and foremost, the fact of the geographic region which includes the Arctic and North Atlantic. The concept of a circumpolar region is mutual and overlapping, and both involve Russia as some sort of target area. In addition, both policy frameworks recognize, participate in, and otherwise deal with, the Arctic Council (AC).

Similarly, the main objectives of the Northern Dimension of Canada's foreign policy are security, maintaining Canada's sovereignty in the North, region-building and sustainable development. Correspondingly, the main aim of the EU's Northern Dimension, as we have seen, is to increase stability and civic security, to enhance democratic reforms and to build up positive interdependence and sustainable development, particularly urgent because the Arctic has proven to be a highly vulnerable environment threatened by pollution, which in turn creates health problems affecting people living in the high north. Indeed, from the point of view of the EU, the ND is a framework and process for continuous dialogue on cooperation between it and its neighbours, especially the Russian Federation, and for co-ordination, even management, of cross-border cooperation across the EU borders. Moreover, the EU's ND is meant to focus on the sectors where the "added value" is expected to be the greatest, for example, in the so-called "priority sectors." Comparing the First and Second Northern Dimension Action Plan (NDAP), for example, there is, in the latter, a greater focus on energy cooperation, human resources and social issues such as education and public health and the environment.

Consequently, despite the fact that the Northern Dimension of Canada's foreign policy uses many of the same

terms as the EU, particularly the notion of "northern dimensionality," the policy of the Canadian state includes its own design and procedure. Its objectives mesh with the EUND in terms of its recognition of the potential for forging new bilateral and multilateral linkages with Russia, particularly in the area of defining and implementing broad-based human security and environmental concerns. What is interesting here is the fact that the contents of the EU's ND has been developed through a common process by the EU institutions, EU member states, and the ND partner countries, each with their particular emphases. EU partner countries and Greenland have been given or have earned a strong, almost equal position within the EU's ND. That played an important role in garnering support from partner countries for the EUND initiative and for its specific policies.

That, however, represents a different kind of constituency and different process of consultation than took place when Canada's northern dimension foreign policy was developed. EU member countries, except Finland and Sweden where the Saami live, do not, for example, contain large indigenous populations making the thrust of their circumpolar social agendas somewhat different in orientation. In Canada's case there is a heavy concern with the indigenous component, particularly in terms of understanding the nature of issues which affect a community of circumpolar peoples. This indigenous focus is quite distinctively Canadian, a hallmark of Canadian state practice, although the indigenous groups which Canada supports are transnational. Partly that has to do with demographic structure, but also it is a result of the fact that Canada's participation rests on a broader consultative process and is the end result of the three simultaneous levels of consultation. Indeed, Canada launched the policy after a consultative process on three levels—with the federal government, with territorial and provincial governments and with non-governmental organizations and stakeholders.<sup>56</sup> Although the EUND is also broad-based, it is more politically sensitive to a broad range of transnational issues. And whereas there is always potential for fallout between Canada and the U.S. over the degree to which participation in the Arctic Council should move beyond explicit environmental goals, the explicit goals of the EUND and its NDAP have supported Canada's efforts to establish regional institutions. That is quite important in achieving the ultimate goals of Canadian foreign policy, which rely heavily upon recognition of a "Pan Arctic" space and transnational institutions.

In terms of the big picture, then, the Northern Dimension structures EU relations with Canada in specific and

different ways than in previous decades and, in general, fosters cooperation, particularly in the area of environment and civil society. Most specifically, for example, the EUND Action Plan of 2004 signaled its intention to work more closely with the U.S. and Canada. It structured this interaction in the context of a “Transatlantic Agenda” and a Joint Statement on Northern Cooperation with Canada.<sup>57</sup> As we shall discuss more fully below, there is both potential for greater cooperation in terms of the Transatlantic Agenda and potential for greater divisiveness because of the degree to which the U.S. and Canada are linked by this initiative. Still, in Europe, endorsement of regionalism as a “Pan Arctic” or circumpolar event remains a realistic possibility. It may even prove to be a new resource for northern development. Historical and even mythical referents, including the image of the Hanseatic League and Norse adventurers and explorers, conjure up images of a north linked east to west by nature and tradition and create new enthusiasm for an EUND in the context of a broader circumpolar project. This open support of transnational linkages is consistent with Canadian northern foreign policy.

### **The U.S. and Its Northern Dimension**

The approach taken by U.S. decision-makers, at least those in Washington, with respect to the circumpolar North is distinctively different from that of Canadians and Europeans, although there is overlap with the European Union’s focus upon Eastern and Northern European states. The U.S. has recently revised its approach, discarding the North European Initiative (NEI) and developing an Enhanced Partnership in Northern Europe (e-PINE). It is in its emphasis upon this aspect of foreign policy that Canada’s approach differs sharply from that of the U.S. At the state level, American policy-makers are less inclined to make policies which promote a formal relationship with the Arctic Circle. The U.S. approach to participation in the Arctic Council, for example, is driven by a number of specific issues rather than by a sense of geographical regionalism. Indeed, national security, economic development and scientific research are important U.S. interests in the region. According to the official political rhetoric, a true U.S. Arctic policy “emphasizes environmental protection, sustainable development, human health and the role of indigenous people,”<sup>58</sup> but that emphasis is specific to U.S. peoples and places, not Pan Arctic indigenous organizations or transnational issues above and beyond environment. Consequently, it would be fair to say that, theoretically, the U.S. position towards the circumpolar

region remains traditional, in the sense that it is based upon a state-centered agenda in which security and national interests are emphasized, although with recognition of the broader context of globalization.

Until recently, for example, within the U.S. northern dimension foreign policy has meant, strictly speaking, the Baltic States and “security” issues. The development in 1997 of a North European Initiative was designed to address the issues of a new geopolitical order in the wake of the cold war and dissolution of the USSR. Indeed, the U.S. approach to the North can be understood as having two very separate sets of initiatives and policy directives and is administered under two separate State Department programs. On the one hand, the NEI and e-PINE are steered towards foreign relations in which more general U.S. policy goals of building democratic and stable societies and promoting free markets are met. In both, there has been a focus upon the subnational level, with a broadening out to include actors such as NGOs, TNCs, multilateral organizations and others, as well as a broadening out of the definition of security interests to include a broad-based concept of human security, including “economic deprivation, energy shortages, weakness of democratic institutions, communicable diseases, environmental degradation, crime, corruption and loss of cultural identity.”<sup>59</sup> On the other hand, a separate U.S. State Department program administers U.S. participation in the Arctic Council, with virtually no overlap in personnel, program, or policy development between the e-PINE and Arctic Council programs. There is no single “northern dimension” to U.S. foreign policy.

Indeed, U.S. consideration of the North American circumpolar North suffers from a lack of a more general or even geographical perspective, as well as a lack of focus on human security. In contradistinction to its Northern European approach, U.S. state interests here are not multilateral and are limited almost exclusively to environmental concerns, as evidenced by the nature of U.S. participation in AEPS and the Arctic Council and by the structure of “science research” emanating from American foundations focusing on the North. Furthermore, the goals are strategic: the NEI, as we have seen, was a U.S. initiative directed toward the Baltic Sea region and Northwest Russia. It has been touted as an effort to engage Northern Europe in a democratic project, couched in the discourse of human security; but in reality, the NEI was most focused upon strategic geopolitical goals such as erasing east-west divisions by increasing stability in the post-cold war North Europe. Its focus was on developing a plan to include the Baltic States in NATO, to support their inclusion in the

EU, and to engage Russia in new dialogues which would lessen the potential for a new east-west divide to form.

Rhodes suggests that this was truly a remarkable agreement which moved the U.S. away from a Westphalian approach to geopolitics and diplomacy and embraced the concept of regionalism and human security.<sup>60</sup> It remains difficult, however, to support the idea that a broad-based human security discourse emerged as part of the U.S. NEI initiative. Although the focus was in the Baltic Sea region, the NEI was not a plan for real “region-building”. Nor is it realistic to support Rhodes’s claim that this was a “post-modern,” “post-Westphalian” effort in internationalism within a borderless world. The NEI contained no sense of a broad circumpolar region, nor did it promote efforts to engage with nations which were geographically not located in North Europe. The U.S. approach towards a general Arctic environment was, instead, compartmentalized in terms of sector by sector agreements within the framework of the AEPS and the Arctic Council.

In terms of a northern dimension, then, the U.S. NEI was geostrategic, state-centred, and based upon traditional definitions of security and strategic alignments not seen since the cold war—although perhaps a kinder, gentler containment policy—and a part of the stability policy of the West.<sup>61</sup> For example, the NEI had four linked objectives: the need to integrate the Baltic States into a regional network of cooperative programs, the need to integrate northwest Russia into the same regional network, the need to promote market-oriented development, and the need to strengthen U.S. relations and regional ties with the Nordic States, Poland, and the European Union.<sup>62</sup> It promoted the notion that security was indivisible, that “military security and everyday human security were not two separate problems.”<sup>63</sup> While to some that suggested a less traditional approach to security, with the benefit of hindsight from the post-September 11<sup>th</sup> era security climate, the conflation of the two is anything but “non traditional”. It allows one to be defined in terms of the other—and then juxtaposed as zero-sum games.

Perhaps the same can be said of the new e-PINE initiative. Seemingly in its infancy and so far also poorly articulated, it has similar, although somewhat more vaguely defined, goals as the NEI, although e-PINE has a different geographical target than the NEI. Its focus is clearly upon areas on the margins of Europe and Russia in closer proximity to the Russian Federation. It is difficult to see how the initiative can be considered as “Northern” in the sense that it does not appear to target any of the countries currently involved in circumpolar region-building. Indeed, in terms of foreign policy, it would seem that Washington is

less interested in the dynamics of northern civil society today than in previous years. It also seems less interested in indigenous society or indigenous representation than it is in the monitoring of Arctic environment or the assessment of the potential for Arctic oil reserves. Indeed, somewhat ironically, while on the one hand its definition of broadening the basis of civil society has recently been modified to include private oil companies’ assessments of environmental issues in drilling for Alaskan oil, on the other hand, the U.S. is more interested in the Russian North. That is due to the latter’s huge oil resources, and this might implicate close energy cooperation between the U.S. and Russia—which correspondingly might be implemented by dramatic increase of oil transportation from the Kola Peninsula to North America.

At the state to state level, the U.S. approaches the circumpolar North from a position of hegemony and an attitude of “what’s in it for me.” Because of the state-centred focus, conceptions of a U.S. northern dimension do not, by definition, consider cooperation with Canada beyond a narrow set of initiatives based upon environment and health. In that sense, the U.S. cannot claim to have a northern dimension to its foreign policy, nor does it recognize the need for a geographical approach to northern environments. Its concept of northern dimension remains an issue-based approach in which traditional security and strategic concerns dominate.

Still, if Washington has had trouble responding to a transnational agenda within the circumpolar North and continues to situate itself in terms of traditional geopolitical discourse and security concerns at the regional level, there is active cooperation. Alaska is, to some extent, a model for inter-regional and grass-root initiatives and cooperation between indigenous and civil organizations and universities, including the establishment of academic, indigenous, and institutional linkages.<sup>64</sup> In recent years there has been considerable cross-border cooperation, ranging from formal agreements on energy, environment and boundaries, to participation in broad-ranging initiatives to develop a University of the Arctic, to encourage scientific research within the circumpolar North, and to engage indigenous Alaskans in the process of strengthening civil society. The State of Alaska has identified its interests in participation within the Arctic Council as organized around five priority areas, including finding common solutions to common problems, advancing a better understanding of the Arctic environment, bettering the lives of Arctic peoples, focusing on the issues of Native peoples (as distinct from Arctic peoples), and advancing the use of technology to deliver services to remote areas.<sup>65</sup>

The University of Alaska itself is active within the region, particularly in higher education, including curricula and applications of information technology into the Arctic context like, for example, the Bachelor of Arctic Studies study programme.

Alaskan participation in the circumpolar North is through institutions which have definition in traditional terms—state, university, research foundation, indigenous peoples’ organizations—but it seems that although there are venues for indigenous participation based upon regional-wide affiliation (i.e. the ICC or Inuit Tapisariat), U.S. and Alaskan decision-makers have pushed for inclusion of indigenous peoples on narrower terms, in the context of their role within U.S. national or subnational institutions—i.e. the Aluet of Alaska, with the intent of countering a more broad-based Pan Arctic definition. Arctic issues are more narrowly defined as well, mainly in the area of environment, health, and education. Nonetheless, the Alaskan perspective is more highly regionalized and defines the “northern dimension” of U.S. foreign policy in which North America is featured.

### **Canada and the U.S. Northern Dimension**

Although there are points of similarity with the EU’s ND approach and the U.S. NEI as a containment policy and a part of the stability policy of the West in the post cold war period, the focus of this paper is to discuss and compare the ND of Canada’s foreign policy and the U.S. northern dimension. At the subnational level, the state of Alaska has become well-integrated into a circumpolar North, particularly in the area of “Track II,” academia, NGOs, and indigenous peoples’ organizations. Several problems are apparent, however. At the state level, the U.S. interest in indigenous peoples is not particularly significant and is, therefore, a bone of contention when dealing with other circumpolar states, such as Canada, where indigenous issues are the motor behind a northern dimensions foreign policy. Washington policy-makers struggle with the validity of such a concept, amazed that Canadians, for example, “let those people” who are obviously insignificant in terms of numbers and power “make foreign policy in the north.” In this sense, it is clear that Washington approaches the North quite differently from Canada and other circumpolar states, viewing the region as a resource “frontier” rather than as a “homeland.” It is also quite clear that the rationale for action within the Arctic is issue-based, as opposed to geographical, something that U.S. policy-makers are readily quick to observe.

If, as was previously suggested, the NEI (and the subsequent e-PINE initiative which replaced it) is a much more strategically defined document than the EU’s ND Action Plan, there are significant consequences for Canada’s involvement in northern Europe. For example, to some extent the NEI membership in Europe was linked to membership in western institutions such as NATO and the EU, NATO itself becoming re-envisioned as a “community of values.”<sup>66</sup> The European Union and other European countries have been quick to appreciate this problem, and indeed Browning claims that there were attempts to marginalize U.S. NEI, and presumably subsequent initiatives, for fear of American definition and hegemony within the region.

That has implications for Canada precisely because the EU rationale and instruments for including the United States within a general northern dimension program was closely associated with the rationale for including Canada. Because both Canada and the U.S. are seen as areas in which to cultivate a transatlantic relationship, as fears of U.S. hegemony rose, both Canada and the U.S. suffered from marginalization.<sup>67</sup> Indeed, Browning asserts that “one result of this has been that when the Action Plan came to define the scope of the Northern Dimension, the United States and Canada were excluded,”<sup>68</sup> which means that they were not among the ND partner countries. Sergounin also suggests that fear of U.S. hegemony has precipitated reactions in which Canada, as well as the U.S., both of which have been discouraged from institutionalizing their presence within northern Europe, or within the EU northern dimensions, except on a case by case basis.<sup>69</sup>

Perhaps, however, the biggest challenge for Canadians with respect to the U.S. approach to a northern dimension is that they must respond to two very different sets of policies which structure the U.S. relationship with the North. One set is a shared AEPS program and Arctic Council in which both Canadians and Americans (the latter most particularly at the subnational level which includes the state of Alaska and various U.S. NGOs) have played an important role. Many Canadian and American institutions have also been central to the process or region-building, contributing to linkages between academic institutions and indigenous people’s fora, as well as exploring the possibilities for environmental cooperation and better health and education opportunities.

On the other hand, the formal role of the U.S., defined by Washington, and its goals in both e-PINE and the Arctic Council are clearly based upon a less cooperative note. At the state level, there is only a tenuous link between the promotion of civil society and human security beyond the context of environmental issues as far as the U.S. approach

to the North American circumpolar region is concerned. Indeed, there is no region, no geopolitical discourse which connects people and place outside of a fairly narrowly and empirically defined environmental agenda. State Department expertise consists of personnel previously assigned to border security and the Immigration and Naturalization Service (INS), and State Department interest with respect to the work of the Council is limited to concern with scientific, environmental, and technical issues which affect the state of Alaska. As such, Washington's failure to engage on the level of a circumpolar North has been criticised by Canadians and Europeans, but on the other hand, it has given Canada opportunity to navigate the Arctic Council to some extent freed from the confines of a formal and separate bilateral relationship with the U.S. on indigenous issues, particularly in the area of initiatives to strengthen the role of indigenous peoples in regional government. That includes Canadian support of, and cooperation with, transnational NGOs such as the Inuit Circumpolar Conference and the Inuit Tapirisat.

In a general sense, it would seem that the institutionalization of the northern dimension with the AEPS and the Arctic Council has placed Canada, as a state, in a position of leadership concerning northern issues and has resulted in the declining centrality of a U.S. strategic discourse within the region. The decreasing importance of U.S. strategic interests in a global north context is, of course, offset by the importance of Alaska as a regional subnational actor within the circumpolar region. It is here where Canada and the U.S. appear to have great potential to build linked approaches to environmental protection, delivery of improved health and education systems, economic development, and protection of traditional cultures and lifestyles. This new regionalism redefines, not only the relationship of north to south but, as we have seen, structures relations between the capitals and the northern peripheries of the eight Arctic states in ways which the military-based security or resource utilization approaches did not, or in the case of the contemporary U.S., do not.

Consequently, understanding of Canada's "northern dimension" in foreign policy and its relationship to U.S. circumpolar strategies cannot be understood without reference to this broader framework of Arctic international cooperation and new human security concerns. Canada-U.S. relations are framed by the context of a multinational circumpolar context and the framework of globalization. At the same time, however, Canadian foreign policy has its own set of objectives and emphases, which must be accommodated, not the least of which is the bilateral relationships with the U.S. The main question for Canadian

policy-makers is less a question of how multilateralism within Arctic cooperation will affect the equally important bilateral relationship with the U.S., but rather how to situate the bilateral Canada-U.S. relationship in the increasingly globalized and regionalized context of a circumpolar north and a new "North-South metaphor."

## Conclusions

In this paper we have seen that Canada's northern dimension, while developed within a Canadian foreign policy context, is well attuned to a broader, multilateral, or even globalized approach to the Arctic region. The northern dimension policy of Canada and that of the European Union, and to a lesser extent the U.S., are similar in the sense that their northern policies address what were previously state-centered specific national issues with more internationalized thinking about regional cooperation. All of these countries have a stake in recasting and internationalizing the geopolitical and territorial dimensions of the new circumpolar region; at the same time that they are required to translate such reterritorializations into state-centered rhetoric and practice. It is not, therefore, simply a problem of individual countries "fitting in" or "falling out" in terms of acceptable practice, but a problem of re-inventing region-building from the bottom up, with new alignments forming as NGOs and governmental organizations adapt. Seen in this way, conflict, contestation and negotiation are necessary parts of the region-building process, not an outcome. It is consistent with a new northern European focus on sustainable development within the Arctic and with the development of strengthened northern civil society.

As such, a northern dimension for Canada's foreign policy appears to make sense, both in relation to the emerging agenda of the EU, Arctic Eight, AEPS, and Arctic Council, and in relationship to bilateral relations with the U.S. Globalization within the Arctic offers new issues and new actors and new points of engagement, and offers, it would appear, a way forward towards a new, multicontextual, and potentially post-modern approach to the Arctic region. Moreover, the concept of Northern Dimension has emerged not only as a consortium of ideas relating the environment, defense foreign policy and traditional culture, but as a sort of metaphor for a new kind of North-South relations between the capitals and the northern peripheries of the eight Arctic countries. The North and its peoples have emerged as a space and population where special conditions prevailed. It is no longer a place in which generic foreign policy, developed in the South, can be applied

with impunity. Instead, the North has become a region in its own right. Moreover, a new geopolitics embracing and supporting the northern dimension has emerged, constituting a cooperative dialogue based upon the concept of sustainability, environment and, ultimately, regionalization. This discourse provides the foundations for new approaches to the Arctic and the circumpolar region in general. "Briefly stated, if globalization in the North means more integration into the larger world, then regionalization refers to integration geared to a different approach, one based on the point of view of the Northern Regions, which will entail wider and deeper cooperation within Northern regions as well as with external actors."<sup>70</sup>

Indeed, since the end of the cold war, Arctic geopolitical discourse increasingly includes a "northern dimension," or a northern oriented geopolitical discourse, which structures relations between the capitals and the northern peripheries of the eight Arctic states in ways which the military-based security or resource utilization approaches did not. It has made clear that there are deficiencies in regarding the North as a field for what used to be considered as "generic" southern initiatives, or southern solutions, to the ongoing economic underdevelopment of the region. In the area of health, education and the support of civil society, for example, made in the South solutions have proven instrumental in perpetuating dependency conditions within the North. The new geopolitics and the new metaphor of north and south within the Northern Hemisphere are increasingly prominent in foreign policy texts, and are based upon the idea that what is good for the South is not necessarily good for the North. The idea that the North might require not just domestic policies, but international policies in recognition of the transnational and highly recalcitrant nature of development issues, as well as the multilateral nature of environmental, cultural and social problems, has gained currency over the past decade. It has been expressed by the launch of the Arctic Environmental Protection Strategy (AEPS) and that of the Arctic Council and the development of the European Union's Northern Dimension in its various forms. It has also led to an increasing U.S. interest in what has been termed the "Northern European Initiative," and more recently, although not so directly-related, the U.S. "enhanced northern initiative" or "e-PINE."

The new "northern dimension" of Canada's foreign policy is also part of this more general trend to internationalization of Arctic initiatives. Although perhaps the most comprehensive in terms of its indigenous and internationalized approach, nonetheless, what all of these northern dimension agendas have in common is that they

have brought to the new northern geopolitical discourse, to different degrees, some basic points of agreement. These include the need for environmental protection, the importance of traditional cultures, and the need to support the development of vibrant civil societies among northern populations. Such new geopolitical discourses rely upon very new theoretical constructs which recognize alternatives to traditional "unified" or state-centred foreign policy discourses at the same time that they address specific internal or domestic concerns of constituent states. The northern dimension is thus an approach which regionalizes and organizes post-Westphalian ideas about international cooperation, in some cases using normative or state-centred discourse.

In terms of the big picture, then, a Northern Dimension that includes the Arctic and the North Atlantic and has keen relations with North America and Russia is an interesting cooperative context for the circumpolar North. As such, it would be interesting and useful to have a comparative study to search for common grounds and cooperative paths and to explore policy gaps among the different Northern Dimensions, as was, for example, discussed in the Symposium "Northern Dimensions – Expanding Circumpolar Cooperation."<sup>71</sup> Indeed, this paper makes a start in this area. It also suggests that it is important to strengthen circumpolar connections and transnational cooperation between Europe, North America and Russia, and that this is area in which Canada could potentially play a key role. That relates to the problem of finding ways to activate transatlantic contacts by launching a proposal for a linkage between the Northern Dimension policies (for example, dealing with the Canada-EU, U.S.-EU and Russia-EU summits). From the point of view of Canada and its indigenous peoples, these issues are timely and relevant and will give further opportunity to develop Canada's foreign policy in the near future. From a broader perspective, that suggests that there is a potential new way of understanding "North-South" relations which are less hemispheric and more contextual in nature.

## Notes

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- 2 M. Gorbachev. 1987. *The Speech of Mikhail Gorbachev in Murmansk*. Pravda, October 2.
- 3 AMAP Assessment 2002: Persistent Organic Pollutants in the Arctic. Oslo: AMAP, 2004.
- 4 Arctic Environmental Protection Strategy, Rovaniemi, Finland, 1991.
- 5 See various essays in *Northern Veche*, Proceedings of the Second NRF Open Meeting, Veliky Novgorod, Russia, September 19-22, 2002.
- 6 See, for example: Nicol, Heather. 1998. "Conclusions." In *Canada, the U.S. and Cuba: Helms Burton and Its Aftermath*. Kingston: Queen's University.
- 7 See: Rifkin, Jeremy. 2004. "Worlds apart on the vision thing." *The Globe and Mail*, 17 August, A15.
- 8 E.g. Young, O. 1985/1986. "The Age of the Arctic." *Foreign Policy* 61(Winter):160; Griffiths, F. 1988. "Introduction: The Arctic as an International Political Region." In *The Arctic Challenge: Nordic and Canadian Approaches to Security and Cooperation in an Emerging International Region*. Edited by K. Möttölä, 1-14. Boulder: Westview Press; Heininen, L., O-P. Jalonen, J. Käkönen. 1995. *Expanding the Northern Dimension*. Research Report No. 61, 13-18. Tampere Peace Research Institute; Keskitalo, E.C.H. 2004. *Negotiating the Arctic: The Construction of an International Region*. New York: Routledge.
- 9 See e.g. Arctic Pollution Issues: A State of the Arctic Environmental Report. 1997. Oslo: AMAP, 6-7.
- 10 Heininen, L. 2004. "Circumpolar international relations and geopolitics." In *Arctic Human Development Report*. Sustainable Development Working Group of the Arctic Council, November; see also Chaturvedi, S. 2000. "Arctic Geopolitics Then and Now." In *The Arctic: Environment, People, Policy*. Edited by M. Nuttall and T.V. Callaghan, 441-458. Amsterdam: Harwood Academic Publishers.
- 11 For more information see: Heininen, L. 2001. "Ideas and Outcomes: Finding a Concrete Form for the Northern Dimension Initiative." In *The Northern Dimension: Fuel for the EU?* Edited by H. Ojanen, 20-53. Kauhava.
- 12 See for example, the Government of Canada's 1996 Report of the Royal Commission on Aboriginal Peoples, Part II: "The Turning Point".
- 13 E.g. Shearer, D. 1997. "The NHL - Creating a Zone of Stability in Northern Europe." Remarks by the Honourable Derek Shearer at the Conference on Regional Integration, Helsinki, October 8; Talbott, S. "What's New—Towards a New Hansatic League? Strobe Talbott speaks at Stanford on the New Russia." September 19, 1997.
- 14 President Vladimir Putin proposed this kind of northern policy in the meeting of Russian Security Council in April 2004 in Salechard ("Putin Says Northern Regions Need 'Intelligent Long-term Policy.'" *ITAR-TASS News Agency*, 28 April, 2004).
- 15 "The Northern Dimension in European integration and European Cooperation: Russian position." In the Foreign Ministers' Conference on the Northern Dimension, Helsinki, November 11-12, 1999; Unofficial translation by I. Leshukov, "Can the Northern Dimension Break the Vicious Circle of Russia-EU Relations?" In *The Northern Dimension: Fuel for the EU?* Edited by H. Ojanen. Kauhava: Programme on the Northern Dimension of the CFSP, 12(2001): 118-141; Alekseyev 2001.
- 16 See: Heininen, Lassi. 2002. "The Northern Research Forum – A New Design for Open Dialogue in the North." In *Northern Veche*, Proceedings of the Second NRF Open Meeting, Veliky Novgorod, Russia, 19-22 September.
- 17 See: Keskitalo 2004.
- 18 "The European Union, The Second Northern Dimension Action Plan (2004-2006)." [http://europa.eu.int/external\\_relations/north\\_dim/ndap/ap2.htm](http://europa.eu.int/external_relations/north_dim/ndap/ap2.htm); see also: Myrjord, A. 2003. "Governance Beyond the Union: EU Boundaries in the Barents Euro-Arctic Region." *European Foreign Affairs Review* 8:239-257.
- 19 Tennberg, N. 2000. "Ympäristökysymysten hallinnat pohjoisilla alueilla." In *Avaamaton mahdollisuus - pohjoisen ulottuvuuden näköaloja*. Edited by Lassi Heininen, Jyrki Käkönen, Arto Nokkala ja Monica Tennberg, 103-117. Helsinki: LIKE.
- 20 The Northern Dimension was first recognized EU-wide at the Luxembourg European Council in December 1997. This initiative assumed a more tangible form when, in 1998, the Vienna European Council adopted a Commission Communication on a *Northern Dimension for the policies of the Union*, followed in 1999 by the European Council adoption of its *Guidelines for the implementation of the Northern Dimension*. Subsequently, in 1999, the Finnish EU Presidency held a Foreign Ministerial Conference on the Northern Dimension where an *Inventory of current activities under the Northern Dimension* was adopted. The Helsinki European Council in December that year, invited the Commission to prepare an Action Plan, and consequently, the Feira European Council in June 2000 adopted the *Action Plan for the*

- Northern Dimension in the external and cross-border policies of the European Union*, which is the key guide to the Northern Dimension.
- 21 European Union. 2003. "The Second Northern Dimension Action Plan (2004-2006)." [http://europa.eu.int/external\\_relations/north\\_dim/ndap/ap2.htm](http://europa.eu.int/external_relations/north_dim/ndap/ap2.htm).
  - 22 PHARE is one of the pre-accession instruments financed by the European Union. These are designed to assist the applicant countries of Central and Eastern Europe in their preparations for joining the European Union. See: <http://europa.eu.int/comm/enlargement/pas/phare/index.htm>.
  - 23 TACIS is an EU program which provides technical assistance to 12 EU countries of Eastern Europe and Central Asia. It aims to enhance the transition process in these countries. See: [http://europa.eu.int/comm/external\\_relations/ceeca/tacis/](http://europa.eu.int/comm/external_relations/ceeca/tacis/).
  - 24 INTERREG is an EU-funded programme, helping Europe's regions form partnerships to work together on common projects. The goal of INTERREG is more or less to encourage the sharing of knowledge and experience. The EU believes that these partnerships "enable the regions involved to develop new solutions to economic, social and environmental challenges." See: [http://www.interreg3c.net/sixcms/list.php?page=home\\_en](http://www.interreg3c.net/sixcms/list.php?page=home_en).
  - 25 European Union. 2003. "The Second Northern Dimension Action Plan (2004-2006)." [http://europa.eu.int/external\\_relations/north\\_dim/ndap/ap2.htm](http://europa.eu.int/external_relations/north_dim/ndap/ap2.htm).
  - 26 Ibid.
  - 27 Ibid
  - 28 Ibid.
  - 29 Heininen, L. 2001. "Ideas and Outcomes: Finding a Concrete Form for the Northern Dimension Initiative." In *The Northern Dimension: Fuel for the EU?* Edited by H. Ojanen, 20-53. Programme on the Northern Dimension of the CFSP. Kauhava: Ulkopoliittinen instituutti & Institut für Europäische Politik, Kauhava.
  - 30 This approach has become a useful model for implementation of other ND sectors like the St. Petersburg wastewater treatment plant and water supply and wastewater facilities in Syktyvkar and Arkhangelsk (Jumppanen 2003).
  - 31 E.g. Buras, Cichocki, Osca and Reiter 2001:17-18; see also Browning, C.S. and P. Joenniemi. 2003. "The European Union's Two Dimensions: The Eastern and the Northern." *Security Dialogue* 34(4, December): 463-478.
  - 32 MacDonald, A. 2004. "The EU's Northern Dimension and beyond: Expanding the boundaries." Presented at the symposium "Northern Dimensions – Expanding Circumpolar cooperation," 3-4 June, Brussels. See the Report in the Northern Research Forum, [www.nrf.is](http://www.nrf.is).
  - 33 Heininen, L. 2004. "Circumpolar international relations and geopolitics" (long version). Background paper for the chapter of the Arctic Human Development Report (May).
  - 34 E.g. Arctic Council Panel. 1991. "To Establish an International Arctic Council. A Framework Report." Prepared by F. Griffiths, R. Kuptana. Canadian Arctic Resources Committee, 14 May.
  - 35 Keskitalo 2004:62
  - 36 Ibid.
  - 37 See Morrison, William R. 1998. *True North, The Yukon and Northwest Territories*. Toronto: Oxford University Press. P. 7-9
  - 38 Keskitalos 2004:66.
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# *21st Century Diplomacy: Mapping and Understanding Trans-governmental Networks in Canada–U.S. Relations*

Nadia Karina Ponce Morales and John Higginbotham

Classic diplomacy assumes that sovereign states control international relations. All foreign—policy-related activities should be overseen by a central government department, the “foreign ministry”. No government department or agency nor sub national entity operates outside territorial or sectoral boundaries. However, when looking at the relationships taking place across the Canada-U.S. border, these assumptions do not apply in the real world.

Canada-U.S. relations have always been driven by a complex set of systems and coalitions that crisscross boundaries, whether through transactions among businesses, cross-border environmental and labour association, or cultural and personal ties. Interaction between governments is equally complex, given that the federal government holds the primary responsibility for setting Canada’s foreign policy; the provincial and territorial governments are increasingly undertaking international activities (and their role in implementing international commitments undertaken at the federal level); and municipalities have increased their efforts in promoting trade and investment.

However, facing a growing participation of non-state actors, financial and trade globalization and the emergence of new information and communication technologies, dip-

lomatic relations between both nations have become even more disaggregated in the twenty-first century. Governments have adapted the management of their foreign policies and the means through which they implement them, and while not disappearing, the central role of government in diplomacy is being divided into more and more separate and functionally distinct parts.

The purpose of this discussion is to address in the first place, the changing nature of diplomacy and discuss the role of networks in the conduct of public policy in the international realm. In the second section of this paper, empirical research on functional linkages at all levels in the conduct of Canada-U.S. relations, will show how a new “network” approach has characterized the activities of government entities, some well beyond the purview of the international sections of domestic departments. At the end of this paper, some suggestions are provided for enhancing and better supporting these networks.

## **New Approaches to Diplomacy: Policy Networks**

Research has documented extensively the emergence of transnational actors and their meaningful role in international governance. Obvious consequences of global-

ization on sovereignty and governance are often discussed, as governments no longer have monopoly of a legitimate power over their territory; they share such power with markets, international organizations, and non-governmental associations. Some authors have sought to explain the impact of internationalization in the role of the states, and the transformation of government into governance. As Keohane and Nye have said, “governance need not necessarily be conducted exclusively by governments and the international organizations to which they delegate authority. Private firms, associations of firms, nongovernmental organizations (NGOs), and associations of NGOs all engage in it, often in association with governmental bodies, to create governance; sometimes without governmental authority.”<sup>1</sup>

Various scholars have discussed the rise of international governance and global networks of non-state actors.<sup>2</sup> New players have emerged, each with different allegiances, expertise and international reach. At the same time that these new actors add complexity to the international stage, there is an increased tendency for governments to work through intergovernmental networks, that is, through non-institutionalized relationships between government officials. Following Keohane and Milner, internationalization has affected the opportunities and constraints that social and economic actors face to best achieve their fundamental goals.<sup>3</sup> Internationalization modifies the aggregate welfare of countries, as well as the constraints and opportunities faced by governments, as it modifies their sensitivity to external changes. Internationalization alters the nature of the policy-making process, as changes are expected in economic policies and in political institutions.<sup>4</sup>

Scholars have attributed these shifts in part to a change in the structure of organizations: from centralized compulsion to voluntary association, from hierarchies to networks.<sup>5</sup> Such networks can be defined in terms of interdependent and relative stable relationships embracing a variety of actors who share common policy goals and who exchange resources in the pursuit of these goals.<sup>6</sup> An underlying driver of the changes has been the information technology revolution, which has significantly expanded communication, consultation and coordination capacity among members of networks.<sup>7</sup> This has led to the attenuation of traditional authority; while far from disappearing, governments are disaggregating more and more into separate and functionally distinct parts where hierarchies and networks co-exist, sometimes uneasily. According to one noted scholar, “these parts—courts, regulatory agencies, executives, and even legislatures—are networking with

their counterparts abroad, creating a dense web of relations that constitutes a new, transgovernmental order.”<sup>8</sup>

In terms of policy development and implementation, these networks become even more relevant as they exchange information on a regular basis, cooperate on enforcement issues, collect and share best practices, and ultimately coordinate policies.<sup>9</sup> They can be a means to build trust and establish long-term relationships among their participants—a key aspect of long-term cooperation. Being often composed by a diverse membership and being characterized by a non-hierarchical organization, networks have the potential for promoting collaboration and learning and accelerate the acquisition and exchange of knowledge.<sup>10</sup>

Academic literature has studied the emergence of networks related to issue-specific areas, but only a few scholars have started to analyze the role of transgovernmental networks as part of larger transnational networks. Haas showed how a network of knowledge-based experts or groups with an authoritative claim to policy-relevant knowledge within the domain of their expertise constitutes an “epistemic community.”<sup>11</sup> With the end of the cold war, many authors claimed the emergence of a new world order, characterized by complex, global governance, relying on networks. As Gerry Stoker has identified in his survey of this literature, governance is about autonomous self-governing networks of actors, and is concerned with settling the conditions for collective action.<sup>12</sup>

Later on, with the development of the literature of integration in the European Union, some scholars addressed how networks provide additional, informal linkages between the inter- and intraorganizational decision-making arenas; such linkages improve communication and trust in order to reconcile interests (bargain) or solve a specific policy problem. Policy networks, in the case of the European Union, have created a basis for common knowledge, experience and normative orientation and have the ultimate benefit of counterbalancing power asymmetries by “providing additional channels of influence beyond the formal structures.”<sup>13</sup>

The possibility of coping with power and resource asymmetries explains the importance for practitioners in the public policy area to understand transgovernmental networks. Understanding how the bureaucratic relations take place within and beyond state borders is key in an international and domestic context where hierarchy is ceding its place to horizontal collaboration and networking among federal and subnational governments, corporations and nongovernmental organizations. As Anne-Marie Slaughter says it, “as the line between national and inter-

national affairs blurs, national officials find that they need to negotiate across borders to do business they could once accomplish solely at home.”<sup>14</sup>

### ***Policy Networks in Canada***

But the external environment is not the only realm that is subject to change. Many studies in Canada have also examined how governments are adjusting internally to address the challenge of “intermesticity,” or the overlap and integration of domestic and international issues. Increasingly, both domestic and international departments are adapting themselves to fulfill their mandates in an environment characterized by a fine line between internal and external areas of activity. As the Report from the International Policy Framework Task Force has stated, Canada’s domestic departments are going global. For most of them, their international spending has increased over the last few years, as well as their activities abroad. For example, that report states that Health, Environment, Agriculture, Transport and Heritage almost quadrupled their international budgets between 1993 and 2003.<sup>15</sup>

Following the Task Force, the international involvement of Canada’s domestic departments can be explained not only by the formal dimension of their mandates (consider, for example, the borderless nature of environment protection and conservation), but also by the opportunities offered by international activities (for example, best practices sharing) and by the threats posed by the international environment (for example, the spread of diseases across borders).

In a knowledge era, where technological innovation grows faster than ever before, technical expertise has become more important in the conduct of foreign relations, which cannot reside within a single ministry. Consequently, as the Canada School’s research on Canada-U.S. relations states, many “domestic” departments participate frequently in international institutions and in the development and negotiation of bilateral or multilateral rules. Moreover, these departments have also frequently acquired in-house trade policy and trade development expertise.<sup>16</sup> Most of them have established international bureaus or divisions to manage or co-ordinate a growing portfolio of international activities. Actual specialists dealing with international issues are thus, scattered throughout these departments.

At the same time, Canada’s international departments have adapted to develop closer linkages with traditionally domestic issues. Foreign policy has become decentralized within governments (from foreign ministries to

sectoral departments) and between governments (from the national to subnational governments), thereby widening the circle of international affairs participants. This trend has made foreign policy-making more complex and has called for the need to consult more widely with other government departments, with provinces and non-governmental actors, which are seen as “new foreign policy stakeholders.”<sup>17</sup>

And this obviously applies to Canada’s most important international relation, the United States. Lacking an Europe-like institutionalized relation, an extraordinary range of bureaucratic relations between both countries constitute an essential mechanism for problem solving, bargaining, and conflict resolution, even in times of tensions at the political levels. The Canada School Roundtable’s research has confirmed that an extraordinary range of functional linkages takes place at all levels and in most areas in the conduct of Canada-U.S. relations, some even beyond the responsibility of the international sections of domestic departments. It would be fair to say that the expanse of bilateral activities between Canadian and U.S. officials is so pervasive that it is virtually impossible to accurately quantify all bilateral activities on a government-wide level.

In a modest, but highly relevant effort to map and understand these linkages, the Roundtable has produced a compendium document that provides a representative sampling of the key channels of co-operation between the Canadian and U.S. federal governments as well as between provincial/territorial and state governments. The following section of this paper presents some meaningful examples of the way important policy sectors are handled through informal, decentralized, non-hierarchical networks of officials from different levels of the federal, state and provincial bureaucracy.

### ***Mapping and Understanding Trans-governmental Networks in Canada-U.S. Relations***

Canada-U.S. relations have always been driven by a complex set of interactions among state and non-state actors. Indeed, the interconnected nature of both economies and societies has meant that decisions made in one country often have important ramifications in the other. In exploring the management of Canada-U.S. relations, we focused on better understanding the bilateral networks of governmental officials. In particular, we examined the interaction between Canadian and U.S. public servants and legislators in federal, provincial, territorial and state governments across a range of cross-border sectoral issues.

The key finding in the School's research is that the unique strength of Canada-U.S. relations resides primarily in the person-to-person linkages between officials. The bulk of contact now takes place "beneath the surface" of formal diplomatic arrangements through highly specialized and functional channels (e.g., regulators, scientists, intelligence analysts, etc.). Interaction is largely expert- and issue-driven, led primarily by sectoral departments rather than central or co-ordinating agencies in the federal or sub-national governments. Cooperation generally transcends departmental/agency boundaries domestically and across borders.

These functional channels are the collaborative core of the relation, as their members often gather in the same fora, belong to the same professional associations, and deal with the same files. Officials from both sides of the border deal with policy questions that often cannot be resolved by their organizations working alone within and outside their own administration, either because of its borderless nature or because of its political implications. As some practitioners have expressed, sectoral experts share more similar views with their colleagues across the border than with most of their national peers working in different areas. Through their interactions, officials from both governments have a means for bridging knowledge gaps, to ease sensitivities, and ultimately provide early warning systems that can help prevent controversial issues to escalate into conflict.

These person-to-person linkages take place not only between technical and professional specialists, but also between line managers and senior officials, including ministers. Legislators also meet constantly with their counterparts at the other side of the borders. Practitioners often highlight the degree of informality of these relationships, that is, the use of non-institutionalized means to resolve common problems, undertake joint operations and share information. Bilateral contacts are said to be richer and more immediately productive than with officials from almost all governments. At the multilateral level, practitioners also noted that in most cases, the degree of formality has an indirect relationship with the effectiveness of the channels used. Frequently, informal settings allow for reliability among officials, and even for increased representativeness, as institution-free environments allow for sharing views with their colleagues on an equal standing.<sup>18</sup> Borrowing Putnam's concept, probably no other bilateral relationship has such a comprehensive degree of social capital—defined as the benefits that flow from the trust, reciprocity, information, and cooperation associated with social networks.<sup>19</sup>

Transgovernmental relations between Canadian and U.S. officials are run through a combination of rules, customary practice and mutual trust. During our research, we found many examples of well-established trust relationships between public officials at both sides of the border. For example, in April 1997, Canada and the U.S. established a bilateral consultative mechanism, the Cross-Border Crime Forum, to address cross-border crime issues. The Forum, led by the Solicitor General of Canada and the Attorney General of the United States, brings together over 100 senior law enforcement and justice officials from Canada and the U.S. to resolve obstacles, primarily with regard to policy, regulations, and legislation, faced by policy, justice and law enforcement officials in the fight against transnational crime.<sup>20</sup> Action Plans are approved at annual Forum meetings and bi-national sub-groups work through the year on deliverables.

As in the case of many networks, most of the activities of the Forum consist on exchange and enhancement of information and in the discovery of best practices, technological and operational innovations. They fuel the sub-groups that are tasked with policy development. Capital to the success of such initiatives is a certain degree of political support. In the case of the Cross Border Crime Forum, the Solicitor General and the Attorney General are active participants. Their presence guarantees that when action plans are blessed, there is high-level political pressure to deliver. This top-down leadership from the politicians is complemented by grassroots input from front line law enforcement officers. At the same time, local law enforcement officers are invited to the Forum to bring operational challenges forward to senior policy makers. This wide and diverse participation leads to holistic solutions to difficult problems, such as the implementation of the Canada-U.S. Action Plan on Mass Marketing Fraud and the execution of a joint Action Plan on Firearms Trafficking.

Intergovernmental cooperation is key not only to resolve difficult issues, but also in times of crisis. For instance, following the September 11<sup>th</sup>, 2001 terrorist attacks, Transport Canada (TC) and other Canadian federal departments had to work quickly and decisively in cooperation with the U.S. to ensure the safety and security of both countries' civil aviation systems, as well as to deal with the crisis at hand and minimize possible further damage.<sup>21</sup> Both Canada and the U.S. decided to shut down their respective air spaces by ensuring that aircraft landed as quickly as possible in an orderly fashion, and not allow any aircraft to take off. TC's Situation Centre became the hub of our country's response. In this time of crisis, there were formal and informal cooperation mechanisms

that existed between Canada and the U.S., allowing the two countries to work efficiently and effectively with one another to secure North American air space and handle the thousands of displaced planes and passengers. Telephone links were established with key staff in the Federal Aviation Administration (FAA) in the U.S.

In order to manage in a safe and secure manner the return to “normal” aviation operations, TC had to design and implement new aviation security policies. TC’s policy experts had to work in collaboration with the U.S. to ensure that Canada’s new policies would be compatible with the corresponding new regulations being developed by American Aviation Security authorities. This was accomplished within two weeks following the attacks. Given the intensity of traffic between Canada and the U.S., and the fact that the U.S. had been the target of the attacks, close and fast coordination with that country was essential. According to practitioners, without the strong formal and informal links that exist between Canada and the U.S., the process of developing security regulations would have taken much longer.

This kind of collaboration allows practitioners to surmount asymmetries, not only related to influence, resources and power, but also those related to systemic issues. In many occasions, this quiet, below-the-radar cooperation leads to successful policy development and implementation. However, as these networks still operate within government systems, political and senior management leadership is required to ensure that these networks are vitalized, coordinated and can sustain the higher voltages of crisis management or institutionalization as circumstances determine. Consider for example the case of the Smart Border process, which would have probably not been as successful as it was without the remarkable quality of relations at the highest level, between the Prime Minister and President and between Canadian Ministers and U.S. Cabinet Secretaries. While much of the contents of the Smart Border Accord were conceived back in 1995 following the Shared Border Accord between Canada and the U.S., its implementation was achieved only when strong joint leadership from John Manley and Tom Ridge followed the September 11<sup>th</sup> crises.

Another aspect that continues to be highly relevant for the success of the activities of these networks is the role of the coordinators of the relationship. Even if foreign ministries must now share an increasingly crowded international stage with other participants, they still have a fundamental role to play. Brian Hocking has coined the term “catalytic” diplomacy, to show how a range of actors has the capacity to contribute resources to the management

of complex problems, whether such resources assume the form and knowledge and financial resources or even the legitimacy of outcomes.<sup>22</sup> According to him, diplomats are increasingly becoming “boundary-spanners,” and their role as mediators remains essential in an environment where boundaries are less and less fixed and permanent. The role of the foreign ministers and of diplomats is being transformed from the assertion of control over policy process to the facilitation of information flows. They share the management of complex issues with a variety of other government departments and with non-state actors.

However, the multiplicity of international actors raises new challenges of co-ordination. Most experts in Canada-U.S. relations believe no government can “manage” the relationship with the U.S. Most experts of the relationship believe that over-management of the relationship would be undesirable, since it would reduce the flexibility of existing arrangements.<sup>23</sup> Nonetheless, there is still a need to provide some co-ordination and guidance to the increasing number of government and non-government players.

At present, in Canada, there are a number of key co-ordinators of the relationship at the federal level. It is vital that practitioners of the relationship be aware of these individuals and organizations.

### ***Principal Co-ordinators of the Bilateral Relationship***

*Prime Minister’s Office (PMO) and Privy Council Office (PCO)*

- The priority of the U.S. relationship has demanded that most critical and sensitive issues be managed by the Prime Minister (rather than the Foreign Minister).
- The Prime Minister is supported within PCO by a Foreign Policy Advisor, who communicates directly with representatives from the Embassy of the United States or senior officials in the White House administration.
- The Foreign Policy Advisor also helps co-ordinate interaction between senior Ministers also dealing with Canada-U.S. issues (e.g., the Minister of Foreign Affairs, the Minister of International Trade and the Minister of National Defence).
- The National Security Advisor within PCO also plays an important role advising the Prime Minister on bilateral security issues.
- In December 2003, a new Cabinet Committee on Canada-U.S. Relations, chaired by the Prime Minister,

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was established to ensure an integrated, government-wide approach to Canada-U.S. issues.

*Foreign Affairs Canada and International Trade Canada  
– Headquarters*

- The North American Bureau at the Department of Foreign Affairs (Headquarters) helps co-ordinate various foreign policy actors, including diplomatic missions in the U.S. and Mexico, as well as other Canadian departments and agencies. Three of four divisions are dedicated to the U.S. (U.S. Relations Division, U.S. Transboundary Division, and U.S. Business Development Division).
- Other branches play key roles in co-ordinating relations with U.S. counterparts, especially trade policy and international security branches.

*Canadian Missions in the United States*

- The Canadian Embassy in the United States plays a critical role in gaining political intelligence in Washington and an advocacy role by asserting Canadian interests. It works closely with federal government sectoral departments on U.S. issues. Several sectoral departments and agencies have staff seconded to the Embassy (e.g., Canadian Security Intelligence Service, National Defence, RCMP, Public Works and Government Services, Citizenship and Immigration).
- Canada's Ambassador to the United States serves as the visible face of Canada in Washington. The Ambassador typically must be seen to be plugged into decision-making back in Canada.
- Under the Enhanced Representation Initiative (ERI), Canada's representation will be expanded from 15 to 22 offices by the fall of 2004. In addition to the Embassy, these will include 13 consulates general (Atlanta, Boston, Buffalo, Chicago, Dallas, Denver, Detroit, Los Angeles, Miami, Minneapolis, New York, San Francisco, Seattle) and eight consulates and trade offices (Anchorage, Houston, Philadelphia, Phoenix, Princeton, Raleigh, San Diego, San Jose). There are plans to establish Honorary Consuls in key U.S. cities where Canada has no formal office. The ERI will also foster consultation with provincial governments and other federal departments to define priorities for these missions.
- The Canadian Embassy has also established a public advocacy and legislative secretariat (to be operational in the fall of 2004) that will work

with provinces and territories and Parliamentarians to plan and support new outreach activities directed at members of the U.S. Congress.

*International bureaus within sectoral departments*

- Most medium and large federal departments (along with some provincial departments) have created international sections, usually within the corporate or strategic policy sectors.
- Many of these domestic-oriented departments have acquired in-house trade policy and trade development expertise. Many have also developed strategic frameworks to set priorities for their international activities.

*North American Free Trade Agreement (NAFTA)*

- NAFTA (and the World Trade Organization) governs trade relations between Canada and the U.S.
- Political direction for NAFTA is provided by Ministers through the NAFTA Commission. NAFTA Deputy Ministers of Trade meet twice annually to provide high-level oversight of the over 30 NAFTA Working Groups, Committees and subsidiary bodies to ensure effective implementation and administration of NAFTA.
- The NAFTA Secretariat, comprising the Canadian, U.S. and Mexican sections, is responsible for the administration of the dispute settlement provisions of the Agreement.
- A number of institutions were also established under the agreement to enhance cross-border co-operation on sectoral issues (e.g., the Commission for Environmental Co-operation, the Commission for Labour Co-operation).

*Specialized bilateral institutions with investigatory or quasi-judicative function*

- Several bilateral organizations of a more or less supranational character have been established, many of which were originally created to resolve disputes over contentious resource management issues. These organizations include the International Joint Commission (1912), the Pacific Halibut Commission (1923), the International Boundary Commission (1925), the Great Lakes Fisheries Commission (1955), and the Pacific Salmon Commission (1985).

*U.S. Government*

- The White House plays a strong, though intermittent, role in co-ordinating executive departments and key agencies on Canada-related issues; it is generally acknowledged that the influence and goodwill of the President is an asset of immense value to a foreign power. The Homeland Security Advisor within the White House is playing an increasingly important role in Canada-U.S. security issues.
- The State Department presently co-ordinates Canadian affairs through one of its six regional bureaus (Western Hemisphere Affairs). Similar to the Government of Canada, however, most functional linkages form largely through departments and agencies with direct Canadian counterparts.
- The U.S. Embassy in Ottawa provides critical intelligence to the State Department on Canadian affairs. It also frequently works with Canadian departments and agencies seeking guidance in dealing with U.S. counterparts. Personnel from 15 other (i.e., non-State Department) government agencies are posted to the Embassy.
- The U.S. government maintains seven Consulates General across Canada (Vancouver, Calgary, Winnipeg, Toronto, Montréal, Québec, and Halifax).

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***The Subnational Dimension***

A systemic issue that is particularly relevant in the management of the relation is the role the states and provinces play to protect and enhance the interests of their constituencies. As Earl Fry points out, Canadian provinces and territories may be the most internationally active of all sub-national governments in the world.<sup>24</sup> Geography provides the key explanation for cooperation with U.S. states on matters such as law-enforcement, waterways, power and road infrastructures.

Provincial involvement in foreign affairs arises in part from constitutional silence on this issue. Sections 91 and 92 of the *Constitution Act*, the provisions enumerating the division of powers, did not explicitly assign competence in foreign affairs to either the federal or provincial governments. In the absence of any constitutional prohibition against international activity, Canada's provincial governments have sought to project and protect their interests beyond their borders. In general, provincial and territorial governments have long been actively engaged in "foreign

affairs," through efforts aimed at economic development (such as trade missions) or sectoral collaboration with foreign governments (such as waterways management with a neighbouring state).

In their relations with U.S. counterparts, provincial and territorial governments are typically structured in a fashion similar to the federal government, though on a smaller scale. Line departments and agencies lead the vast majority of interaction with U.S. state governments on sectoral issues. They participate in regional organizations that can be issue-specific or umbrella organizations that provide fora for information exchange. Contact can also take place bilaterally for specific issues. For the most part, these consultations are conducted in concert with the Canadian federal government.

In general terms, it is possible to assert that provinces, territories and states' functional ties remain highly decentralized within each provincial and territorial government. The clearest example is the government of Ontario, which has inventoried 125 MOUs with the U.S. government; such agreements are implemented by line departments. Some Deputy Ministers maintain ongoing contact with U.S. counterparts, particularly those Great Lakes states. The same applies to lower level officials with responsibility on U.S. files. Some of them establish ad-hoc contact (at conferences; on a one-off basis in the context of a particular issue; etc.).

This province illustrates well the fact that Canada-U.S. subnational linkages occurs among working-level public servants. For the most part, these functional ties remain highly decentralized within each provincial and territorial government. Limited co-ordination takes place within the Premier's office and quite often within the intergovernmental affairs ministry or agency. The most robust co-ordination takes place in Québec through the Ministry of International Relations. Table 1 (next page) provides a snapshot of each government's co-ordinating agency, along with a short description of its responsibilities.

Although the research of the Roundtable did not specifically examine the nature of cross-border collaboration at the local or municipal area, it is clear that such contact occurs through numerous channels. This includes contact through twinning arrangements, trade promotion activities, and professional conferences (e.g., for land use planners or municipal administrators). In addition, more formal bi-national institutions have been created at the local level to address regionally specific issues, such as tourism or the environment. One of the more prominent institutions is the International Association of Great Lakes and St. Lawrence Mayors, which meets annually to adopt

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**Table 1. Provincial and Territorial Co-ordination of International Activities**

Province/ Territory	Ministry/Agency Responsible for Canada-U.S. or International Affairs	Responsibilities
British Columbia	Ministry of State for Intergovernmental Relations supported by the Intergovernmental Relations Secretariat	A small staff works with line departments to provide strategic and policy advice on international activities.
Alberta	Department of International and Intergovernmental Relations	Two sections deal extensively with international issues (international relations and trade policy). The line department of Economic Development manages Alberta's representatives abroad. Alberta may open up an Alberta office within the Canadian Embassy in Washington.
Saskatch-ewan	Ministry of Governmental Relations and Aboriginal Affairs with the Assistant Deputy Minister as contact for trade and international relations	The small international relations branch has a general co-ordinating function, along with responsibility for U.S. files.
Manitoba	The Premier is Minister of Federal-Provincial Relations supported by the Deputy Minister of Federal-Provincial Relations	Responsibilities cover trade policy, trade promotion and ministerial travel. Office helps co-ordinate line departments' international activities.
Ontario	Office of International Relations and Protocol, within the Ministry of Intergovernmental Affairs. The Premier serves as Minister.	The Office lightly co-ordinates international activities, most of which are discharged by line ministries. Ontario maintains an official at the Canadian Consulate General in New York City (reporting to the Ministry of Economic Development and Trade)
Québec	Ministry of International Relations	The Ministry has geographical and functional bureaus, along with legal and public affairs sections. It maintains one délégation générale (New York), three délégations (Boston, Chicago and Los Angeles), two bureaux (Atlanta and Miami) and a bureau de tourisme in Washington, DC. Approximately 70 staff are dedicated to U.S. issues at headquarters and in the U.S.
New Brunswick	The Premier serves as Minister of Intergovernmental Affairs with the Department of Intergovernmental Affairs covering international affairs.	The Premier helps co-ordinate international issues with line departments. Business New Brunswick is the government agency tasked with trade policy, export promotion, investment attraction and immigration.
Nova Scotia	The Premier serves as Minister of Intergovernmental Affairs with the Deputy Minister responsible for FPT and international issues	Two directorates deal extensively with international issues, including Premiers/Governors meetings, interaction with the Canadian Embassy in Washington and Boston consulate, and trade policy.
Prince Edward Island	The Premier serves as Minister of Intergovernmental Affairs. The Intergovernmental Affairs Co-ordinator works out of Executive Council Office and deals with FPT issues	A small staff supports the New England Governors and Eastern Canadian Premiers as well as the Premier's involvement in Team Canada Atlantic. It works closely with line departments on international issues
Newfoundland and Labrador	Minister of Intergovernmental Affairs; supported by the Intergovernmental Affairs Secretariat with the Assistant Deputy Minister designated as contact for international issues	Sectoral departments and agencies usually co-ordinate U.S. relations. Intergovernmental Affairs often helps in developing necessary briefing materials.
Yukon	Executive Council Office including a Director of Intergovernmental Affairs	The Office provides some co-ordination of departmental interaction with U.S. officials. The bulk of Yukon-Alaska linkages are handled directly by sectoral departments and agencies.
Northwest Territories	Department of the Executive as well as Intergovernmental Affairs and Strategic Planning	NWT has few formal relations with the U.S. These are handled directly at the departmental level.
Nunavut	The Premier serves as Minister of Intergovernmental Affairs, supported by Department of the Executive and Intergovernmental Affairs	Nunavut has few formal relations with the U.S. These are handled directly at the departmental level. A small staff works with line departments to provide strategic and policy advice on international activities.

unified positions and make recommendations concerning water levels, transportation, commercial development, dredging, waterfront development, water quality, tourism and other topics.

### ***Intergovernmental Collaboration on Canada-U.S. Issues***

Federal-provincial-territorial collaboration on bilateral issues is extensive. This stems largely from areas of concurrent jurisdiction (agriculture and immigration) as well as overlapping responsibilities (such as the environment, natural resources, policing, and transportation). Consultation and collaboration on these functional issues are often co-ordinated by intergovernmental units in specialist line departments, particularly at the federal level.

Another important driver of intergovernmental collaboration is international trade policy. Although the negotiation of trade agreements and treaties falls under federal jurisdiction, provincial governments are often called upon to implement agreements, particularly when elements of these agreements come under their authority. As such, federal-provincial consultation now occurs before and during the formulation of trade policy. Examples of consultation include annual meetings between the Minister of International Trade and his provincial and territorial counterparts as well as quarterly meetings of the working-level Federal-Provincial-Territorial Committee on Trade (C-Trade).

Several innovative and highly effective intergovernmental groupings bring together federal, provincial and U.S. officials. A mechanism often cited by practitioners as an example of high-quality tripartite collaboration is the Provinces/States Advisory Group on Agricultural issues. Established in the mid 1990s, PSAG is mandated as an advisory forum to the federal Canada-U.S. Consultative Committee on Agriculture. Canadian participants include provincial departments of agriculture along with Agriculture and Agri-Food Canada and Foreign Affairs. U.S. representatives include the heads of the state departments of agriculture. PSAG meets annually as well as on an ad hoc basis to respond to pressing agricultural trade issues.

### **Concluding Remarks: Implications and Further Research**

In summary, the bulk of governmental interaction between Canada and the U.S. occurs through highly specialized and functional channels that have evolved over decades. For the most part, these channels operate “under

the radar,” supporting the work of Ministers but receiving limited public visibility. Working through these channels, be they on regulatory co-operation or joint scientific assessments, can help defuse conflictive issues before they reach policy or political levels. When properly employed, they also do the spadework for higher level initiatives.

Despite the myriad points of contact and the over 300 treaties in force, the Canada-U.S. relationship is a largely non-institutionalized one at the supranational level, particularly relative to the European Union. However, “light” institutions and agreements, such as working groups and memoranda of understanding, play an important role in facilitating collaboration and contact. This is important given regular changes in personnel, especially following new U.S. administrations. Moreover, these institutions are very effective in bringing attention to Canadian issues within the diffuse and dynamic nature of the U.S. political environment.

This initiative has paved the way for interesting future research. From an analytical point of view, the meshing of international relations and public administration needed to analyze the bureaucratic relations between Canada and the U.S. needs further refinement. As our research is still at the factual phase, some typology of the different channels and networks can offer not only a very interesting exercise for scholars, but can cast some light for examining which channels work best and in which conditions.

From the point of view of practitioners, questions related to how these networks should be supported and promoted, to how trust replaces authority, to how decisions are achieved, and to how knowledge and information could be better shared with peers domestically and across the border should be further explored. A deeper analysis on possible causes of failure of networks and channels is also necessary. Additional case studies’ analysis could show how in certain cases, these networks fail to articulate a clear purpose, maintain participation and involvement of their members and at the end of the day, achieve the purposes for which the network was created.

However, through our research, we can make a series of recommendations for strengthening the fundamentals of the relationship that is, by understanding and exploiting the linkages that mediate transboundary relations. Such a flexible approach allows for moving issues forward, even in times where the relationships at the highest political level are tense, or even in times of crisis. This implies developing a deeper knowledge of our systems in Canada and the U.S., examining carefully in which areas these linkages can be reinforced and supporting joint initiatives for improving mutual knowledge and information shar-

ing. In Canada, it is also fundamental to give increased and sustained attention to maximizing federal-provincial collaboration on bilateral issues. Linked to this is the importance of resolving issues at the regional level before they escalate nationally. Identifying and resolving conflicts regionally are far more effective than letting them escalate to the national level, where the diffusion of interests marginalizes Canada's voice in the U.S.

## Notes

- 1 Keohane, Robert O. and Joseph S. Nye Jr. 2000. "Globalization: What's new? What's Not? (And So What ?)." *Foreign Policy* 118 (spring):104-119.
- 2 See for example, Keck, Margaret E. and Kathryn Sikkink. 1998. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca: Cornell University Press. p. 227.
- 3 Milner, Helen and Robert Keohane, eds. 1996. *Internationalization and Domestic Politics*. Cambridge: Cambridge University Press. p. 4.
- 4 Possible changes include the liberalization of foreign trade and investment policies, the deregulation of domestic markets, shifts in fiscal and monetary policy, and changes in the institutions designed to affect these policies. Milner, Helen V. and Robert O. Keohane. 1996. "Internationalization and Domestic Politics: an introduction." In *Internationalization and Domestic Politics*. Edited by Helen Milner and Robert Keohane. Cambridge: Cambridge University Press. p. 3
- 5 Mathews, Jessica T. 1997. "Power Shift." *Foreign Affairs* 76(1, January/February).
- 6 Wolfgang H. Reinecke has developed these ideas under the concept of "global public policy networks." See Reinecke, W.H. 1998. *Global Public Policy: Governing without Government?* Washington DC: Brookings Institution.
- 7 Other authors have claimed that intergovernmental cooperation across organizational boundaries can be attributed to the arrival of the welfare state, for it has brought on increased intergovernmentalization of policies and programs and the corresponding need to manage across government jurisdictional boundaries. See Agranoff, Robert. 2001. "Managing Within the Matrix: Do Collaborative Intergovernmental Relations Exist?" *Publius: The Journal of Federalism* 31(2):31-56.
- 8 Slaughter, Anne-Marie. 1997. "The Real New World Order." *Foreign Affairs* 76(5):184.
- 9 Slaughter, Anne Marie. 2004. *A New World Order*. Princeton and Oxford: Princeton University Press. p. 3.
- 10 Reinecke 1998.
- 11 Members of an epistemic community hold a common set of causal beliefs and share notions of validity based on internally defined criteria for evaluation, common policy projects, and shared normative commitment. Haas, Peter. 1992. "Introduction: Epistemic Communities and International Policy Coordination." *International Organization* 46:3.
- 12 Stoker, Gerry. 1998. "Governance as Theory: Five Propositions." *International Social Science Journal* 155.
- 13 Benz, Arthur, Fritz W. Scharpf, and Reinhard Zintl, eds. 1992. *Horizontale Politikverflechtung. Zur Theorie von Verhandlungssystemen*. Frankfurt/New York: Campus. Quoted in Tanja Börzel, Tanja. 1997. "What's so Special About Policy Networks? An Exploration of the Concept and Its Usefulness in Studying European Governance." *European Integration Online Papers* 1(16). [www.eiop.or.at/eiop/texte/1997-016a.htm](http://www.eiop.or.at/eiop/texte/1997-016a.htm).
- 14 Slaughter 2004:45.
- 15 International Policy Framework Task Force. 2003. *Toward an International Policy Framework for the 21st Century*. Ottawa: Privy Council Office.
- 16 Heynen, Jeffrey and John Higginbotham. 2004. *Advancing Canada's Interests in the United States. A Practitioner's Guide for Canadian Public Servants*. Report of the Canada School of Public Service Action-Research Roundtable on Managing Canada-U.S. Relations. Chaired by Louis Ranger. Ottawa: Canada School of Public Service.
- 17 *International Policy Framework* 2003:17.
- 18 Early studies have pointed at similar conclusions. Chisholm explains that "where formal arrangements are absent, insufficient or inappropriate for providing requisite coordination informal adaptations develop to satisfy that need." Chisholm, Donald. 1998. *Coordination Without Hierarchy: Informal Structures in Multio-rganizational Systems*. Berkeley: University of California Press. p. 17
- 19 Putnam, Robert D. 2000. *Bowling Alone: The Collapse and Revival of American Community*. New York: Simon & Schuster.
- 20 Participants in the Forum include provincial, state, and local partners as well as the Royal Canadian Mounted Police, Citizenship and Immigration Canada, Canada Revenue Agency, Canada Border Services Agency, Foreign Affairs Canada, Public Safety and Emergency

- Preparedness Canada, Justice Canada, Health Canada, and from the U.S., the Department of Justice, Department of Homeland Security, the FBI, DEA, U.S. Attorneys, Department of State, Bureau of Alcohol, Tobacco, Firearms and Explosives, Federal Trade Commission, and Postal Inspection Service. The authors would like to thank officials from the Department of Emergency Preparedness for sharing this information with the Roundtable.
- 21 Agencies involved included Transport Canada, NAV Canada, National Defence, the Royal Canadian Mounted Police, U.S. Transportation Security Administration (which, at the time, fell under the U.S. Federal Aviation Administration) and the U.S. Embassy. The authors would like to thank Transport Canada for providing the case study that is presented in this article.
- 22 Hocking, Brian. 1999. "Catalytic Diplomacy: Beyond Newness and Decline." In *Innovation in Diplomatic Practice*. Edited by J. Melissen. London: Macmillan.
- 23 Bob Wolfe makes a strong point in this respect. In his study "See you in Washington," he argues that rather than building strong North American institutions, which would be probably located in Washington, we should see Canada-U.S. relations as everyone's responsibilities. Wolfe, Robert. 2003. "See you in Washington. A Pluralist Perspective on North American Institutions." *Choices* 9 (4, April).
- 24 Fry, Earl H. 2004. *The Role of Sub-National Governments in North American Integration*. Montréal: Institute for Research on Public Policy. p. 11.
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PART II

ASSESSING FREE TRADE AND NAFTA

Economy, Redistribution, Law, and Price



# *The Failure of the Third and Triumph of the First Option*

Mark J. Kasoff

The sentiments expressed in Mitchel Sharp's Third Option are as old as Canada itself. From 1867 onward, Canada was fearful of U.S. domination and replete with examples to reduce economic dependence on the U.S. Macdonald's National Policy included a tariff to protect firms in the new infant economy. With recent memories of U.S. abrogation of the Reciprocity Agreements in the 1850s and calls for "manifest destiny" to unite the remaining British Colonies of North America with the U.S., the young Dominion of Canada was wary of undue American influence exercised through dependent economic relations.

Fears of assimilation or undue U.S. influence continued in Canadian politics. In 1911, a free trade agreement negotiated by Laurier led to the government's defeat in the 1912 election. In the 1960s, poor relations between Prime Minister Diefenbaker and President Kennedy after the Cuban missile crisis resulted in Dief trying to strengthen economic ties with Europe. "He was...determined to redirect...trade so that 15 percent of...exports then going to the U.S. would instead go to Britain" (Ritchie 21). Such efforts had little impact. Britain turned its back on Canada by joining the European Common Market (now European Union) when trade preferences to Commonwealth nations were abandoned (Ritchie 42).

Canada edged a step closer to freer trade with the U.S. with the Auto Pact of 1965 but by the 1970s pulled back from further integration. Perhaps this was a result of President Nixon's bold and harsh New Economic Policy of August 1971 that refused to exempt Canada from measures

to protect the U.S. balance of payments and prop-up the floating dollar (Muirhead). This "Nixon shock" signified an end to the special relationship with the U.S. and to stronger anti-American feelings in Canada. Policies such as the Foreign Investment Review Act (FIRA) and Foreign Affairs Minister Mitchell Sharp's now famous Third Option proposal followed.

According to Sharp, Canada had three choices: Option 1 – Do nothing and let relations with the U.S. develop as they may; Option 2 – Actively pursue closer economic integration with the U.S.; Option 3 – Reduce dependence on the U.S. through aggressive action to sell Canadian goods outside North America, particularly in Asia and Japan (Trudeau 203). It was also hoped that Japan would become a bigger foreign direct investor in Canada, with greater emphasis on manufacturing goods rather than natural resources. By 1989, such hopes were dashed with total Japanese FDI totaling \$2.2 billion, while U.S. FDI in Canada continued apace at approximately \$30 billion annually.

Under Brian Mulroney, one can argue that Canada pursued Option 2 – closer economic integration with the U.S. Examples include the 1989 FTA and 1994 NAFTA, negotiated while the Tories were still in office. Mulroney's motivations included assured access to the U.S. market during a new wave of tough U.S. protectionism; this resulted in making Canadian industry more competitive on a global basis, creating a binding and better way to settle trade disputes, and protecting Canadian culture (Kasoff).

By the late 1980s, U.S. tariffs had declined to an average of only 6% owing to the GATT negotiating rounds. From Canada's perspective, the U.S. market was already open as far as tariffs were concerned (with a few exceptions). NTBs, including anti-dumping and countervailing duties were the big worries, not U.S. tariffs. This distinction is important when assessing the success or failure of the Sharp's three options.

Pursuing the Third Option is still a part of Canada's foreign economic policy. Note this comment in the April 2004 Throne Speech:

There are growing opportunities for Canadian exporters and investors to complement our enormously successful relationship with the United States by building closer economic ties with other regions of the world. In particular, more attention will be focused on such newly emerging economic giants as China, India, and Brazil.

Sharp's Third Option was no more successful than Diefenbaker's misguided efforts to divert away from the U.S. and towards the British motherland. By the end of the Trudeau years, our dependence on the American market had reached unprecedented levels (Ritchie).

Interest in the Third Option remains undiminished. A 1996 study by Industry Canada noted that "the Asia-Pacific is the fastest growing economic region in the world. Accessing (these) markets will be instrumental in promoting jobs and growth in Canada" (Ahmad, et al.) The study asserted that "the Asia APEC region will continue to outperform the non-Asia region" and that the "APEC market has tremendous growth potential."

To be sure the 1980s was a period of dramatic economic change in Asia which effected trade and investment relations with the Western industrialized economies. Most notably, China embarked on the path of economic reform by way of pursuing foreign trade and accepting foreign direct investment. Rapid rates of economic growth were sustained by high rates of savings and investment, low wage rates, and playing catch-up with productivity and technology gaps. Until the Asian financial crisis hit in the summer of 1997, continued high rates of growth and increased trade relations with the West was the chosen scenario of most pundits. Canada was no exception to the drive to get on the Asian trade bandwagon and gets its slice of the growing economic pie. Not only would increased business contribute to Canadian prosperity, but it would also help reduce dependency on the U.S.

Like the U.S., Canada's imports from Asia rose rapidly from 1980 onward, almost doubling between 1980 and 1992. Exports to Asia also rose rapidly from very low levels, often with sharp fluctuations on a year-to-year basis. Canada received large numbers of Asian tourists, especially from Japan, and attracted large numbers of Hong Kong immigrants. The latter largely settled in the Vancouver, BC area under the immigrant entrepreneur program.

Increased trade with a growing Asia would enable Canada to reduce its economic dependence on the U.S. "Many Canadians...have viewed this dependence with alarm, as a factor of national weakness and vulnerability by leading for a search for alternatives." Both Mr. Diefenbaker and Mr. Trudeau in different ways made such an attempt. So did Mr. Mulroney, not in the form of a search for alternative markets, but in the form of seeking more secure access to the American market under the Canada-U.S. Free Trade Agreement

Taylor concluded that the U.S. relationship was so important that "no government can hope to modify substantially, let alone reverse, the economic integration of Canada with the United States" (Taylor 7-8). For all the benefits of the Canada-United States relationship, many Canadians will remain uneasy, even alarmed, about this degree of dependence. Governments will be under pressure to seek alternatives or counterweights (8). Trade with other countries is important "psychologically, by giving Canadians a reassuring sense that not all their economic eggs are in the American basket" (9).

Economic nationalism peaked in the 1970s when the Trudeau government enacted the Foreign Investment Review Act in 1973 to limit foreign control of Canadian industry. In terms of corporate revenue, foreign owned companies in Canada accounted for 37.6% in 1971, a record high (*Globe and Mail*, Feb. 1, 1999). Six years had passed since the Auto Pact of 1965, and Canada was in no mood to extend this to free trade in most sectors. Some felt that Canada had actually lost jobs as a result of the pact or at least was not getting its fair share, a view not shared from the U.S. side. The election of 1988 was fought on the issue of free trade and returned the Conservative Mulroney government to power.

The Liberal Chrétien government, first elected in 1993, accepted Canada's being more closely integrated into the continental economy. After the face saving side agreements on environmental and labor issues, the Liberals moved to take advantage of a Canada more open to trade and investment. With the exception of some in the NDP, globalization had surprisingly become a non-issue in Canadian politics. Most Canadians seem to accept the reality

of globalization and are not willing to put their economic welfare at risk through an overly aggressive nationalistic policy. The business community wants unfettered access to foreign markets far larger than Canada's, including the right to invest abroad directly. The die had been cast a few years earlier, despite the anti-NAFTA Liberal rhetoric of the campaign. On January 21, 1991, Roy MacLaren, a senior member of Her Majesty's loyal opposition in Canada, published a revealing discussion paper for the Economic Policy Committee of the Liberal Caucus. Entitled, "Wide Open: In Search of an Independent Global Trade Policy for Canada," the paper provides insight into the foreign trade policy of the Liberal Government which assumed power three and a half years later (MacLaren).

MacLaren, who later served as Minister of International Trade, advocated "expanding Canada's free trade relations beyond the United States and, indeed, beyond the Western Hemisphere," as the only way of reducing dependence on the U.S. He rejected abrogating the Canada-U.S. Free Trade Agreement of 1989 (CUSTA), (which grew into the North American Free Trade Agreement (NAFTA) of 1994 to include Mexico). MacLaren was also pessimistic about any major progress on trade disputes with the U.S. (e.g., lumber, durum wheat). He rejected the drift towards "continentalism" embodied in NAFTA, or a return to a Canadian protectionist trade policy.

MacLaren wrote that only by going "global" and becoming more competitive could Canada lessen its economic dependence on the U.S. He felt that Canada could be a Pacific and European nation as well as a North American one. The ideas contained in the MacLaren discussion paper have been faithfully followed by the Liberals during their terms in office.

The Canadian economic development community cited the benefits of globalization through large merchandise trade surpluses and attracting branch plants that are larger, more outward oriented, than companies only selling to the Canadian market. These firms hire workers in greater numbers and spend more on R&D.

Economic nationalists like the Council of Canadians keep trying to be heard over such issues as the protection of Canadian culture, the right to ban the sale of bulk water, the right to ban substances like MMT in gasoline, foreign control of key industries like chemicals and pharmaceuticals, transportation equipment, and electronic products, and strong opposition against the OECD inspired MAI (Multilateral Agreement on Investment). For those who embrace these positions, NAFTA is an unmitigated disaster which Canada should either withdraw from or subject to radical surgery. They represent "a certain type of Canad-

ian (who) is sure that free-trade agreements are a plot to make Canada a commercial colony of the United States" (*NY Times*, "Free Trade in Fresh Water? Canada Says No," March 7, 1999).

Some icons of Canadian popular culture are being purchased by foreign investors. Examples include Tim Horton's by American based Wendy's; Bauer ice skates now controlled by Nike, which purchased Canstar sports; Target's planned takeover of the Hudson Bay Company; Labatt's beer owned by Belgium's Interbrew and the recent announced merger of Coors and Molson. Additionally, the privatization of the Canadian National Railway, formerly a state owned crown corporation, through the issuance of common stock resulted in 70% U.S. control. Until recently, the low Canadian dollar reduced the real purchase price of acquiring Canadian assets. KMPG Corporate Finance, Inc. reported that foreign acquisitions of Canadian firms "were double the rates of the previous four years" (*Vancouver Sun*, Mar 4, 1999). Of the 240 firms purchased worth \$15.3 billion, 170 were acquired by Americans, or 71%. Despite the weak dollar, Canadians purchased 403 firms abroad worth an even greater \$40.7 billion over the same period. This suggests that the value of the Canadian dollar is not the only factor driving outward FDI decisions.

Efforts to reduce U.S. trade dependence have failed in that the share of Canadian trade with the U.S. increased. By 1999, 86% of Canadian exports were destined for U.S. markets and have remained at similar levels. Since 1989, Canadian-American trade and investment has been governed by long term arrangements, first under a bilateral one, and since 1994, under NAFTA.

In late 1997, financial turmoil began in Thailand and spread across Asia. As a result, the foreign exchange rates of many Asian countries tumbled, economic growth slowed, and some fell into recession. Such developments dampened Canada's hopes for rapid gains in these markets. In terms of Asia, this paper is limited to the countries of East Asia where most trade with Canada occurs. Japan is by far the most important country for Canada.

In 1995, the Government of Canada published Canada's Export Strategy, including a business plan that follows the broad outline of the 1991 MacLaren paper. The report lists diversifying Canada's foreign trade as its first objective. Multilateralism through the General Agreements on Tariffs and Trade (GATT, now the WTO-World Trade Organization) was to be the "cornerstone and pillar" of Canada's trade policy. Regional groupings such as NAFTA were to "complement and enhance" rather than substitute for GATT. The Asia-Pacific Economic Cooperation (APEC) forum was seen as an "increasingly important vehicle" for

lessening Canada's dependence on the United States. The report laments that only with the U.S. has Canada been a "truly successful trader" and that "Canada may be a trading nation, but it is not a nation of traders."

### Foreign Direct Investment

Canada is also heavily dependent on the U.S. for direct investment flows. In 1990, the U.S. accounted for 65% of Canada's FDI stock. By 2003, this figure was almost unchanged at 64%. The U.S. share ranged from 61-67% over this period. Canadian direct investment in the U.S. rose from \$60 billion in 1990 to \$165 billion in 2003. The ratio of Canadian direct investment in the U.S. to U.S. direct investment in Canada was 71% in 2002 and 72% in 2003, rising from much lower levels in the 1970's. Canadian direct investment in the U.S. rose more rapidly than U.S. direct investment in Canada. Increased levels of outward FDI were not diminished during the period of the falling Canadian dollar.

### Determinants of Canadian Foreign Trade

A number of theories of international trade have been advanced to explain a country's exports and imports. Among these include classic comparative cost advantage of Ricardo and Mill, relative factor endowments of Heckscher-Ohlin, and overlapping demand patterns of Linder. Rao and Lempriere developed an econometric model of Canadian foreign trade utilizing all three approaches (1992). They specified a number of independent variables and calibrated the model to explain trade between Canada and major world areas. Regressions were run by pooling all industries and by separate industries for each region.

Independent variables include: consumption, relative unit labor costs, comparative advantage, foreign direct investment, trade barriers, capacity utilization, R&D expenditures, exchange rate variability, and a time trend factor (10-17). Estimates are made for the period 1971-86.

With regard to unit labor costs, few nations equal Canadian levels for the 1950-1990 period. Figures were lower for Canada's two major trading partners, the U.S. and Japan, for the entire period. Rising unit labor costs were fueled by inflation in Canada during this period. It is no wonder that the Bank of Canada has aggressively targeted inflation in its monetary policy. The failure to do so would result a continuing productivity gap, which could be offset only through a depreciating Canadian dollar.

The importance of the U.S. in Canadian foreign trade has increased dramatically since the 1980s. In 1981, about

65% of exports went to the U.S.; in 1989, the figure rose to 74% and now stands at around 85%. A number of factors contributed to this trend including: the implementation of the 1965 Auto Pact resulting in huge increases of transportation equipment trade; the very strong U.S. dollar during the early 1980s and mid-1990s, making Canadian goods cheaper for U.S. purchasers; the restrictive effects of the European Union; the Canada-U.S. free trade agreement of 1989; and the NAFTA of 1994. Asian financial turmoil, starting in the summer of 1997, the flight to the safety of the U.S. dollar, and the drop in the value of the Canadian dollar to an all time low of nearly 63 U.S. cents by September 1998, helped stimulate exports to the U.S. Once trade patterns are established, they are slow to change directions.

Primary commodities account for a large share (about a third) of Canada's exports. Examples include forestry products (wood, pulp, newsprint); minerals (petroleum, copper, coal, nickel); and agricultural crops (wheat, canola, barley). The non-U.S. share of Canadian exports consists mainly of these goods.

With respect to U.S. exports, Rao and Lempriere found that cost differences were relatively unimportant. This confirms the annual KMPG survey finding Canadian business costs, including taxation, no higher than in the U.S. Differences in R&D expenditures were very important. A strong time trend variable shows an average annual increase of 4.1%, underlining increased economic integration in North America and rising levels of intra industry trade.

With regard to Japan, exports are strongly affected by consumption and less so by Canadian costs. While the time trend is significant at 0.5% per year, this is much weaker than for the U.S., indicating very little economic integration between Canada and Japan. Canadian exports to Japan are almost entirely driven by Canada's comparative advantage in primary products.

### Trade with Asia

Canadian exports to Asia have been erratic and remained at low levels for decades. Canadian records indicate a trade deficit with most Asian nations in contrast to a large merchandise trade surplus with the U.S. While the merchandise trade balance with Japan has improved, Canada continues to record a negative balance with most of Asia.

Canada has aggressively sought business with the Chinese economic area (including Taiwan and Hong Kong). In 2003, China was Canada's fourth largest trading partner, but volumes were low at about U.S. \$3.5 billion, only

U.S. \$1 billion more than 1995. Export rates to China grew steadily until 1988 when the rates peaked at \$2.3 billion and have been erratic since. Sales of Canadian wheat account for about 50% of exports, with lesser amounts for wood and derivatives, industrial chemicals, and aircraft.

### Value of the Canadian Dollar

How does the value of the Canadian dollar affect exports, foreign trade and investment? On August 27, 1998, the Canadian dollar fell to nearly 63 cents against the U.S. dollar, an all time low. The Bank of Canada responded by raising interest rates 100 basis points (1%) to stave off further declines. Earlier attempts to protect the dollar through purchases on the foreign exchange markets failed. The Bank of Canada concluded that raising Canadian interest rates above U.S. levels was the only way to protect the "loonie."

What factors were at play and what were prospects for the value of the loonie? On the surface, it was a bit puzzling. The Canadian economy had been growing steadily, the balance of international merchandise trade positive, the federal budget in surplus, with most provinces having put their fiscal houses in order. True, substantial debt overhang exists from the past, which must be serviced. But improved budgets should have helped, not hurt the loonie

What are some of the other factors that worked against the Canadian dollar? For some time Canadian interest rates were lower than U.S. levels. The Bank of Canada, no doubt, did not want to choke off economic growth with higher rates feeling that the falling loonie helped stimulate exports. The Conference Board of Canada concluded that Canada's export industries would be in trouble were it not for the weak dollar (*Financial Post*, October 16, 1998). Canadian productivity growth has lagged behind the U.S. with unit labor costs rising at 0.9% per year, faster over the 1990-97 period. Only the depreciation of the Canadian dollar over the period by 22% has resulted in annual labor cost savings of 0.7%.

With financial turmoil in Asia, Russia and Latin America, investors fled to the safety of the U.S. dollar. Since the Canadian dollar is not a reserve currency, demand for the loonie was weak. This masks the fact that the Canadian dollar strengthened against most other currencies, especially those in Asia. Another factor cited is the erroneous perception that Canada's exports are primarily raw materials and agricultural products. With 80% of exports to the U.S. and the dominance of the automobile industry, only about a third of Canada's exports worldwide are in

primary products. Still, Canada is more export dependent than the U.S., with over 40% of Gross Domestic Product destined for overseas markets.

By September of 1998, the Bank of Canada became worried that the loonie was headed for a free fall. Billions of dollars of reserves were used to prop up the dollar. When this failed, the Bank of Canada increased interest rates by 100 basis points to levels above those in the U.S. A few other developments favorable to the loonie occurred around the same time. First, increased financial turmoil in world and North American markets led Federal Chairman Alan Greenspan to signal that U.S. interest rates, which have remained at or near historically low levels until 2004, would decline. Second, world commodity prices began to rise, making Canadian exports more valuable.

In the future, the value of the loonie will be influenced by a number of factors. On the positive side, high world commodity prices, low U.S. interest rates, and stability in world financial markets are good for the loonie. The biggest cloud on the horizon is the performance of the U.S. economy. A recession or slowdown will reduce Canadian exports (83% go to the U.S.), and worsen her balance of trade.

It is possible that the psychology of currency traders regarding the Canadian dollar will change to a more favorable position (as long as the Bank of Canada keeps interest rates above U.S. levels), further driving up its value? Those holding U.S. currency in order to purchase more Canadian dollars will likely move into loonies as the Canadian dollar steadily rises in value. Waiting too long may be at the expense of gaining those extra 5-15% Canadian dollars. This change in psychology, in itself, could push up the Canadian dollar.

January 1999 saw the introduction of the Euro replacing individual currencies in most E.U. countries. A successful Euro has implications for the Canadian dollar. If the Euro becomes an alternative to the U.S. dollar, this will weaken the U.S. dollar versus other currencies, especially the Japanese yen. In this context, a weaker U.S. dollar translates into added strength for the Canadian dollar.

Now there is worry that the Canadian dollar is too strong, hitting U.S. 80 cents in October, 2004. While this is clearly bad news for Canadians traveling to the U.S., the consequences for exports and FDI are less certain. Several factors partially offset a dramatic drop in exports. First, exporters will accept lower profit margins to maintain sales connections; second, the price of imported inputs will drop in Canadian dollars, lowering production costs; and third, the prices of many world commodities that Canada exports are usually in U.S. dollars. As far as FDI

is concerned, we have already seen that the value of the Canadian dollar bears little relationship to FDI activity.

### Discussion

What are the prospects for Canada lessening dependence on the U.S.? We have seen that trade with Asia is erratic from year to year and remains at low levels. This is due to the structure of Canadian exports to the area which is dominated by primary and related products. The size of the Chinese wheat harvest, for example, directly influences wheat purchases from Canada. Also, many Asian markets are only slowly opening up to manufactured goods from Canada and other industrialized countries.

In contrast, owing to NAFTA, the North American market is relatively open and trade with the U.S. has grown and remains at high levels. While Canada records a trade deficit with Asia, merchandise trade with the U.S. is in surplus.

The European Union (E.U.) will continue to be a relatively declining market for Canadian manufactured goods, with strength in primary products. Canada has accused the E.U. of failing to follow established GATT procedures regarding tariff modifications.

The American market will continue to be attractive to Canadian exporters owing to its close geographic proximity, similarity in demand patterns, culture and language, etc. These factors are compelling for small and medium sized Canadian companies in comparison to doing business thousands of miles away. Of course business with Asia can grow, but so will trade with the U.S. For these reasons I expect little change with Canada's trade dependence with the U.S.

### ***Foreign Direct Investment: Recent global developments have not favored Canada as a destination for FDI***

Enhanced border security measures by the U.S. and Canada can diminish Canada's locational advantages for a foreign investor. Both sides are aware of this and have developed a series of measures under the Smart Border policy umbrella, but problems persist. There is evidence, for example, that a German firm decided to locate in Michigan rather than Ontario owing to border concerns.

Inward FDI to Canada fell dramatically after the 2001 terrorist attacks in the U.S. declining for three straight years. The 2003 drop of \$8.3 billion was down 75% from 2002 (DFAIT, March 2004).

Canada's outward FDI continues to grow faster than inward FDI and is becoming more evenly distributed around the world. In 2003, the U.S. share was 47%, down from 60% ten years earlier (EDC, December 2003).

### Concluding Comments

How have Sharp's options fared in light of recent developments? I conclude that both Options 2 and 3 have failed to materialize, despite attempts by various Canadian governments to pursue one or the other. If Mulroney pursued Option 2, did this result in closer economic and political ties with the U.S.? I think not since the U.S. market was already open for trade and investment. While the FTA's did assure long term market access for Canada, economic disputes with the U.S. continue (softwood lumber, durum wheat, chapter 11 of NAFTA, etc). Under NAFTA, Canadian exports to Mexico have grown but remain at very low levels. Moving on to Option 3, we see no evidence whatsoever of reduced dependence of the U.S. for trade and investment. Option 1 implies that there is very little Canada can do to reduce this dependency. This confirms the path of Canada-U.S. relations since the end of WW II. Aside from the anxiety of the "mouse sleeping with the elephant," Canadians can at least take comfort that their values and culture have not converged with the U.S. (Michael Adams).

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# *The Effects of North American Trade on the Canadian Economy*

Martin A. Andresen

## **Introduction**

In 2000, total global merchandise exports were valued at over US\$6.3 trillion, with more than half of that international trade flowing between developed countries (such as Canada and the United States), less than 15 percent between developing countries, with the remainder flowing between developed and developing countries (Helpman 1999; International Monetary Fund 2001). The average growth rate of international goods and services exports is more than twice the average growth rate of gross domestic product from 1985 to 2001. Additionally, services are occupying an increasing share of total output for most industrialized nations (particularly in North America and Europe) and have even a faster export growth than merchandise trade flows (Dicken 2003). Perhaps most important, international trade flows are positively associated with economic growth (Frankel and Romer 1999). For these reasons international trade flows are important to national economies.

The rapid growth in international trade flows is largely regarded as a result of successive rounds of negotiations of the General Agreement on Tariffs and Trade (GATT, established in 1947) (Helpman 1999). Central to the GATT is the principal of nondiscrimination in trade relations among the GATT members, also known as the principal of multilateralism, which is global free trade or the move toward it (Bhagwati 1999). Trading blocs or zones, usually placed in opposition to multilateralism (protectionism is truly the opposite of multilateralism), represent the move

toward free trade within a limited set of countries in the world but maintain tariffs for all remaining countries not in the trading bloc. As a phenomenon, since the mid 1980s trading blocs have grown at a faster rate than international trade flows and are considered a paradox by some because exclusion (the nature of a trading bloc) is supposed to decrease international trade. In 1985, there were 26 supranational Regional Trade Agreements (RTAs) in force in the global economy. That number rose to 189 by the end of 2003, with 100 of the RTAs established during the past seven years. Canada and the United States are involved in two of these regional trading agreements.

The trading relationship between Canada and the United States pre-dates Canada's confederation in the nineteenth century but began to intensify from the 1960s forward. This intensification formally began in 1965 with a trading arrangement involving trade in automotive products (The 1965 United States-Canada Automotive Pact). In 1989, the Canada-United States Free Trade Agreement (CUSFTA) came into force, and five years later the North American Free Trade Agreement (NAFTA), essentially adding Mexico to the CUSFTA, superseded the CUSFTA. These trading agreements all had provisions for reducing barriers to trade (both tariff and non-tariff barriers), increasing cross-border investment, and more recently, enhancing the temporary cross-border flow of skilled labour.

As a result of these agreements, Canada and the United States are each other's top international trading partner for both exports and imports, with automotive products dominating trade flows on both sides of the border. In order to investigate the changes in the Canada-United States trading relationship resulting from these free trade agreements, this paper uses detailed commodity-based international trade flow data provided by Statistics Canada. These data are used to decompose international trade flows into their component parts to obtain a better picture of the convergence of the Canadian and U.S. economies resulting from these agreements. By changing the economic-political framework within which international trade occurs, the ties between the two economies have necessarily changed.

The paper is organized as follows: the next section outlines free trade in North America. Section III reviews previous research on the effects of that free trade; the results of Canada's changing international trading patterns are presented in Section IV; Section V summarizes and concludes.

## Free Trade in North America

### *Why Free Trade? Why Now?*

During the twentieth century, Canada and the United States entered into free trade negotiations in 1935, 1938, and 1948 with no success largely because Canada chose to rely on the slower, but effective, process of trade liberalization through multilateralism, particularly the General Agreement of Tariffs and Trade (GATT) in the post-war period (Smith and Stone 1987). However, by the 1980s, Canada-U.S. trade, despite Canadian efforts to diversify its trading portfolio, was the largest bilateral trade flow in the world, and the Canadian government became concerned about the economy's dependence on the United States.

In 1985, Canada requested a comprehensive free trade agreement with the United States through the MacDonal Royal Commission. The request was made despite the fact that in 1985, 85 percent of all Canadian exports to the United States crossed the border duty free, with the remaining average tariff rate being four percent—these zero and low tariff rates were in large part because of the Canada-U.S. Automotive Products Agreement of 1965 and Canada's dedication to the successive rounds of the GATT negotiations. However, given the high degree of economic dependence on the United States, Canada was quite vulnerable to unilateral action from the United States through

foreign trade policy changes and sought to minimize this vulnerability (Coffey, et al. 1999).

There were four factors during the 1980s that led to Canada's feeling vulnerable and to the negotiations of the CUSFTA. First, the 1981–1982 recession with its corresponding high interest rates, high unemployment, and particularly important for Canada, declines in commodity prices, was viewed as an external force acting on the Canadian economy. Because of this view, the need for open and assured access to the U.S. market for exports was reinforced. Second, during the recession, the United States began to move toward protectionist trade policies, particularly on important Canadian exports such as softwood lumber, fish, pork, and steel. Canada needed to limit the scope of any unilateral trade restrictions made by the U.S. policy-makers. Third, on the international front, there was a perceived decline in the GATT's ability effectively to regulate world trade. Lastly, the emergence of new international competition in world markets forced Canada to consider its place in a globally competitive world (Smith and Stone 1987).

The resulting objective for Canada and the United States, though somewhat different, all relate to these four factors. Canada's objectives were greater certainty in U.S. trade laws and market access to the United States through decreased tariff rates and increased foreign direct investment. The United States, on the other hand, was more focused on rule-making: no new trade barriers; agreements on services, investment, and intellectual property rights; and resolutions to long-standing trade disputes, particularly automotive subsidies to non-Auto Pact automotive producers in Canada. In general, both countries hoped the CUSFTA would further the multilateralism process, as well as functioning as a "fallback" if the GATT (WTO) process broke down. At the domestic level, both Canada and the United States also aimed for inter- and intra-industry specialization (the rationalization of production) in order for both countries to benefit from the Agreement. This rationalization would, in turn, increase the competitiveness of each country in a global context to promote export-led growth and reduce each country's trade imbalance with the rest of the world, particularly that of the United States (Schott 1991).

### *The Canada-U.S. Free Trade Agreement*

At the time, the CUSFTA was the most comprehensive free trade agreement negotiated and implemented between two nations. For the first time, the CUSFTA established a bilateral and contractual institutional base to manage a

bilateral trade and economic relationship. The Agreement also introduced non-discrimination based on the firm's nationality in areas such as services and investment (Hart 1989; Waverman 1991). Importantly also, for the international trading regime and multilateralism in general, the CUSFTA is not inconsistent with the GATT/WTO (see Bhagwati (1999) for a critical discussion of this issue). In fact, because of increased efficiency and productivity through rationalization, the progress made in agriculture, and the Agreement countering the worldwide protectionist trend, the CUSFTA "pioneers new agreements on dispute settlement, services, and investment on which GATT negotiators can build and develop better multilateral accords" (Schott 1991:81).

The results of the CUSFTA can be broadly classified into three categories: trade liberalization, rule-making and standstill. Trade liberalization is probably the most "visible" portion of the CUSFTA. Tariffs on most goods were to become zero within ten years—less progress was made with non-tariff barriers. More government contracts were to be opened to competitive bidding, which is the so-called national treatment of firms that states any firm from either Canada or the United States is to be treated without consideration of its nationality. And the uses of restraints and minimum price requirements or both on energy have been barred. With respect to rule-making, the CUSFTA established legal frameworks: the ability of businesses to operate in both Canada and the United States; a trade dispute resolution mechanism, liberalization and transparency of investment policies, particularly in Canada. No national bias to be imposed on future government policies (similar to the national treatment of firms, above), judging service providers on their competence and facilitation of cross-border travel by businesspersons to stimulate the trading and investment relationships between the two countries. Finally, standstill refers to aspects of the CUSFTA that preclude any return to protectionist policies by stating that any new restrictions and barriers or both cannot be greater in magnitude than before the Agreement and should move toward liberalization. It should be noted that the CUSFTA does not prevent future attempts at protectionism but requires that policies be transparent (Schott 1991).

Despite these great strides forward in trade liberalization, rule-making, and standstill, the CUSFTA does have significant limitations and comes nowhere near the level of trade and economic integration present in the European Union (Waverman 1991). Regardless of the significant inroads made in agricultural trade, agriculture is covered only briefly, trade flows in the textiles industry is severely constrained, and beer is excluded from the Agreement

completely; services and investment, though partially liberalized in certain sectors, are quite limited in their scope of liberalization; in the context of the European Union, the CUSFTA does not liberate international trade in the factors of production, particularly labour mobility; and in the context of multilateralism (see Bhagwati 1999), the CUSFTA does not cover barriers to international trade with third parties (Waverman 1991)—both Canada and the United States maintain independent trade barriers with non-CUSFTA countries. However, whether the CUSFTA is judged by its great strides forward or its limitations, it is a document that has a significant role in the nature of the Canadian economy because of the high degree of economic interaction with the United States.

### ***Why Bother With the NAFTA?***

The vast majority of Canada's 1993 international trade flows were with the United States (exports = 79.8 percent, imports = 67 percent), followed by those to East Asia (exports = 9.0 percent, imports = 14.8 percent), the European Union (exports = 6.2 percent, imports = 9.7 percent), and Mexico (exports = 0.5 percent, imports = 2.3 percent). Needless to say, Mexico's importance to Canada's international trade flows was not great, even by today's (2002) standards (exports = 0.6 percent, imports = 3.7 percent). So, why did Canada become involved with the NAFTA? The CUSFTA did not address subsidies, countervailing duties, anti-dumping duties, procurement preferences, and intellectual property rights (Coffey et al. 1999), but surely these issues could have been directly negotiated with the United States—the first few of these omissions have become quite important in the softwood lumber industry in recent years, particularly for British Columbia. However, despite the low degree of Canada-Mexico international trade flows, competition in the U.S. markets could prove to be trade diverting for Canada, leaving Canada worse off by not being a part of the NAFTA. In addition to increased access to the U.S. market, any gains in Mexico's efficiency and productivity resulting from scale economies and the rationalization of production or both could further increase Mexico's labour cost advantage over Canada (Cadsby and Woodside 1993; Hart 1991; Waverman 1993; Weintraub 1991).

As a result of these concerns and the announcement that the United States and Mexico intended to establish a free trade agreement in June 1990, Canada, in January 1991, sought negotiation status to ensure access to the U.S. market, yet again. Therefore, rather than having foreign trade policies of other nations dictate Canada's role

in the global economy, Canada played an active role in those foreign policies, potentially achieving further gains in efficiency and productivity from scale economies and rationalization, thereby improving Canada's overall position in the global economy as well as potentially dealing with perceived deficiencies of the CUSFTA (Coffey, et al. 1999; Whalley 1993).

### ***The North American Free Trade Agreement***

As with the CUSFTA, the most visible aspect of the NAFTA is trade liberalization, having tariff rates eliminated over a 10–15 year period, depending on the sensitivity of the tariff rate category to the national economy. Despite this lengthy transition, 50 percent of all tariff rates were eliminated as of 1994, and Canada-United States tariffs continued on their complete tariff rate phase-out according to the CUSFTA completed in 1998. The Agreement also included a commitment to decrease significantly non-tariff barriers such as quotas and import licenses, particularly with United States-Mexico trade in agriculture, and to permit an easier flow of business and professional people across both national borders (Coffey, et al. 1999; Hufbauer and Schott 1993; Weintraub 1993).

However, the NAFTA is much more than an agreement to add Mexico to the CUSFTA. Historically speaking, the NAFTA, superseding the CUSFTA, became the most comprehensive free trade agreement negotiated between regional trading partners and is the first free trade agreement negotiated between a developing country and industrialized countries (Hufbauer and Schott 1993). Moreover, the NAFTA extended the scope of the CUSFTA with respect to Canada-United States international trading relations, but most notably in a negative manner.

As with the CUSFTA, the NAFTA contains rules of origin in determining whether or not a product qualifies for the NAFTA tariff rate—essentially, a certain portion of the product must be produced within the free trade area to qualify. These rules of origin increased significantly in the automotive and textiles/apparel sectors—viewed as increases in the degree of protectionism between members of a free trade agreement (Cadsby and Woodside 1993). In the automotive sector, the “domestic” content of the automobiles and engines went from 50 percent (1994) to 56 percent (1998) to 62.5 percent (2002). This increase is believed to be significant because any domestic content requirement above 60 percent requires large investments in power train manufacturing (engines and transmissions), potentially having a deleterious effect on Japanese automotive investment in Canada (Waverman 1993). Similarly

with textiles and apparel, the rules of origin became more restricted as a result of the NAFTA in such a way that even though there has been the elimination of tariff rates and non-tariff barriers on NAFTA trade, very few products qualify under the NAFTA—considered a “schizophrenic result” of the Agreement (Hufbauer and Schott 1993:3).

Other aspects of the NAFTA include the following provisions: agreements on labour and the environment (though considered more “symbolic gestures” than substantive agreements (Cadsby and Woodside 1993)); an expansion of the dispute settlement procedures not only to include Mexico, but to include a permanent supranational institutional body that may be effective in government trade relations for the member countries; a slight broadening of the scope for financial service liberalization, as well as services in general; moderate liberalization in land transportation services; and the explicit protection of intellectual property rights, a U.S. objective in the CUSFTA negotiations (Cadsby and Woodside 1993, Hufbauer and Schott 1993). Notable omissions from the NAFTA include the energy sector and future impediments to international trade flows. The energy sector, aside from moderate access to the Mexican oil and gas market (Hufbauer and Schott 1993) and a provision for U.S. utility companies to honour existing contracts with Canadian energy providers, is generally immune to free trade. Significant impediments to international trade flows, also unresolved in CUSFTA negotiations, such as anti-dump and countervail procedures against member countries, continue to be an issue in Canadian trade—softwood lumber, for example.

Regardless of the fact that a large portion of the NAFTA documents deals with exceptions to free trade and the restrictions and limitations therein, the NAFTA is a “move toward greater freedom in economic relations among the three [member] countries” (Weintraub 1993). As with the CUSFTA, the NAFTA has not only modified Canada's trading relationship with its largest trading partner, the United States, but re-positioned it in the global economic order and modified its international trading patterns.

### **Previous Research on the Effects of Free Trade**

#### ***Ex-ante Estimates of the Effects of Free Trade***

Assessing the impact of a substantial policy change such as a free trade agreement, for example, is necessarily a difficult task. A national economy is a complex and inter-related social construction that does not easily lend itself to accurate economic forecasts (see Granger and Newbold (1986) for a summary of the relative merits of alterna-

tive forecasting methods in econometric modeling). Despite the difficulties associated with accurately predicting changes in the economy, such predictions may be informative to the formation of government policy. If, for example, no matter how the predicted effects are obtained in the modeling process, a strong deleterious effect always arises from a policy change, that government policy may (should) be reconsidered. One such method that does not depend on the (failed) econometric models using historical data to estimate future change is a simulation.

These simulations, built on the seminal work of Harris (1984), use a simplified model of the economy, impose a policy change (shock) on the economy, and calculate the change in the economy as a result of that policy change. That is done by gathering actual data on inter-industry transactions, factor payments (wages, interest, etc.), final demands for goods (consumption, investment, government expenditures, etc.), and making some simplifying assumptions regarding economic behaviour. Further, assuming that the observed (real) data is in (short-run) equilibrium, the relevant policy parameters (tariff rates, etc.) are altered, a new equilibrium is calculated, and the change between the two equilibria is measured (Kehoe and Kehoe 1995).

These models of the economy are usually referred to as applied general equilibrium models. They are popular because they can assess the impact of reallocating resources between industries and determine the winners and losers differentiated by industry, region, or both, that result from the policy change. Unfortunately, these models of the economy are highly simplified versions of the actual economy with many simplifications such as a limited number of aggregated industries (typically 15–35) and the policy change is instantaneous—in the case of free trade agreements, all tariff rates and non-tariff barriers are removed at the implementation of the policy change. Therefore, any results should be taken with a grain of salt, interpreted and evaluated with caution. Nevertheless, they do provide a view into the future worth noting.

Though the different studies using applied general equilibrium analysis all differ along the number of industries in the economy, how many countries are modeled and markets structured, the results are all qualitatively similar. The effect of the CUSFTA is positive for Canada, with the increases in real GDP ranging from 1.6 percent (Jenness 1987) and 4.5 percent (Cox 1994) to 11 percent (Roland-Holst, et al. 1994)—these gains all take 8–10 years to materialize and are in addition to any growth in the economy independent from the CUSFTA. The large range in the effects is present because of different assumptions in

the model economy. Jenness (1987) also finds that these gains are distributed quite evenly across the different regions of Canada—proportional to their populations. At the industry level, Jenness (1987) finds that 30 of the 36 industries modelled experience output and employment gains, with an industry-wide net increase in both output and employment. Roland-Holst, et al. (1994) find similar results but notes that the industry-level gains and losses are difficult to ascertain because the results are quite sensitive to the model's assumptions, particularly with market structure in the industry.

NAFTA, from a Canadian perspective, is quite different. The general result is that Canada has zero, or essentially zero, gains from the NAFTA over and above the gains from the CUSFTA (Kehoe and Kehoe 1995). Using the CUSFTA results as a benchmark, Cox and Harris (1992) and Cox (1994, 1995) find that Canada has small (though positive) gains from the NAFTA, particularly with respect to changes in the trading relationship with the United States. Relatively speaking, Canada-Mexico trade increases significantly, 57 percent, but because the small base level of trade, this increase has little effect on the Canadian economy. Brown, et al. (1992) reports a significant positive effect of the NAFTA for Canada, but the magnitude, though larger than the Cox and Harris (1992) and Cox (1994, 1995) results, is low.

Overall, Canada experiences the greatest gains from free trade in North America (only through the CUSFTA), followed by Mexico, and the United States. This rank order should be no surprise given the importance of the U.S. economy to the Canadian economy, followed by Mexico. Though Canada is the United States' largest trading partner, with Mexico now ranking second, the U.S. economy is so large that any absolute changes from free trade agreements are relatively small (Brown, et al. 1995).

### *The Measured Effects of Free Trade*

The applied general equilibrium models discussed above are the most prominent of the simulation studies done on the effects of the CUSFTA and the NAFTA on Canada and the United States. Overall, compared to actual international trade flow data, these studies do a good job in the relative ranking of the member countries with respect to the overall impact of free trade, but the magnitude of their estimates are underestimated, particularly for the NAFTA (Kehoe 2003). However, since the CUSFTA and the NAFTA are still quite young, research on the actual effects of these free trade agreements on the members' national economies is sparse. Some research on the older

agreement, the CUSFTA, has emerged in the past years, and to a lesser degree, the NAFTA.

One of the prime concerns regarding regional trade agreements, or regionalism, such as the CUSFTA and the NAFTA, is that the member countries will concentrate their international trading relationships solely with member countries, leading to decreased multilateralism and decreased world welfare (Bhagwati 1999). With respect to the CUSFTA and the NAFTA, very little meaningful evidence is found to date to justify this concern. Clausing (2001) finds that there is substantial trade creation (intra-regional international trade growth) resulting from the CUSFTA, with little evidence of any trade diversion. Supporting this claim for the NAFTA, Krueger (2000) finds that not only is there little evidence of trade diversion in the aggregate, but this result holds across almost all commodity categories as intra-NAFTA trade increased as a whole. Using a finer degree of data aggregation, Fukao, et al. (2003) find that there is significant evidence of trade diversion for U.S. international trade flows in textiles and apparel and footwear products, particularly in Asia. However, trade diversion is an aggregate phenomenon, well beyond a commodity category, even a single national economy. A result of any free trade agreement is some form of rationalization of production, potentially leading to a spatial re-organization of commodity production and, therefore, trading partners. The issue is not whether or not international trade flows in a particular commodity group with a particular non-member country has increased or decreased, but if any rationalization of production lends itself to a decrease in international trade flows with non-member countries, overall. To date, no research has indicated such a phenomenon regarding the CUSFTA or the NAFTA.

The rationalization of production, however, has occurred as a result of free trade between Canada and the United States, but not to the extent initially thought. Head and Ries (1999) find that although Canadian manufacturing output per plant has increased dramatically (about 34 percent) while the number of plants has decreased dramatically (about 21 percent) during the six years after the CUSFTA came into effect, the CUSFTA is only partially responsible. The apparent substantial rationalization in Canadian manufacturing is partially due to the measurement error on the part of Statistics Canada and on other economic forces, but industrial re-organization and the reduction of (U.S.) tariff rates has had an impact on Canadian manufacturing. As hoped by Canadian negotiators, this industrial restructuring has had initially a positive impact on Canada's competitive position in the global

economy. In 1998 and 1999 Canada reached its highest ranking, number five, but has since fallen to sixteen (2003), losing out to countries in the European Union and East Asia (World Economic Forum).

Overall, the effect of free trade on Canada is positive. Trefler (1999) notes that manufacturing output and employment decreased in the years following the CUSFTA, but it is difficult to assess the independent effect of the CUSFTA because of the recession that ensued at the time the CUSFTA came into force (Gaston and Trefler 1997)—these decreases actually resulting from the CUSFTA are the result of Canadian manufacturing adjusting to its new multinational competitive space. International trade flows, on the other hand, have increased in magnitude much greater than expected, with more than one-half of the international trade flow increases attributable to the CUSFTA (Clausing 2001; Schwanen 1997). The NAFTA, however, has not been shown to have had a significant effect over and above the CUSFTA (Gould 1998). The industrial sectors that achieved the most significant tariff decreases typically had the greatest growth in international trade flows; and for these industries that were substantially impacted by the CUSFTA, the tariff cuts not only explain almost all of Canada's increased international trade flows with the United States, but also the increased share of the United States in Canadian international trade flows (Clausing 2001; Schwanen 1997; Trefler 1999).

Not surprisingly, Canada experienced unprecedented import and export expansion during the 1990s that cannot be explained without considering the free trade agreements. Additionally, Canadian international trade growth currently exceeds Canadian manufacturing output growth, making Canada one of the most open national economies in the world (Trefler 1999). The result is a high level of integration between Canada and the United States—almost one-third of the Canadian economy is currently tied to the United States' economy through international trade flows (Courchene 2003). This level of integration of now higher than that of a typical customs union or common market national economy, without any of the supranational institutions and rules to manage such a high degree of economic interdependence. That leads Courchene (2003:263) to call for "institutional deepening" between Canada and the United States. The former east-west (inter-provincial) geographical economic space has been transformed into a north-south (Canada-United States) geographical economic space, through free trade (Courchene 2003).

## Canada-U.S. Trade Patterns, 1989-2002

### *International Trade at the National Level*

The levels of Canadian international trade flows to the United States, Mexico, the European Union (EU-15), East Asia with Australia and New Zealand (EA-ANZ) and the Rest of the World (ROW), are shown in figures 1–4 and table 1—see the Data Appendix for a brief description of the data and industrial sectors used in this study. Canada's international trade with the United States has grown steadily throughout the study period, with exports growing at a rate slightly higher than imports. Concerning the possibility of trade diversion resulting from the free trade agreements, total international trade flows to all other regions of the world, including Mexico, have increased at a faster rate than the Canadian economy. Considering imports separately, the pattern is similar, with exceptional growth in Canada's imports from Mexico. Exports exhibit a slightly different pattern, growing significantly faster than the Canadian economy for the United States and Mexico, but slower, though positive, for the European Union, East Asia with Australia and New Zealand, and the Rest of the World. Therefore, any concerns regarding trade diverting effects of the free trade agreements are unfounded, consistent with previous research.

The relative shares of Canadian international trade flows to the same countries or regions are shown in figures 5–8 and table 2. Canada is clearly adjusting its trading relationships with the rest of the world as a result of the free trade agreements. The European Union, East Asia with Australia and New Zealand, and the Rest of the World are all losing shares in Canadian international trade flows, particularly with respect to exports. Essentially all of these former export markets have moved to the United States over the past 15 years: 74 percent (1989) to 87 percent (2002). Mexico has increased its share of Canadian exports only marginally. East Asia with Australia and New Zealand began to lose some of its import share after the implementation of the NAFTA, but has since regained its losses; both the European Union and the Rest of the World show consistent moderate gains in their import shares, also exhibiting slight decreases around the time the NAFTA was implemented. The United States, however, has decreased its share in Canadian imports by three percent, with Mexico absorbing most of the U.S. losses.

The overall result of the free trade agreements is Canada reorganizing its international trading relationships both within and outside of North America. This reorganization is done without any apparent losses in global welfare be-

cause Canada's international trade flows outside of North America have increased in real terms. In many cases, that growth in international trade flows has outstripped the growth of the Canadian economy.

### *International Trade Growth at the Industrial Sector Level*

As shown in figures 9–14 and table 3, almost all industrial sectors have experienced significant growth in the volume of international trade flows, in real terms—all values are in constant 1997 Canadian dollars, exports plus imports. The only exception to this pattern is the Leather industrial sector that exhibited almost zero growth. The Food Products and Clothing industrial sectors exhibited the strongest growth, with trading volumes five times the 1989 value or more in 2002. Generally speaking, all industrial sectors in the Canadian economy expanded their levels of international trade flows with the United States subsequent to the CUSFTA entering into force.

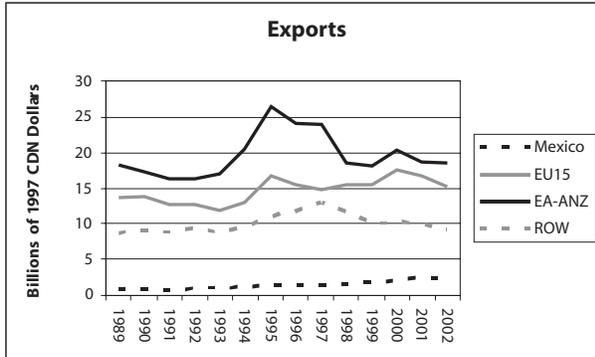
Separating international trade flows into exports and imports; export growth outstripped import growth in all but four industrial sectors (see table 5). With increase factors as high as 5.18 (Textiles), 6.60 (Food), and 9.40 (Clothing), and overall exports (2.55) and imports (1.97), Canada's trade balance with the United States has improved. This outcome satisfies one of the goals set out by Canadian negotiators of the CUSFTA.

Regarding the timing of the expansion in international trade flows, most industrial sectors show smooth expansion over the study period. However, Vegetable Agriculture, Mining Quarrying, and Petroleum, Wood Products, Primary and Fabricated Metals Products, Other Transport, Professional Goods, and Other all appear to have accelerated their growth at times coinciding with the implementation of the NAFTA. Despite this appearance, caution should be exercised with any interpretations, given that only five years separate the CUSFTA and the NAFTA. Lastly, as shown in the national levels of imports and exports, as well as most of the industrial sectors, the levels of post-2000 international trade flows have fallen slightly, likely because of the changing political climate in the United States from the September 11, 2001 terrorist attacks.

Turning to table 4, the relative industrial sector shares in Canada-United States trade, the changes over the study period are much more varied, indicating changes in the industrial structure of international trade flows. Paper Products, Printing and Publishing, Primary and Fabricated Metals, Non-electrical Machinery, and Motor

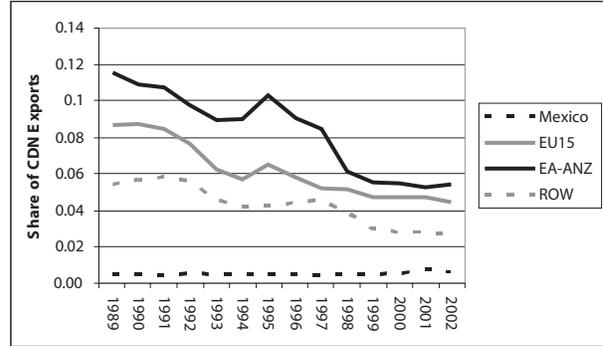
THE EFFECTS OF NORTH AMERICAN TRADE ON THE CANADIAN ECONOMY

Figure 1. National Level Exports



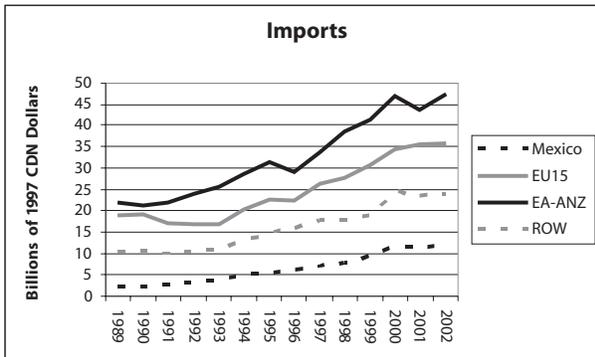
Source: Statistics Canada (2003).

Figure 5. Canadian Export Share



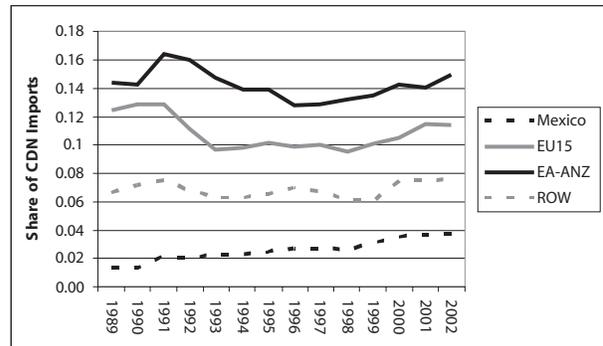
Source: Statistics Canada (2003).

Figure 2. National Level Imports



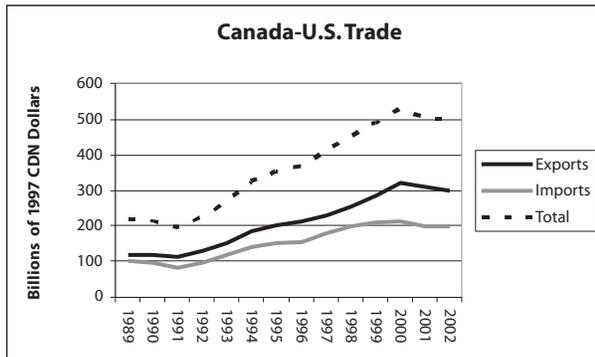
Source: Statistics Canada (2003).

Figure 6. Canadian Import Share



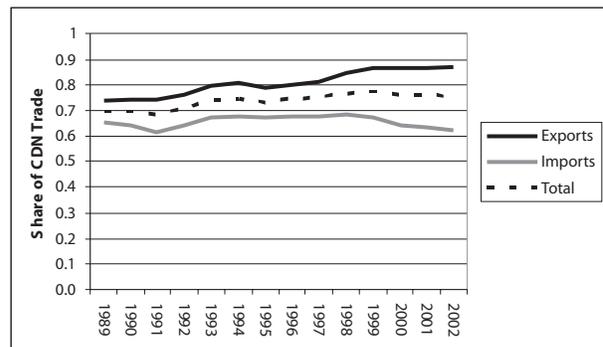
Source: Statistics Canada (2003).

Figure 3. Canada-U.S. Trade



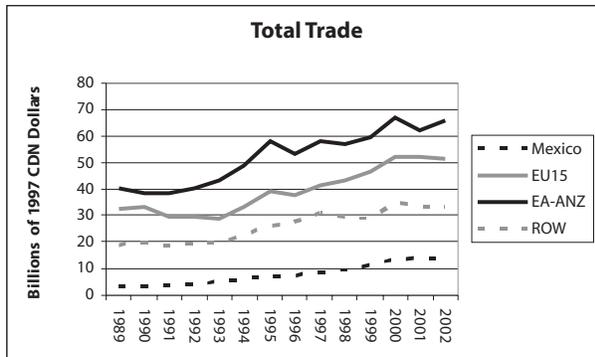
Source: Statistics Canada (2003).

Figure 7. U.S. Trade Share



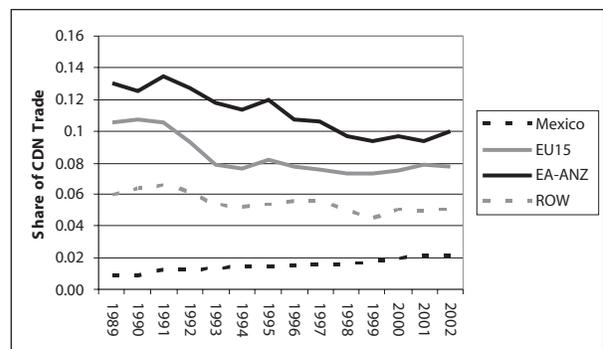
Source: Statistics Canada (2003).

Figure 4. National Level Total Trade



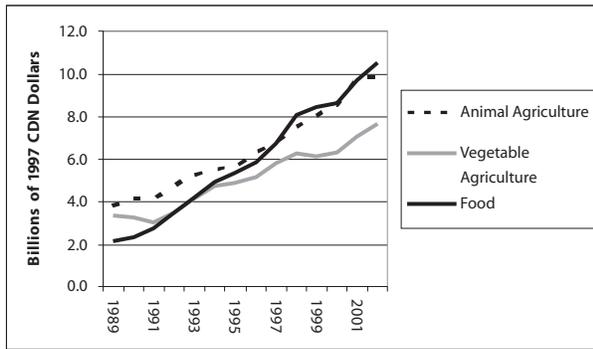
Source: Statistics Canada (2003).

Figure 8. Canadian Total Trade Share



Source: Statistics Canada (2003).

Figure 9. Exports plus Imports, by Industry



Source: Statistics Canada (2003).

Figure 12. Exports plus Imports, by Industry

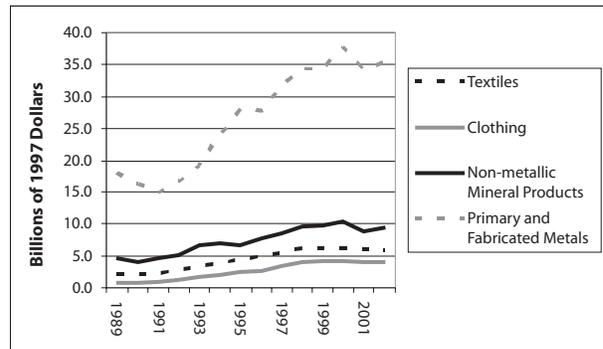
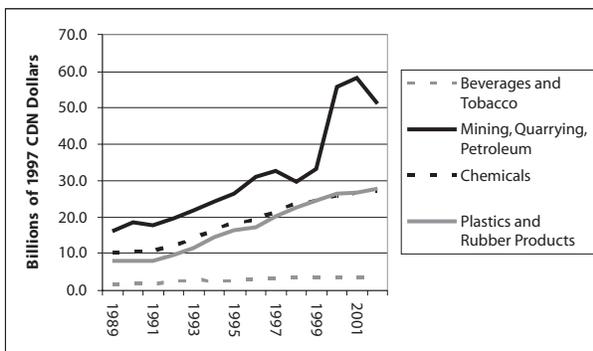


Figure 10. Exports plus Imports, by Industry



Source: Statistics Canada (2003).

Figure 13. Exports plus Imports, by Industry

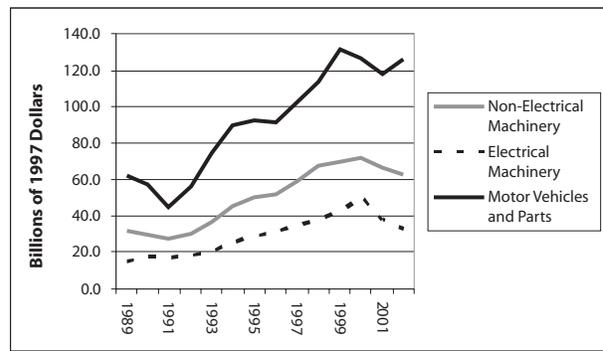
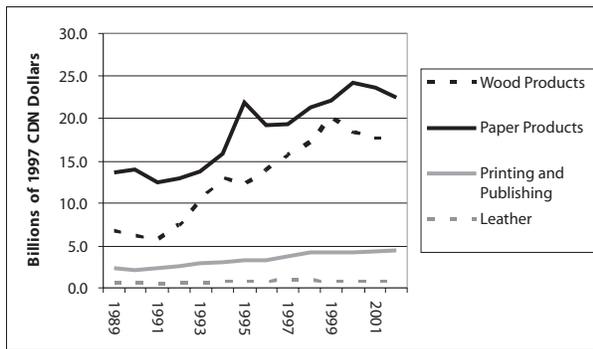
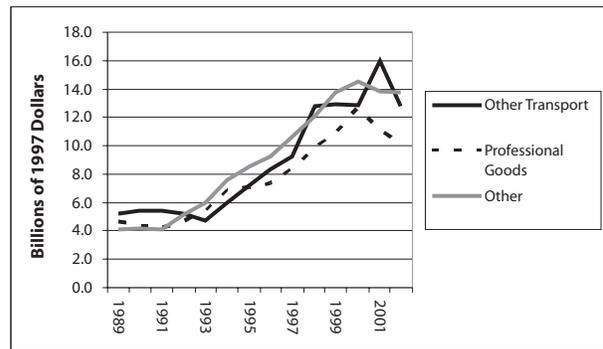


Figure 11. Exports plus Imports, by Industry



Source: Statistics Canada (2003).

Figure 14. Exports plus Imports, by Industry



Source: Statistics Canada (2003).

**Table 1. Canadian international trade flows**

<b>Exports</b>	<b>1989</b>	<b>1990</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	2001	2002
USA	117.0	117.4	112.7	128.4	152.2	182.4	202.1	213.5	230.2	253.6	283.0	318.6	307.2	298.4
Mexico	0.7	0.7	0.6	0.9	0.9	1.1	1.2	1.3	1.2	1.5	1.6	1.9	2.5	2.2
EU15	13.7	13.8	12.8	12.8	11.9	12.9	16.7	15.5	14.8	15.4	15.5	17.6	16.7	15.3
EA-ANZ	18.3	17.2	16.3	16.4	17.1	20.4	26.5	24.1	23.8	18.5	18.1	20.3	18.7	18.5
ROW	8.5	8.9	8.8	9.3	8.6	9.5	11.0	11.6	12.9	11.6	9.9	10.2	9.9	9.1
Total	158.2	158.0	151.1	167.7	190.7	226.3	257.4	266.0	282.9	300.5	328.1	368.5	355.0	343.5
<hr/>														
<b>Imports</b>	<b>1989</b>	<b>1990</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
USA	99.7	95.8	81.8	95.9	116.9	139.7	150.6	153.2	178.7	198.8	206.9	211.3	196.9	196.2
Mexico	2.0	2.0	2.8	3.0	3.9	4.7	5.5	6.1	7.0	7.7	9.4	11.4	11.4	11.8
EU15	19.0	19.1	17.2	16.7	16.9	20.2	22.8	22.5	26.4	27.9	31.0	34.6	35.7	35.8
EA-ANZ	22.0	21.2	21.9	23.9	25.9	28.7	31.4	28.9	33.9	38.5	41.4	47.0	43.7	47.2
ROW	10.1	10.5	9.9	10.1	11.0	12.8	14.7	15.7	17.6	17.7	18.8	24.7	23.2	23.9
Total	152.7	148.6	133.7	149.6	174.6	206.2	224.9	226.4	263.7	290.7	307.5	329.0	310.9	314.8
<hr/>														
<b>Total Trade</b>	<b>1989</b>	<b>1990</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
USA	216.7	213.2	194.5	224.4	269.1	322.0	352.7	366.7	408.8	452.4	489.9	529.9	504.1	494.6
Mexico	2.7	2.7	3.4	3.9	4.8	5.9	6.7	7.4	8.2	9.2	11.0	13.3	13.9	14.0
EU15	32.6	33.0	29.9	29.5	28.8	33.1	39.5	38.0	41.2	43.3	46.5	52.1	52.4	51.1
EA-ANZ	40.3	38.4	38.2	40.3	42.9	49.1	57.8	53.0	57.8	57.0	59.5	67.3	62.4	65.7
ROW	18.6	19.5	18.7	19.4	19.6	22.3	25.7	27.4	30.5	29.4	28.7	34.9	33.1	33.0
Total	310.8	306.7	284.8	317.4	365.2	432.3	482.4	492.4	546.5	591.2	635.6	697.5	665.9	658.3

Source: Statistics Canada 2003

**Table 2. Canadian international trade shares**

<b>Exports</b>	<b>1989</b>	<b>1990</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
USA	0.740	0.743	0.746	0.766	0.798	0.806	0.785	0.803	0.814	0.844	0.863	0.864	0.865	0.869
Mexico	0.005	0.004	0.004	0.005	0.005	0.005	0.005	0.005	0.004	0.005	0.005	0.005	0.007	0.006
EU15	0.086	0.087	0.084	0.076	0.062	0.057	0.065	0.058	0.052	0.051	0.047	0.048	0.047	0.045
EA-ANZ	0.115	0.109	0.108	0.098	0.090	0.090	0.103	0.091	0.084	0.061	0.055	0.055	0.053	0.054
ROW	0.054	0.057	0.058	0.055	0.045	0.042	0.043	0.044	0.045	0.039	0.030	0.028	0.028	0.027
<b>Imports</b>	<b>1989</b>	<b>1990</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
USA	0.653	0.644	0.612	0.641	0.670	0.678	0.670	0.677	0.678	0.684	0.673	0.642	0.633	0.623
Mexico	0.013	0.013	0.021	0.020	0.023	0.023	0.024	0.027	0.027	0.027	0.031	0.035	0.037	0.037
EU15	0.124	0.129	0.129	0.112	0.097	0.098	0.101	0.099	0.100	0.096	0.101	0.105	0.115	0.114
EA-ANZ	0.144	0.143	0.164	0.160	0.148	0.139	0.139	0.128	0.129	0.133	0.135	0.143	0.141	0.150
ROW	0.066	0.071	0.074	0.068	0.063	0.062	0.065	0.069	0.067	0.061	0.061	0.075	0.075	0.076
<b>Total Trade</b>	<b>1989</b>	<b>1990</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
USA	0.697	0.695	0.683	0.707	0.737	0.745	0.731	0.745	0.748	0.765	0.771	0.760	0.757	0.751
Mexico	0.009	0.009	0.012	0.012	0.013	0.014	0.014	0.015	0.015	0.015	0.017	0.019	0.021	0.021
EU15	0.105	0.107	0.105	0.093	0.079	0.077	0.082	0.077	0.075	0.073	0.073	0.075	0.079	0.078
EA-ANZ	0.130	0.125	0.134	0.127	0.118	0.113	0.120	0.108	0.106	0.096	0.094	0.096	0.094	0.100
ROW	0.060	0.064	0.066	0.061	0.054	0.052	0.053	0.056	0.056	0.050	0.045	0.050	0.050	0.050

Source: Statistics Canada 2003

**Table 3a. Total and industrial sector export levels, constant 1997 Canadian dollars**

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Total Trade	117.0	117.4	112.7	128.4	152.2	182.4	202.1	213.5	230.2	253.6	283.0	318.6	307.2	298.4
Animal Agriculture	2.8	3.1	3.0	3.6	4.0	4.1	4.2	4.8	5.2	5.8	6.2	6.6	7.8	8.0
Vegetable Agriculture	0.9	0.9	0.8	1.1	1.4	2.1	2.0	2.3	2.6	2.8	2.7	2.7	3.1	3.2
Food	0.9	0.9	1.2	1.6	1.9	2.4	2.7	3.0	3.4	4.3	4.6	4.8	5.5	6.0
Beverages and Tobacco	0.9	1.0	1.2	1.5	2.0	1.5	1.5	1.8	1.9	2.0	2.0	2.0	2.0	2.0
Mining, Quarrying, Petroleum	13.3	15.5	15.6	17.2	19.6	21.7	23.4	27.8	29.0	25.3	29.2	51.4	53.7	46.7
Chemicals	4.7	4.7	4.6	5.4	6.2	7.4	8.4	8.7	9.5	10.1	10.3	11.3	12.1	12.3
Plastics and Rubber Products	3.3	3.5	3.4	4.2	5.2	6.8	8.0	8.4	9.7	10.9	11.9	13.2	13.8	14.2
Wood Products	5.3	4.9	4.5	6.2	9.0	11.2	10.4	12.3	13.5	14.8	17.7	15.7	15.3	15.1
Paper Products	11.7	11.9	10.3	10.5	11.1	12.5	17.6	15.2	15.0	16.4	16.8	18.6	18.0	16.9
Printing and Publishing	0.5	0.4	0.4	0.5	0.7	0.7	0.9	0.9	1.1	1.4	1.5	1.6	1.7	1.8
Leather	0.3	0.3	0.3	0.3	0.3	0.4	0.4	0.5	0.5	0.5	0.5	0.5	0.5	0.4
Textiles	0.5	0.6	0.7	0.9	1.1	1.4	1.6	1.8	2.0	2.4	2.5	2.6	2.6	2.6
Clothing	0.3	0.4	0.5	0.7	0.9	1.2	1.4	1.7	2.1	2.6	2.9	3.1	3.0	3.1
Non-metallic Mineral Product	2.4	1.8	2.5	2.8	3.7	4.0	3.9	4.6	5.0	5.6	6.0	6.5	5.1	5.6
Primary and Fabricated Metals	11.0	9.6	8.7	9.8	11.3	14.3	17.1	16.9	18.4	19.7	19.5	20.9	19.8	20.7
Non-Electrical machinery	11.1	10.6	9.9	11.1	13.3	17.2	20.0	21.2	22.5	26.6	27.5	28.9	27.2	25.9
Electrical Machinery	5.0	6.4	6.5	7.0	7.4	9.0	10.8	12.7	14.3	15.8	18.3	25.9	17.7	14.7
Motor Vehicles and Parts	36.0	34.6	32.6	37.6	46.3	54.9	56.9	55.9	59.6	68.3	82.8	80.2	75.0	77.7
Other Transport	2.7	3.1	3.2	2.9	2.7	3.8	4.3	5.4	5.8	8.1	8.5	8.4	10.7	9.1
Professional Goods	1.2	0.9	1.0	1.3	1.4	1.8	1.9	2.1	2.4	2.8	3.0	4.4	3.6	3.3
Other	2.2	2.1	1.8	2.3	2.9	4.0	4.8	5.5	6.5	7.3	8.6	9.4	9.1	9.3

Source: Statistics Canada 2003.

**Table 3b. Total and industrial sector import levels, constant 1997 Canadian dollars**

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Total Trade	99.7	95.8	81.8	95.9	116.9	139.7	150.6	153.2	178.7	198.8	206.9	211.3	196.9	196.2
Animal Agriculture	1.0	1.0	1.1	1.1	1.2	1.4	1.4	1.4	1.5	1.6	1.8	1.9	2.0	1.9
Vegetable Agriculture	2.4	2.3	2.2	2.4	2.7	2.7	2.9	2.9	3.2	3.4	3.4	3.6	4.0	4.5
Food	1.2	1.4	1.5	1.9	2.2	2.5	2.7	2.8	3.3	3.8	3.8	3.8	4.2	4.5
Beverages and Tobacco	0.6	0.6	0.6	0.7	0.8	0.9	0.9	1.0	1.2	1.3	1.3	1.3	1.5	1.5
Mining, Quarrying, Petroleum	2.9	3.0	2.3	2.5	2.4	2.8	3.1	3.2	3.7	4.3	4.0	4.3	4.4	4.4
Chemicals	5.4	5.6	5.9	6.6	7.7	9.0	9.8	10.4	11.9	13.4	14.1	14.3	14.7	14.9
Plastics and Rubber Products	4.8	4.8	4.7	5.5	6.4	7.8	8.5	9.0	10.5	11.9	12.8	13.3	13.0	13.4
Wood Products	1.3	1.2	1.1	1.2	1.4	1.7	1.8	1.7	2.1	2.2	2.4	2.5	2.3	2.4
Paper Products	1.9	2.1	2.1	2.4	2.7	3.3	4.2	3.9	4.3	4.9	5.2	5.6	5.6	5.6
Printing and Publishing	1.7	1.8	1.9	2.0	2.1	2.4	2.5	2.4	2.7	2.8	2.7	2.6	2.6	2.6
Leather	0.3	0.3	0.2	0.2	0.2	0.3	0.3	0.3	0.4	0.3	0.3	0.3	0.3	0.2
Textiles	1.6	1.6	1.6	1.8	2.1	2.5	2.8	3.0	3.4	3.8	3.6	3.6	3.4	3.2
Clothing	0.4	0.4	0.5	0.6	0.8	0.9	1.0	1.0	1.3	1.4	1.3	1.2	1.2	1.1
Non-metallic Mineral Product	2.4	2.3	2.1	2.3	3.0	2.9	2.8	3.0	3.5	4.0	3.8	3.9	3.7	3.8
Primary and Fabricated Metals	7.0	6.7	6.1	6.7	7.8	9.7	11.0	10.7	13.3	14.5	14.9	16.8	14.4	14.5
Non-Electrical machinery	21.0	19.3	18.0	19.7	23.1	27.9	29.9	30.7	36.2	41.0	42.0	42.7	39.1	37.1
Electrical Machinery	10.0	10.9	10.1	11.3	13.0	15.7	17.5	18.1	20.3	22.4	23.7	25.1	20.4	17.6
Motor Vehicles and Parts	26.1	22.7	12.1	18.5	28.1	34.7	35.6	35.6	42.3	45.1	48.5	46.4	42.6	48.1
Other Transport	2.5	2.3	2.2	2.3	1.9	2.2	2.9	3.0	3.4	4.7	4.4	4.5	5.4	3.7
Professional Goods	3.4	3.3	3.2	3.4	4.0	5.0	5.1	5.2	6.1	7.1	7.9	8.3	7.5	6.9
Other	1.9	2.1	2.2	2.8	3.1	3.6	3.7	3.8	4.2	4.8	5.1	5.1	4.7	4.5

Source: Statistics Canada 2003.

**Table 3c. Total and industrial sector export plus import levels, constant 1997 Canadian dollars**

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Total Trade	216.7	213.2	194.5	224.3	269.1	322.1	352.7	366.7	408.9	452.4	489.9	529.9	504.1	494.6
Animal Agriculture	3.8	4.1	4.1	4.7	5.2	5.5	5.6	6.2	6.7	7.5	8.0	8.5	9.8	9.8
Vegetable Agriculture	3.4	3.3	3.0	3.5	4.1	4.7	4.9	5.2	5.8	6.2	6.1	6.3	7.1	7.7
Food	2.1	2.3	2.7	3.5	4.2	4.9	5.4	5.8	6.7	8.1	8.4	8.7	9.7	10.5
Beverages and Tobacco	1.5	1.6	1.8	2.2	2.8	2.4	2.4	2.8	3.1	3.3	3.3	3.3	3.5	3.4
Mining, Quarrying, Petroleum	16.2	18.5	17.9	19.7	22.0	24.5	26.4	31.0	32.7	29.6	33.2	55.7	58.1	51.0
Chemicals	10.1	10.4	10.5	12.0	13.9	16.4	18.2	19.1	21.4	23.5	24.4	25.6	26.8	27.2
Plastics and Rubber Products	8.1	8.2	8.1	9.7	11.6	14.5	16.5	17.4	20.2	22.8	24.7	26.5	26.8	27.6
Wood Products	6.6	6.1	5.7	7.5	10.4	12.8	12.1	14.0	15.6	17.1	20.1	18.2	17.6	17.5
Paper Products	13.6	13.9	12.4	12.8	13.8	15.8	21.8	19.1	19.3	21.3	22.0	24.2	23.6	22.5
Printing and Publishing	2.3	2.2	2.3	2.5	2.8	3.1	3.4	3.4	3.8	4.1	4.2	4.2	4.3	4.4
Leather	0.6	0.6	0.4	0.5	0.6	0.7	0.7	0.8	0.9	0.8	0.7	0.8	0.8	0.7
Textiles	2.1	2.2	2.3	2.7	3.2	3.9	4.4	4.8	5.4	6.2	6.1	6.2	5.9	5.8
Clothing	0.7	0.8	1.0	1.3	1.7	2.1	2.5	2.7	3.4	4.1	4.2	4.3	4.1	4.1
Non-metallic Mineral Product	4.7	4.1	4.6	5.1	6.7	6.9	6.7	7.7	8.6	9.6	9.8	10.4	8.8	9.4
Primary and Fabricated Metals	17.9	16.3	14.8	16.5	19.1	24.0	28.0	27.7	31.8	34.2	34.4	37.7	34.1	35.2
Non-Electrical machinery	32.1	30.0	27.9	30.7	36.4	45.0	49.9	51.9	58.7	67.6	69.5	71.6	66.3	62.9
Electrical Machinery	15.0	17.3	16.6	18.4	20.4	24.7	28.3	30.8	34.6	38.2	42.0	51.0	38.2	32.3
Motor Vehicles and Parts	62.0	57.3	44.7	56.1	74.4	89.6	92.6	91.6	101.8	113.4	131.3	126.6	117.6	125.7
Other Transport	5.3	5.4	5.4	5.2	4.7	6.0	7.2	8.3	9.2	12.8	12.9	12.9	16.0	12.8
Professional Goods	4.6	4.3	4.2	4.7	5.4	6.8	7.1	7.3	8.5	9.9	10.9	12.7	11.1	10.2
Other	4.1	4.2	4.1	5.1	6.0	7.6	8.5	9.2	10.6	12.1	13.7	14.5	13.8	13.7

Source: Statistics Canada 2003

**Table 4. Industrial sector international trade shares**

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Animal Agriculture	0.017	0.019	0.021	0.021	0.019	0.017	0.016	0.017	0.016	0.016	0.016	0.016	0.019	0.020
Vegetable Agriculture	0.016	0.015	0.015	0.016	0.015	0.015	0.014	0.014	0.014	0.014	0.013	0.012	0.014	0.015
Food	0.010	0.011	0.014	0.015	0.015	0.015	0.015	0.016	0.016	0.018	0.017	0.016	0.019	0.021
Beverages and Tobacco	0.007	0.008	0.009	0.010	0.010	0.008	0.007	0.008	0.008	0.007	0.007	0.006	0.007	0.007
Mining, Quarrying, Petroleum	0.075	0.087	0.092	0.088	0.082	0.076	0.075	0.084	0.080	0.065	0.068	0.105	0.115	0.103
Chemicals	0.046	0.049	0.054	0.054	0.052	0.051	0.052	0.052	0.052	0.052	0.050	0.048	0.053	0.055
Plastics and Rubber Products	0.037	0.039	0.042	0.043	0.043	0.045	0.047	0.047	0.049	0.050	0.050	0.050	0.053	0.056
Wood Products	0.031	0.029	0.029	0.033	0.039	0.040	0.034	0.038	0.038	0.038	0.041	0.034	0.035	0.035
Paper Products	0.063	0.065	0.064	0.057	0.051	0.049	0.062	0.052	0.047	0.047	0.045	0.046	0.047	0.045
Printing and Publishing	0.010	0.011	0.012	0.011	0.011	0.010	0.010	0.009	0.009	0.009	0.009	0.008	0.009	0.009
Leather	0.003	0.003	0.002	0.002	0.002	0.002	0.002	0.002	0.002	0.002	0.002	0.001	0.002	0.001
Textiles	0.010	0.010	0.012	0.012	0.012	0.012	0.012	0.013	0.013	0.014	0.012	0.012	0.012	0.012
Clothing	0.003	0.004	0.005	0.006	0.006	0.007	0.007	0.007	0.008	0.009	0.009	0.008	0.008	0.008
Non-metallic Mineral Products	0.022	0.019	0.023	0.023	0.025	0.022	0.019	0.021	0.021	0.021	0.020	0.020	0.017	0.019
Primary & Fabricated Metals	0.083	0.077	0.076	0.074	0.071	0.074	0.079	0.075	0.078	0.076	0.070	0.071	0.068	0.071
Non-Electrical machinery	0.148	0.141	0.144	0.137	0.135	0.140	0.141	0.142	0.144	0.149	0.142	0.135	0.132	0.127
Electrical Machinery	0.069	0.081	0.085	0.082	0.076	0.077	0.080	0.084	0.085	0.084	0.086	0.096	0.076	0.065
Motor Vehicles and Parts	0.286	0.269	0.230	0.250	0.276	0.278	0.262	0.250	0.249	0.251	0.268	0.239	0.233	0.254
Other Transport	0.024	0.025	0.028	0.023	0.017	0.018	0.021	0.023	0.023	0.028	0.026	0.024	0.032	0.026
Professional Goods	0.021	0.020	0.022	0.021	0.020	0.021	0.020	0.020	0.021	0.022	0.022	0.024	0.022	0.021
Other	0.019	0.020	0.021	0.023	0.022	0.023	0.024	0.025	0.026	0.027	0.028	0.027	0.027	0.028

Source: Statistics Canada 2003.

**Table 5. Canada-U.S. international trade flows, increase factors**

	Exports	Imports	Total
Total Trade	2.55	1.97	2.28
Animal Agriculture	2.85	1.95	2.62
Vegetable Agriculture	3.46	1.83	2.28
Food	6.60	3.74	4.97
Beverages and Tobacco	2.14	2.69	2.35
Mining, Quarrying, Petroleum	3.50	1.51	3.15
Chemicals	2.63	2.76	2.70
Plastics and Rubber Products	4.31	2.81	3.42
Wood Products	2.83	1.82	2.63
Paper Products	1.44	2.89	1.65
Printing and Publishing	3.37	1.51	1.96
Leather	1.39	0.78	1.09
Textiles	5.18	2.01	2.78
Clothing	9.40	2.74	5.77
Non-metallic Mineral Product	2.37	1.62	1.99
Primary and Fabricated Metals	1.89	2.08	1.96
Non-Electrical machinery	2.33	1.77	1.96
Electrical Machinery	2.96	1.76	2.16
Motor Vehicles and Parts	2.16	1.84	2.03
Other Transport	3.35	1.44	2.43
Professional Goods	2.76	2.04	2.23
Other	4.25	2.32	3.34

Source: Statistics Canada 2003.

Vehicles and Parts all exhibit declines in their shares of international trade flows, despite strong growth in the levels of that trade. The decrease in the share of Motor Vehicles and Parts from 28.6 percent (1989) to a low of 23.3 percent (2001) is indicative of the Canadian economy's move toward a more diversified international trade portfolio now that free trade is established in more than this one industrial sector of the economy. The most recent decrease in the share of Wood Products, particularly after 1999, is likely due to the softwood lumber dispute that has escalated only in recent years—the industrial sector's share had been increasing, albeit slowly, until that time. Notable expansions include the Mining Quarrying and Petroleum and Plastics and Rubber Products industrial sectors, with Food, Chemicals, and Other exhibiting moderate relative expansion. Until 2000, Electrical Machinery exhibited significant expansion but has since declined, again, possibly because of the changing political climate in the United States.

Thus far, there is nothing novel in this presentation of the effects of free trade agreements on Canada-United States international trade patterns, aside from the latest data and, perhaps, the particular industrial sector classifications. Consequently, there is little new information being presented here.

### *The Measurement of Trade Types*

Though aggregate measures of international trade flows are instructive in the investigation of international trade, in general, and trade policy changes such as free trade agreements, in particular, they may still shroud changes in international trade patterns. Therefore, it is necessary to disentangle the Canada-United States aggregate international trade flows into their component parts: one-way trade, two-way trade, and the specialization in the quality of that two-way trade.

### *The Grubel-Lloyd Index*

The Grubel-Lloyd Index measures the degree of trade overlap in similar products (intra-industry trade) within one or several industries (Sodersten and Reed 1994). For a single industry, it is equal to:

$$GL = \frac{(X_i + M_i) - |X_i - M_i|}{(X_i + M_i)} = 1 - \frac{|X_i - M_i|}{(X_i + M_i)}$$

where  $i$  is a commodity within industry  $j$ . This Grubel-Lloyd Index expresses the country level as an unweighted average for all commodity categories. This restriction with the index can be removed with a weighted average, though there still remains the category/sub-group aggregation problem with the ratio of net trade to gross trade (Greenaway and Milner 1986).

This problem arises because the net trade-gross trade ratio is a weighted average of the indices for the next most disaggregated groups (Sodersten and Reed 1994). Suppose there are two commodities/sub-groups within an industry:

$$\frac{|X_i - M_i|}{(X_i + M_i)} = \frac{(X_{1i} - M_{1i}) + (X_{2i} - M_{2i})}{(X_{1i} + M_{1i} + X_{2i} + M_{2i})}$$

If the country in question is a net exporter in both sub-groups, the weighting effect of the ratio is maintained, but if the country is a net exporter of one good and a net importer of the other good, the weighting effect is lost

and the Grubel-Lloyd Index will take on a different value (Sodersten and Reed 1994).

The index can be corrected by replacing the original net trade-gross trade ratio with the following:

$$\frac{\sum_{i=1}^n |X_{ij} - M_{ij}|}{(X_j + M_j)}$$

where  $i$  is a commodity sub-group  $i$  within industry  $j$ . This adjustment removes the categorical aggregation problem that results from countries being a net exporter in one sub-group of an industry and a net importer in another sub-group. If a country is a net exporter/importer in both goods,  $GL = GL'$ , but if a country is a net exporter in one good and a net importer in another,  $GL \neq GL'$  (Greenaway and Milner 1986):

$$GL' = 1 - \frac{\sum_{i=1}^n |X_{ij} - M_{ij}|}{(X_j + M_j)}$$

#### Disentangling intra-industry trade

Although the Grubel-Lloyd Index measures the degree of trade overlap in a particular industry, it does not indicate when trade becomes two-way trade. If the definition of two-way trade is taken literally, the simultaneous import and export of the same commodity classification, any commodity that has a Grubel-Lloyd Index greater than zero is two-way trade. More generally, we can consider trade within a commodity classification two-way trade when the minority value flow of trade, the lesser value of exports or imports, is at least  $\gamma$  percent of the majority value flow of trade, the greater value of exports or imports:

$$\frac{\text{Min}(X_{pt}, M_{pt})}{\text{Max}(X_{pt}, M_{pt})} > \gamma \text{ percent}$$

where  $p$  is the product category and  $t$  is the year. Below this level, the minority value flow is not considered significant because it does not represent the structural feature of trade (Abd-el-Rahman 1991). In this study,  $\gamma = 20$  percent.

This criterion is then used to calculate an index of two-way trade. For those products that have a 20 percent, or greater, overlap:

$$\text{Share of Two - Way Trade} = \frac{\sum_i (X_i + M_i)}{(X_j + M_j)}$$

where  $i$  represents two-way traded goods with  $\gamma$  percent overlap and  $j$  represents all traded goods. This index of two-way trade is proposed by Fontagné and Freudenberg (1997).

When the Grubel-Lloyd Index and the two-way trade index used by the Centre d'études prospectives et d'informations internationales (CEPII) are compared, they are quite similar. Fontagné and Freudenberg (1997), using regression analysis, found the fit between the two indices to be impressive:  $R^2 = 0.97$ . The CEPII two-way trade index is typically an overestimate of two-way trade as compared to the Grubel-Lloyd Index because the Grubel-Lloyd Index measures the degree of trade overlap, while the CEPII index considers all trade over the  $\gamma$  percent threshold to be two-way trade (Fontagné and Freudenberg 1997). As will be seen below, the Grubel Lloyd Index does indeed fall below the CEPII two-way trade index in this North American study.

#### Product Similarity

Thus far, only one- and two-way trade are differentiated, and now horizontal and vertical intra-industry trade need to be disentangled. Within a given commodity group classified as two-way trade, products may or may not differ in their quality. In models of intra-industry trade, horizontal product differentiation is characterized by products with similar quality levels, but different attributes, whereas vertical differentiation is characterized by products with significantly different quality levels.

Following Stiglitz (1987), empirical work that disentangles intra-industry trade assumes that prices represent quality even under imperfect information. Differences in the unit values ( $UV$ ) or prices of these commodities are assumed to represent quality differences. Unit values are defined for each commodity classification as the value of trade divided by the quantity traded, giving an average price of the goods traded in this category. Clearly, the more disaggregated the classification system the better this method represents the price of the commodities—a classification system such as the 10-digit Harmonized Tariff Schedule with 20,000 commodity classifications captures this well. The categories in the Harmonized Tariff Schedule are so specific that different commodities have different quantity measures: litres, kilograms, number, etc., whereas the SITC classification system is more general and uses tonnes as its quantity variable for all commodity categories.

Regardless of the level of (dis)aggregation, Abd-el-Rahman (1991) and Fontagné and Freudenberg (1997) define horizontal product differentiation as having the

ratio of the export unit value to the import unit value falling within some range:

$$\frac{1}{1 + \alpha} \leq \frac{UV^X}{UV^M} \leq 1 + \alpha$$

where  $\alpha$  is the threshold for the range. Vertical product differentiation is then defined as:

$$\frac{UV^X}{UV^M} > 1 + \alpha \quad \text{or} \quad \frac{UV^X}{UV^M} < 1/(1 + \alpha)$$

The two thresholds used for the distinction between vertical and horizontal product differentiation in the literature are 15 and 25 percent. The 15 percent threshold is considered appropriate when price differences reflect only differences in quality—the assumption of perfect information—such that a consumer will not purchase a similar, or lower, quality good at a higher price. However, in the case of imperfect information the 15 percent threshold may be too narrow such that the 25 percent threshold is more appropriate. This study uses the 15 percent threshold suggested by Abd-el-Rahman (1991).

The preceding criteria for trade overlap and product similarity lead to three different categories of trade:

- two-way trade in similar, horizontally differentiated, products (significant overlap and low unit value differences)
- two-way trade in vertically differentiated products (significant overlap and high unit value differences)
- one-way trade (no significant overlap).

With quality ranges of goods defined as up-market, middle-market, and down-market goods:

- high-end market: unit value > 15 percent of the average
- low-end market: unit value < 15percent of the average
- middle-end market: unit value within 15 percent of the average.

The purpose of the up-, middle-, and low-market distinctions is to investigate which price/quality segments of the market countries or industries place themselves, or move towards.

In order to measure the share of two-way trade in horizontally differentiated products (TWHD) in industry  $j$ , the ratio of the value of two-way trade for which  $UV^X/UV^M$  falls within the horizontally differentiated products range,  $1/(1 + \alpha) \leq UV^X/UV^M \leq 1 + \alpha$ , to the total value of trade in that industry is calculated:

$$TWHD = \frac{\sum_{p_i \in j} \sum_{HD} (X_{p,t} + M_{p,t})}{\sum_{p_i \in j} \sum_Z (X_{p,t} + M_{p,t})}$$

where  $Z$  represents all trade types,  $TWHD$  represents the two-way horizontally differentiated trade share,  $p_i \in j$  represents product  $i$  in industry  $j$ , and  $t$  represents the year.

A similar formula is used in the calculation of the share of two-way trade in vertically differentiated products ( $TWVD$ ) in industry  $j$ ; that is, when  $UV^X/UV^M < 1/(1 + \alpha)$  or  $UV^X/UV^M > 1 + \alpha$ :

$$TWVD = \frac{\sum_{p_i \in j} \sum_{VD} (X_{p,t} + M_{p,t})}{\sum_{p_i \in j} \sum_Z (X_{p,t} + M_{p,t})}$$

where  $VD$  is vertically horizontally differentiated trade. The share of one-way trade in industry  $j$  is the residual:

$$OWT_j = 1 - TWHD_j - TWVD_j$$

The primary limitation of the data used in this study is the existence of quantities for every product category. Though sometimes because of confidentiality in the data when particular products are produced by only a few firms, the quantity information is generally not disclosed when the same product category is recorded with multiple quantity units. Despite the low degree of aggregation in these data, many products are reported using multiple quantity units, with no standardization being imposed. As a result, the percentage of horizontally- and vertically-differentiated trade is often not equal to two-way trade, in general. Therefore, the proportions of trade based on quality must be viewed as a sample of all two-way trade in most industrial sectors. To aid in interpretation, the two-way trade index (TW) is supplemented with a restricted two-way trade index (TWR) that includes only two-way trade that has quantities reported for both the import and export value—both indices are reported in table 6.

**Table 6a. Industrial sectors, by trade type**

		1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Total Trade	GL	0.410	0.433	0.360	0.390	0.412	0.404	0.418	0.426	0.440	0.455	0.443	0.427	0.417	0.429
	TW	0.582	0.589	0.448	0.514	0.528	0.579	0.595	0.608	0.602	0.622	0.641	0.610	0.543	0.597
	TWR	0.307	0.335	0.191	0.257	0.272	0.327	0.317	0.333	0.330	0.340	0.347	0.326	0.269	0.341
	HD	0.133	0.183	0.056	0.127	0.124	0.154	0.165	0.103	0.160	0.188	0.149	0.144	0.095	0.157
	VDHQ	0.079	0.078	0.065	0.060	0.071	0.083	0.085	0.106	0.103	0.086	0.119	0.118	0.108	0.112
	VDLQ	0.095	0.074	0.070	0.069	0.078	0.090	0.067	0.124	0.068	0.066	0.079	0.064	0.066	0.072
Animal Agriculture	GL	0.268	0.186	0.211	0.242	0.268	0.285	0.264	0.265	0.296	0.277	0.302	0.317	0.284	0.248
	TW	0.258	0.184	0.269	0.282	0.293	0.299	0.295	0.280	0.350	0.355	0.349	0.482	0.351	0.351
	TWR	0.251	0.183	0.259	0.273	0.285	0.290	0.286	0.271	0.342	0.346	0.346	0.480	0.347	0.347
	HD	0.033	0.014	0.010	0.027	0.027	0.014	0.029	0.026	0.020	0.189	0.176	0.169	0.185	0.197
	VDHQ	0.046	0.056	0.042	0.037	0.040	0.086	0.086	0.080	0.134	0.087	0.116	0.258	0.122	0.107
	VDLQ	0.172	0.112	0.206	0.209	0.218	0.190	0.171	0.166	0.188	0.070	0.055	0.053	0.041	0.043
Vegetable Agriculture	GL	0.199	0.210	0.224	0.212	0.234	0.215	0.223	0.255	0.235	0.256	0.270	0.258	0.250	0.251
	TW	0.240	0.256	0.278	0.296	0.279	0.247	0.275	0.320	0.296	0.327	0.362	0.332	0.335	0.313
	TWR	0.195	0.209	0.228	0.248	0.235	0.203	0.226	0.269	0.244	0.264	0.297	0.264	0.268	0.248
	HD	0.048	0.043	0.041	0.034	0.040	0.052	0.031	0.035	0.016	0.126	0.103	0.049	0.094	0.057
	VDHQ	0.014	0.026	0.020	0.025	0.024	0.024	0.027	0.065	0.073	0.049	0.066	0.125	0.062	0.081
	VDLQ	0.134	0.139	0.166	0.189	0.171	0.127	0.168	0.170	0.155	0.088	0.128	0.091	0.112	0.109
Food	GL	0.383	0.387	0.401	0.420	0.452	0.464	0.469	0.480	0.493	0.451	0.474	0.488	0.496	0.494
	TW	0.503	0.504	0.514	0.570	0.579	0.595	0.570	0.622	0.604	0.569	0.616	0.640	0.583	0.636
	TWR	0.503	0.504	0.514	0.570	0.579	0.595	0.570	0.622	0.604	0.569	0.616	0.640	0.583	0.636
	HD	0.118	0.206	0.203	0.242	0.103	0.232	0.282	0.305	0.298	0.315	0.258	0.294	0.347	0.339
	VDHQ	0.181	0.128	0.140	0.095	0.237	0.112	0.085	0.123	0.088	0.132	0.132	0.133	0.131	0.121
	VDLQ	0.204	0.170	0.172	0.233	0.239	0.251	0.203	0.194	0.218	0.122	0.226	0.213	0.105	0.177
Beverages and Tobacco	GL	0.224	0.242	0.222	0.181	0.164	0.215	0.239	0.234	0.246	0.256	0.296	0.284	0.298	0.326
	TW	0.199	0.232	0.227	0.205	0.251	0.202	0.253	0.230	0.331	0.329	0.347	0.336	0.341	0.301
	TWR	0.199	0.224	0.222	0.205	0.251	0.202	0.253	0.230	0.331	0.329	0.347	0.336	0.341	0.301
	HD	0.056	0.014	0.039	0.087	0.073	0.081	0.038	0.037	0.147	0.087	0.084	0.099	0.083	0.075
	VDHQ	0.011	0.013	0.005	0.001	0.028	0.009	0.082	0.101	0.016	0.015	0.013	0.075	0.091	0.062
	VDLQ	0.132	0.197	0.178	0.117	0.150	0.112	0.134	0.092	0.168	0.227	0.250	0.162	0.168	0.165

Source: Statistics Canada 2003.

**Table 6b. Industrial sectors, by trade type**

		1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Mining, Quarrying, Petroleum	GL	0.133	0.116	0.085	0.081	0.083	0.082	0.080	0.080	0.089	0.128	0.099	0.076	0.085	0.092
	TW	0.106	0.099	0.082	0.078	0.090	0.082	0.084	0.081	0.079	0.137	0.081	0.056	0.061	0.067
	TWR	0.106	0.099	0.082	0.078	0.090	0.082	0.084	0.081	0.079	0.137	0.081	0.056	0.061	0.067
	HD	0.055	0.034	0.035	0.028	0.010	0.017	0.027	0.028	0.018	0.071	0.014	0.019	0.009	0.019
	VDHQ	0.014	0.025	0.019	0.009	0.041	0.032	0.013	0.020	0.013	0.023	0.027	0.013	0.015	0.016
	VDLQ	0.038	0.040	0.028	0.041	0.039	0.033	0.045	0.033	0.048	0.043	0.040	0.024	0.037	0.032
Chemicals	GL	0.237	0.252	0.264	0.265	0.274	0.295	0.310	0.333	0.326	0.336	0.344	0.349	0.350	0.354
	TW	0.280	0.315	0.286	0.319	0.363	0.367	0.406	0.442	0.415	0.425	0.461	0.460	0.482	0.489
	TWR	0.197	0.231	0.205	0.219	0.251	0.260	0.282	0.305	0.287	0.294	0.307	0.313	0.323	0.321
	HD	0.059	0.055	0.073	0.063	0.065	0.052	0.047	0.067	0.066	0.085	0.085	0.087	0.071	0.074
	VDHQ	0.074	0.078	0.040	0.077	0.076	0.081	0.073	0.090	0.079	0.076	0.082	0.086	0.113	0.115
	VDLQ	0.065	0.098	0.092	0.079	0.111	0.127	0.162	0.148	0.142	0.132	0.140	0.140	0.139	0.132
Plastics and Rubber Products	GL	0.543	0.563	0.572	0.585	0.604	0.618	0.638	0.654	0.669	0.670	0.680	0.682	0.674	0.679
	TW	0.699	0.711	0.788	0.830	0.826	0.825	0.839	0.870	0.887	0.907	0.905	0.909	0.911	0.892
	TWR	0.437	0.454	0.535	0.574	0.583	0.570	0.600	0.630	0.625	0.622	0.628	0.640	0.638	0.628
	HD	0.180	0.192	0.196	0.192	0.114	0.244	0.384	0.292	0.420	0.296	0.296	0.357	0.317	0.289
	VDHQ	0.078	0.102	0.089	0.115	0.206	0.105	0.055	0.074	0.072	0.114	0.100	0.114	0.111	0.062
	VDLQ	0.179	0.160	0.250	0.267	0.264	0.221	0.161	0.264	0.133	0.212	0.231	0.169	0.210	0.278
Wood Products	GL	0.157	0.169	0.159	0.144	0.123	0.126	0.132	0.129	0.153	0.156	0.147	0.166	0.152	0.161
	TW	0.173	0.201	0.195	0.184	0.147	0.164	0.178	0.173	0.193	0.213	0.168	0.206	0.181	0.163
	TWR	0.131	0.160	0.149	0.141	0.116	0.130	0.137	0.134	0.135	0.156	0.140	0.172	0.120	0.130
	HD	0.006	0.027	0.001	0.003	0.023	0.039	0.024	0.034	0.041	0.039	0.033	0.033	0.005	0.029
	VDHQ	0.025	0.053	0.052	0.042	0.048	0.051	0.064	0.076	0.068	0.082	0.073	0.100	0.091	0.063
	VDLQ	0.100	0.080	0.096	0.095	0.045	0.040	0.048	0.023	0.026	0.034	0.034	0.039	0.023	0.038
Paper Products	GL	0.136	0.159	0.183	0.208	0.220	0.242	0.238	0.256	0.280	0.294	0.298	0.312	0.324	0.334
	TW	0.184	0.181	0.204	0.237	0.217	0.288	0.240	0.340	0.358	0.370	0.386	0.391	0.412	0.386
	TWR	0.161	0.153	0.167	0.190	0.149	0.205	0.161	0.241	0.255	0.261	0.265	0.270	0.281	0.236
	HD	0.039	0.081	0.051	0.049	0.047	0.065	0.088	0.104	0.127	0.102	0.079	0.102	0.140	0.107
	VDHQ	0.005	0.011	0.021	0.043	0.046	0.043	0.037	0.041	0.031	0.056	0.074	0.103	0.081	0.081
	VDLQ	0.116	0.060	0.095	0.098	0.055	0.097	0.036	0.095	0.098	0.102	0.112	0.065	0.060	0.048

Source: Statistics Canada 2003

**Table 6c. Industrial sectors, by trade type**

		1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Printing and Publishing	GL	0.469	0.368	0.356	0.384	0.450	0.467	0.469	0.504	0.506	0.527	0.533	0.529	0.550	0.550
	TW	0.597	0.575	0.600	0.574	0.602	0.608	0.626	0.982	0.698	0.986	0.981	0.985	0.987	0.990
	TWR	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	HD	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	VDHQ	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	VDLQ	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Leather	GL	0.540	0.556	0.552	0.570	0.571	0.576	0.614	0.584	0.639	0.557	0.572	0.575	0.521	0.494
	TW	0.649	0.694	0.687	0.720	0.735	0.752	0.771	0.707	0.756	0.752	0.770	0.749	0.726	0.638
	TWR	0.503	0.576	0.540	0.568	0.583	0.624	0.584	0.523	0.566	0.524	0.512	0.480	0.460	0.416
	HD	0.268	0.202	0.034	0.285	0.329	0.322	0.315	0.256	0.255	0.032	0.033	0.003	0.032	0.006
	VDHQ	0.094	0.172	0.275	0.256	0.227	0.244	0.226	0.228	0.260	0.434	0.417	0.438	0.397	0.374
	VDLQ	0.141	0.202	0.231	0.027	0.027	0.057	0.043	0.040	0.051	0.057	0.062	0.040	0.031	0.036
Textile	GL	0.291	0.345	0.367	0.409	0.414	0.380	0.409	0.419	0.421	0.436	0.467	0.469	0.457	0.455
	TW	0.380	0.379	0.402	0.599	0.567	0.446	0.606	0.589	0.592	0.612	0.613	0.677	0.632	0.645
	TWR	0.379	0.359	0.382	0.576	0.545	0.436	0.599	0.568	0.585	0.597	0.593	0.652	0.605	0.617
	HD	0.037	0.073	0.107	0.261	0.283	0.165	0.213	0.088	0.190	0.313	0.331	0.284	0.245	0.317
	VDHQ	0.160	0.106	0.122	0.132	0.140	0.194	0.219	0.284	0.231	0.135	0.124	0.177	0.174	0.117
	VDLQ	0.182	0.181	0.154	0.182	0.122	0.077	0.167	0.196	0.164	0.149	0.138	0.191	0.186	0.182
Clothing	GL	0.452	0.440	0.418	0.417	0.447	0.462	0.485	0.490	0.500	0.492	0.445	0.411	0.412	0.388
	TW	0.641	0.630	0.526	0.559	0.601	0.613	0.627	0.638	0.622	0.668	0.523	0.537	0.525	0.515
	TWR	0.507	0.486	0.397	0.471	0.512	0.507	0.532	0.549	0.536	0.575	0.418	0.396	0.366	0.353
	HD	0.053	0.097	0.116	0.175	0.137	0.134	0.143	0.082	0.166	0.204	0.076	0.068	0.064	0.094
	VDHQ	0.363	0.202	0.106	0.187	0.173	0.220	0.254	0.305	0.215	0.217	0.189	0.188	0.167	0.173
	VDLQ	0.092	0.187	0.176	0.108	0.201	0.153	0.135	0.162	0.155	0.154	0.153	0.140	0.134	0.086
Non-metallic Mineral Product	GL	0.396	0.549	0.396	0.441	0.421	0.383	0.381	0.371	0.436	0.463	0.375	0.349	0.367	0.346
	TW	0.636	0.629	0.603	0.740	0.489	0.485	0.498	0.484	0.699	0.645	0.400	0.410	0.450	0.429
	TWR	0.383	0.329	0.311	0.455	0.228	0.185	0.169	0.166	0.440	0.398	0.141	0.148	0.145	0.143
	HD	0.284	0.154	0.020	0.204	0.016	0.013	0.020	0.107	0.391	0.299	0.048	0.033	0.049	0.029
	VDHQ	0.037	0.162	0.263	0.237	0.197	0.139	0.125	0.050	0.049	0.098	0.089	0.100	0.091	0.091
	VDLQ	0.062	0.013	0.028	0.014	0.015	0.033	0.023	0.009	0.000	0.001	0.003	0.015	0.005	0.022

Source: Statistics Canada 2003

**Table 6d. Industrial sectors, by trade type**

		1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Primary & Fabricated Metals	GL	0.377	0.407	0.409	0.407	0.425	0.430	0.426	0.438	0.460	0.475	0.484	0.470	0.478	0.494
	TW	0.484	0.514	0.504	0.536	0.544	0.544	0.530	0.553	0.576	0.630	0.624	0.585	0.609	0.634
	TWR	0.285	0.322	0.319	0.322	0.312	0.326	0.324	0.314	0.335	0.353	0.330	0.320	0.327	0.351
	HD	0.104	0.166	0.136	0.145	0.154	0.138	0.160	0.137	0.147	0.146	0.147	0.142	0.157	0.190
	VDHQ	0.090	0.056	0.065	0.050	0.046	0.077	0.071	0.077	0.091	0.081	0.069	0.064	0.057	0.066
	VDLQ	0.090	0.100	0.118	0.126	0.112	0.111	0.092	0.100	0.097	0.126	0.114	0.114	0.113	0.095
Non-Electrical machinery	GL	0.575	0.570	0.573	0.580	0.573	0.561	0.563	0.599	0.582	0.590	0.600	0.608	0.611	0.616
	TW	0.776	0.748	0.790	0.792	0.787	0.798	0.829	0.842	0.825	0.816	0.824	0.798	0.809	0.807
	TWR	0.270	0.267	0.270	0.269	0.274	0.247	0.248	0.274	0.282	0.298	0.320	0.315	0.315	0.329
	HD	0.008	0.018	0.110	0.145	0.159	0.122	0.113	0.127	0.126	0.146	0.157	0.154	0.153	0.159
	VDHQ	0.211	0.176	0.091	0.046	0.042	0.034	0.044	0.058	0.074	0.081	0.072	0.068	0.067	0.062
	VDLQ	0.050	0.073	0.068	0.078	0.072	0.092	0.091	0.089	0.082	0.072	0.091	0.093	0.096	0.107
Electrical Machinery	GL	0.585	0.665	0.627	0.613	0.602	0.614	0.645	0.667	0.645	0.655	0.618	0.563	0.580	0.587
	TW	0.745	0.766	0.721	0.768	0.741	0.776	0.804	0.796	0.808	0.783	0.803	0.806	0.787	0.778
	TWR	0.305	0.250	0.282	0.300	0.286	0.284	0.304	0.326	0.334	0.298	0.264	0.231	0.230	0.213
	HD	0.018	0.002	0.022	0.034	0.023	0.024	0.192	0.034	0.015	0.019	0.009	0.024	0.013	0.024
	VDHQ	0.254	0.200	0.227	0.250	0.229	0.061	0.074	0.248	0.245	0.231	0.198	0.169	0.168	0.137
	VDLQ	0.033	0.048	0.032	0.016	0.034	0.199	0.038	0.044	0.074	0.048	0.058	0.038	0.049	0.053
Motor Vehicles and Parts	GL	0.476	0.523	0.255	0.376	0.445	0.391	0.415	0.412	0.439	0.449	0.421	0.419	0.401	0.436
	TW	0.808	0.844	0.287	0.502	0.571	0.710	0.718	0.758	0.684	0.690	0.783	0.751	0.520	0.736
	TWR	0.501	0.626	0.054	0.280	0.346	0.547	0.485	0.540	0.474	0.485	0.539	0.517	0.281	0.541
	HD	0.332	0.522	0.010	0.244	0.248	0.343	0.310	0.136	0.297	0.389	0.280	0.282	0.048	0.297
	VDHQ	0.020	0.029	0.016	0.017	0.037	0.148	0.149	0.172	0.159	0.078	0.208	0.205	0.209	0.217
	VDLQ	0.148	0.075	0.028	0.018	0.061	0.056	0.027	0.232	0.017	0.018	0.051	0.030	0.023	0.027
Other Transport	GL	0.504	0.557	0.508	0.427	0.497	0.465	0.491	0.460	0.550	0.521	0.565	0.567	0.502	0.460
	TW	0.554	0.737	0.580	0.469	0.477	0.472	0.669	0.419	0.542	0.557	0.579	0.625	0.558	0.526
	TWR	0.045	0.175	0.049	0.013	0.017	0.019	0.282	0.028	0.114	0.109	0.147	0.216	0.256	0.244
	HD	0.000	0.000	0.005	0.000	0.000	0.000	0.003	0.000	0.088	0.079	0.012	0.001	0.214	0.000
	VDHQ	0.043	0.168	0.043	0.012	0.012	0.012	0.270	0.015	0.011	0.015	0.119	0.198	0.029	0.224
	VDLQ	0.002	0.007	0.002	0.001	0.006	0.006	0.008	0.012	0.015	0.014	0.016	0.018	0.014	0.020

Source: Statistics Canada 2003

**Table 6e. Industrial sectors, by trade type**

		1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Professional Goods	GL	0.413	0.402	0.440	0.479	0.462	0.488	0.503	0.510	0.478	0.481	0.428	0.466	0.472	0.487
	TW	0.532	0.486	0.547	0.620	0.630	0.677	0.687	0.712	0.715	0.705	0.633	0.662	0.732	0.751
	TWR	0.021	0.033	0.035	0.036	0.033	0.030	0.031	0.034	0.035	0.038	0.027	0.026	0.039	0.047
	HD	0.000	0.013	0.013	0.019	0.014	0.000	0.000	0.014	0.013	0.012	0.010	0.008	0.014	0.018
	VDHQ	0.014	0.009	0.011	0.008	0.006	0.006	0.019	0.006	0.008	0.011	0.007	0.006	0.004	0.007
	VDLQ	0.007	0.011	0.012	0.009	0.012	0.024	0.011	0.014	0.014	0.015	0.010	0.011	0.021	0.022
Other	GL	0.490	0.556	0.575	0.608	0.601	0.608	0.627	0.597	0.597	0.548	0.542	0.522	0.516	0.525
	TW	0.703	0.845	0.792	0.803	0.801	0.744	0.811	0.716	0.729	0.701	0.744	0.734	0.713	0.643
	TWR	0.050	0.008	0.010	0.005	0.006	0.015	0.023	0.013	0.016	0.006	0.005	0.005	0.003	0.006
	HD	0.000	0.000	0.000	0.001	0.000	0.003	0.006	0.010	0.000	0.001	0.000	0.000	0.000	0.000
	VDHQ	0.033	0.001	0.005	0.001	0.000	0.008	0.000	0.000	0.001	0.000	0.000	0.000	0.000	0.002
	VDLQ	0.017	0.007	0.005	0.004	0.006	0.004	0.017	0.003	0.015	0.004	0.005	0.005	0.003	0.004

Source: Statistics Canada 2003.

This limitation in the data does not decrease the value of implementing the above measurement methodology. In order to assess the effects of free trade agreements it is necessary to decompose trade into its component parts. This type of analysis allows for a better insight into the integration, or convergence, of the Canadian and U.S. economies.

### **Canada-United States International Trade by Trade Types**

At the aggregate country level, the Grubel-Lloyd (GL) and Two-Way Trade (TW) indices indicate gradual increases over time. However, at the individual sector level, changes in two-way trade are, in some cases, large in magnitude—see table 6. Only Mining Quarrying and Petroleum, Clothing, Non-metallic Mineral Products, Motor Vehicles and Parts, and Other exhibit declines in the level of two-way trade, with significant declines only in Clothing and Non-metallic Mineral Products. Industrial sectors that expanded their two-way trade significantly include Animal Agriculture, Chemicals, Plastics and Rubber Products, Paper Products, Printing and Publishing, Textiles, and Professional Goods. As shown in table 3, the general expansion of two-way trade comes from Canada's increased exports to the United States in almost every industrial sector. Aside from Plastics and Rubber Products and Paper Products, none of these industrial sectors exhibited significant change in their relative international trade flow shares or exceptional growth in the levels of international trade flows. Therefore, merely separating international trade flows into one-way and two-way trade provides significant insight into the changes in the level of industrial sector cross-border integration.

Separating two-way trade into low-, middle-, and high-end markets provides further insights into the changing relationship of the Canadian and US economies (see table 6). At the aggregate national level, despite little change in two-way trade as a whole, Canada is moving into the middle- and high-end markets in international trade. The middle-end market (HD), though volatile, shows an upward trend over the study period (0.133 to 0.157), with a similar trend, somewhat less volatile, in the high-end market (VDHQ) over the study period (0.079 to 0.112). Also worth noting is the timing of these changes: both increases occur only after the implementation of the NAFTA, indicating that the NAFTA has an independent affect on the Canada-United States trading relationship over and above that of the CUSFTA.

At the industrial sector level, sectors that show increases in two-way trade generally exhibit increases in high-end markets at the expense of low- and middle-end markets or both, though middle-end markets do commonly rise. As indicated at the national level, changes in the low-, middle- and high-end portions of the market dominantly occur at or after the time of the NAFTA's coming into force, providing further support for the NAFTA having an independent affect on the Canada-United States trading relationship. Caution should be taken in any interpretation of changes in the Printing and Publishing, Other Transport, Professional Goods, and Other industrial sectors because their small (non-existent for Printing and Publishing) samples of two-way trade commodity categories that have qualities reported for both imports and exports.

### **Summary and Conclusions**

The Canada-United States Free Trade Agreement and the North American Free Trade Agreement have undoubtedly changed Canada's international trading relationship with the United States and the world. Both agreements set the standard for the integration of regional trading partners with respect to the comprehensive coverage in the agreements on not only trade and goods, but service, investment, dispute resolution and trade in agricultural industries. As noted earlier, the NAFTA is also the first free trade agreement negotiated and implemented between industrialized and developing economies.

*Ex ante* estimates of the effects of the CUSFTA and the NAFTA show positive economic impacts for Canada, particularly with the CUSFTA. *Ex post* analyses of the actual effects of the Agreements largely confirm the positive impact on the Canadian economy, but also show that the *ex ante* studies, in particular, underestimated the effects of the Agreements with respect to the volume of international trade flows.

There has been a definite reorganization of Canada's trading relationships with the regions of the world, but this reorganization does not come at the price of trade diversion. Not only has Canada's trade within North America increased, but so has its trade with the rest of the world. Canada-United States international trade flows have grown in all but a few industrial sectors in the Canadian economy, and, pertaining to U.S. international trade flows, there has been some significant restructuring in the relative shares of these industrial sectors. However, these more traditional measures of change in international trade relations tell only part of the story resulting from the CUSFTA and, in particular, the NAFTA.

Separating international trade flows into one-way and two-way trade shows the changes in the level of industrial sector cross-border integration. Two-way trade has increased within most industrial sectors, indicating stronger linkages between Canadian and U.S. industries. And within the two-way trade category, Canada is moving into the higher-end product markets.

On the whole, the free trade agreements with which Canada is associated appear to impact the Canadian economy positively. Though significant trade-induced industrial adjustment is likely present, the overall effect of free trade in North America has been good for the Canadian economy allowing it to place itself better in the North American and global economies for the benefit of all Canadians in the long run.

## DATA APPENDIX

### *World Trade Country Metadata*

The Statistics Canada *World Trade Country Metadata* data set measures Canada-U.S. international trade from 1989–2002 using the Harmonized Tariff Schedule. The data set includes the yearly values and quantities for products at the 10 and 8 digit levels of aggregation for imports and exports, respectively. In order to perform calculations for the various trade types, the 10 digit import classifications needed to be recoded into 8 digit classifications. This is performed on a classification by classification basis to avoid improper aggregation.

#### *Definitions of Industrial Sectors, by 2-Digit Harmonized System*

##### *Animal Agriculture*

- 01 live animals
- 02 meat and edible meat offal
- 03 fish and crustaceans, molluscs and other aquatic invertebrates
- 04 dairy produce, birds' eggs, natural honey, edible products of animal origin, not elsewhere specified or included
- 05 products of animal origin not elsewhere specified or included

##### *Vegetable Agriculture*

- 06 live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage
- 07 edible vegetables and certain roots and tubers
- 08 edible fruit and nuts; peel of citrus fruits or melons

- 09 coffee, tea, mate and spices
- 10 cereals
- 11 products of the milling industry, malt, starches, insulin, wheat gluten
- 12 oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medical plants; straw and fodder
- 13 lacs; gums, resins and other vegetable saps and extracts
- 14 vegetable plaiting materials; vegetable products not elsewhere specified or included

##### *Food*

- 15 animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes
- 16 preparations of meat, fish or crustaceans, molluscs or other aquatic invertebrates
- 17 sugars and sugar confectionery
- 18 cocoa and cocoa preparations
- 19 preparations of cereals, flour, starch or milk; pastry cooks' products
- 20 preparations of vegetables, fruit, nuts or other parts of plants
- 21 miscellaneous edible preparations

##### *Beverages and Tobacco*

- 22 beverages, spirits and vinegar
- 23 residues and waste from the food industries; prepared animal fodder
- 24 tobacco and manufactured tobacco substitutes

##### *Mining, Quarrying, Petroleum*

- 25 salt; sulphur; earth and stone; plastering material, lime and cement
- 26 ores, slag and ash
- 27 mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes

##### *Chemicals*

- 28 inorganic chemicals: organic or inorganic compounds of precious metals, of rare-earth metals
- 29 organic chemicals
- 30 pharmaceutical products
- 31 fertilizers
- 32 tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter
- 33 essential oils and resinoids; perfumery, cosmetic or toilet preparations
- 34 soaps, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes

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- 35 albuminous substances; modified starches; glues; enzymes
- 36 explosives; pyrotechnic products; matches; pyrophoric alloys; combustible materials
- 37 photographic or cinematographic products
- 38 miscellaneous chemical products

*Plastics and Rubber Products*

- 39 plastics and plastic products
- 40 rubber and articles thereof

*Wood Products*

- 44 wood and articles of wood; wood charcoal
- 45 cork and articles of cork
- 46 wickerwork and basketwork

*Paper Products*

- 47 pulp of wood or of other fibrous cellulose material; waste and scrap of paper or paperboard
- 48 paper and paperboard; articles of paper pulp, paper or paperboard

*Printing and Publishing*

- 49 books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans

*Leather*

- 41 hides and skins (other than fur-skins) and leather
- 42 articles of leather; saddlery and harness; travel goods, handbags and similar containers
- 43 fur skins and artificial fur; articles thereof

*Textiles*

- 50 silk
- 51 wool, fine and coarse animal hair; yarn and fabrics of horsehair
- 52 cotton
- 53 other vegetable textile fibres; paper yarn and woven fabrics of paper yarn
- 54 man-made filaments
- 55 man-made staple fibres
- 56 wadding, felt and non-wovens; special yarns; twine, cordage, rope and cable and articles thereof
- 57 carpets and other textile floor coverings
- 58 special woven fabrics; tufted textile products; lace; tapestries; trimmings; embroidery
- 59 impregnated, coated, covered or laminated textile fabrics; articles for technical use, of textile materials
- 60 knitted or crocheted fabrics

*Clothing*

- 61 articles of apparel and clothing accessories, knitted or crocheted
- 62 articles of apparel and clothing accessories, not knitted or crocheted
- 63 other made up textile articles; sets; worn clothing and worn textile articles; rags
- 64 footwear, gaiters and the like; parts of such articles
- 65 headgear and parts thereof
- 66 umbrellas, sun umbrellas, walking sticks, seat-sticks, whips, riding-crops and parts thereof
- 67 prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair

*Non-Metallic Mineral Products*

- 68 articles of stone, plaster, cement, asbestos, mica or similar materials
- 69 ceramic products
- 70 glass and glassware
- 71 natural or cultured pearls, precious or semi-precious stones, precious metals

*Basic Metals & Fabricated Metals Products*

- 72 iron and steel
- 73 articles of iron or steel
- 74 copper and articles thereof
- 75 nickel and articles thereof
- 76 aluminium and articles thereof
- 78 lead and articles thereof
- 79 zinc and articles thereof
- 80 tin and articles thereof
- 81 other base metals; cements; articles thereof
- 82 tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal
- 83 miscellaneous articles of base metal

*Non-Electrical Machinery*

- 84 nuclear reactors, boilers, machinery and mechanical appliances; parts thereof

*Electrical Machinery*

- 85 electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image

*Motor Vehicles and Parts*

- 87 vehicles other than railway or tramway rolling-stock, and parts and accessories thereof

*Other Transport Equipment*

- 86 railway or tramway locomotives, rolling stock and parts thereof; railway or tramway track fixtures  
 88 aircraft, spacecraft, and parts thereof  
 89 ships, boats and floating structures

#### *Professional Goods*

- 90 optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments  
 91 clocks and watches and parts thereof  
 92 musical instruments; parts and accessories for such articles

#### *Other Industries*

- 93 arms and ammunition; parts and accessories thereof  
 94 furniture; medical and surgical furniture; bedding, mattresses, mattress supports, cushions  
 95 toys, games and sports requisites; parts and accessories thereof  
 96 miscellaneous manufactured articles  
 97 works of art, collectors' pieces and antiques

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# *The Effects of Canada–U.S. Free Trade and Economic Integration on Wage and Price Convergence in North America\**

Steven Globerman and Paul Storer

## **Introduction**

The debate over the 1989 Canada-U.S. free trade agreement (CUSTA) and the 1994 North American Free Trade Agreement (NAFTA) included much discussion of the possible positive and negative effects of convergence in North America. Economists pointed to the potential benefits of scale economies and gains from trade associated with different relative prices. Market integration would be associated with a convergence of productivity, wages, and costs on both sides of the border as mutually beneficial trade established a single market price. Free trade opponents of various types predicted that cultural convergence would rob Canada of its distinct identity (as elusive as this identity may be to define) and also argued that any changes in wages and prices would tend to raise prices but lower wages in Canada. This paper looks at wages and prices in Canada and the United States and attempts to identify the extent and nature of any convergence that can be attributed to the formal trade liberalization agreements of 1989 and 1994.

The paper begins by explaining why economic theory holds that trade liberalization should lead to price convergence. Next, it examines the impact of the 1965 Canada-U.S. Auto Pact on convergence of wages, prices, and returns to capital. The paper reviews existing literature on the post-CUSTA experience, and presents new evidence that

updates this work. We find fairly consistent evidence that divergence, rather than convergence, followed CUSTA's introduction. We consider three general explanations for the result: 1. the size of tariff reductions; 2. the failure to reduce non-tariff trade impediments; and 3. the combination of limited exchange rate pass-through combined with exchange rate volatility. The evidence seems to point to the second and third of these potential explanations.

## **The Link Between Economic Integration and Convergence**

The convergence of prices for outputs and inputs has long been viewed as a measure of economic integration. As barriers to the movement of inputs and final outputs between members of a regional trading arrangement are reduced or eliminated, there should be an intensification of trade among member countries. In the neoclassical economic model, an intensification of trade should lead to an equalization of prices net of transport costs and taxes (Hine 1994). Furthermore, since trade is a substitute for factor movements in the neoclassical model, increased trade should also lead to a convergence of wages and returns to capital within the region. To the extent that direct factor movements are stimulated by differences in wage rates and

rates-of-return to capital, increased cross-border flows of capital and labour, perhaps facilitated by formal trade agreements, should further contribute to a convergence of returns to factors of production within the integrating region.

There are compelling reasons to focus on price-based measures of economic integration rather than on the more traditional measures based on trade flows. The theory of contestable markets provides the fundamental insight that the *threat* of substantial new entry into domestic industries can cause monopoly prices to decline to competitive levels without actual entry taking place. Moreover, the threat of new entry can lead to reductions in *X-inefficiency* (higher than necessary costs that, in turn, are encouraged by the protection from more efficient competitors enjoyed by incumbent producers). In the extreme, the threat of new competition from imports can promote significantly lower prices in domestic markets without any significant increases in import volumes. That means that examining convergence of prices and cost contributes directly to the debate over the consequences of trade liberalization but also indirectly to the literature on economic integration.

#### **Past Effects of Integration on Convergence: The Auto Pact of 1965**

Prior to the Canada-U.S. FTA, the most significant example of post-war North American economic integration was the Canada-U.S. Auto Pact of 1965. That agreement led to integration of the automobile industry on a continental scale and was enacted in response to the perceived weakness of the Canadian automotive industry. The Canadian industry was protected by provisions such as a basic tariff of 17.5 percent on cars and parts and higher tariffs on certain specific parts such as engines and brake shoes. The result of this protection was a domestic automotive industry typified by limited production runs that served the relatively small Canadian market. Michael Hart provides the following portrait of the state of the automotive industry in Canada prior to the Auto Pact: “As a result of the established pattern of protection, Canadians paid considerably more for cars than did Americans and had to choose from a narrower range of vehicles. In addition, Canadian workers earned about 30 percent less than their US counterparts. ... It is little wonder, therefore, that Canadian consumption of vehicles was a third less on a per capita basis than that of Americans. ... Prospects for the Canadian industry did not look promising: unemployment in the automotive industry was rising, as were costs” (Hart 2002:241).

Economists like Vincent Bladen who studied the Canadian automotive industry arrived at a clear diagnosis: production runs in Canada were too small to exploit scale economies, and productivity in Canada suffered as a result. The policy changes prescribed to rectify this situation were equally clear: Canadian manufacturers needed to produce for a continental market in order to increase the scale of production. The Auto Pact provided just such continental access, along with guarantees that levels of production in Canada would be maintained. Hart describes the convergence that resulted at the consumer level following the Auto Pact: “The gap between the cost of North American cars to Canadian and American consumers disappeared. ... The available choice was identical” (Hart 2002:245).

The productivity gap that existed prior to the Auto Pact has also disappeared. A 2000 paper by Canadian Auto Workers’ economist Jim Stanford noted that “The auto industry is one of a handful of manufacturing sectors in which Canadian productivity exceeds that of the U.S., and the Canadian productivity advantage has grown through the 1990s.” Stanford also reports hourly wages of Can\$49.72 and \$37.00 in the Canadian and U.S. auto assembly and parts industries in 1998 (Stanford 2000: table 1). This translates into a higher wage in Canada for any value of the Canadian dollar above 74.4 cents. While the market exchange rate averaged about 67 cents during 1998, the PPP exchange rate is generally agreed to have been in the low to mid 80 cent range, suggesting that the real purchasing power of Canadian autoworkers was higher.

Taking this evidence together, the Auto Pact seems like a textbook example of how trade liberalization leads to convergence of wages and prices. While some authors (see Fuss and Waverman 1992, for example) dispute the direct contribution of the Auto Pact, there seems broad agreement that increased production and economies of scale improved conditions in the Canadian automotive industry. There also seems little dispute that the Auto Pact played a role as a catalyst. Stanford, for example, states that the “1965 Auto Pact, ... provided a crucial boost to the early development of Canada’s auto industry” (Stanford 2000:11). Even Fuss and Waverman agree that there was convergence of labor productivity, factor input costs, and output prices after 1965. That suggests that similar effects would be observed after the 1989 Canada-U.S. Free Trade Agreement and its 1994 expansion to include Mexico.

## A Review of the Existing Empirical Literature on Wage, Price, and Profit-Rate Convergence Following CUSTA and NAFTA

### Convergence of Consumer Prices

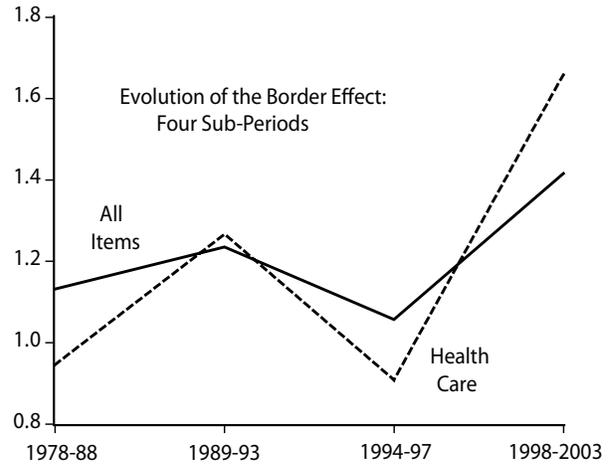
In what has become the classic study of the effect of borders on international consumer price convergence, Engel and Rogers studied ratios of CPI indexes (including 14 categories of prices) for 23 different cities in Canada and the United States (Engel and Rogers 1986). They found that when comparing cities in different countries, deviations from the law of one price based on distance alone were much larger than predicted. Engel and Rogers concluded that the combination of sticky nominal prices and exchange rate volatility explained some of this border effect. Given that the initial Engel and Rogers study predated the CUSTA and NAFTA, it was not able to measure the impact of trade liberalization on this border effect.

The effect of trade liberalization on price convergence has since been examined in studies by Engel and Rogers (1998) and Baldwin and Yan (2004). Engel and Rogers examined city and province-level consumer price index (CPI) series for 14 broad expenditure categories. Their method involved calculating relative prices for pairs chosen from fourteen cities (in the U.S.) and ten provinces (in Canada). The use of index numbers implies that the levels of these relative prices have no meaning. Hence, Engel and Rogers look at the two-month change in the relative prices. Their hypothesis is that changes in relative prices should be smaller the greater the degree of market integration.

To measure border effects, Engel and Rogers first calculated the standard deviations for their city-pair price volatility series. The standard deviations were then used in a cross-section regression on a variable measuring the distance between each city pair and a dummy variable equal to one if cities are in different countries. To test for CUSTA effects, Engel and Rogers estimated regressions for 1978-88, 1989-93, and 1994-97 sub-samples. While the authors found some drop in the size of the coefficient for the border dummy variable between 1978-88 and 1994-97, the distance coefficient also declined, and the authors attributed both of these declines to factors other than trade agreements.

Unlike Engel and Rogers, Baldwin and Yan (2004) used individual goods prices rather than prices indexes and so could focus on price levels rather than on changes in prices. Baldwin and Yan used Canada-U.S. prices of roughly 168 private business product groups<sup>1</sup> for 1985,

Figure 1. Border effects over time



1990, 1993, 1996, and 1999 to calculate the ratio of the Canadian price expressed in U.S. dollars to the U.S. price. This ratio is called the Comparative Price Level, and values above 1.0 indicate that a product is more expensive in Canada. Baldwin and Yan looked at average values of this ratio for three types of general groups: 1. non-tradable commodities such as services and trade-restricted goods such as milk; 2. differentiated tradable goods such as appliances and clothing; and 3. homogeneous tradable goods such as rice, fresh fruit, and fish. In their figure 1, Baldwin and Yan identify an inverted “V-shaped” pattern to the data. That is, average prices for the three categories of products grew relatively more expensive in Canada from 1985-1990 but then became relatively less expensive over the 1990-1999 period. Interestingly, this pattern mirrors the cycle of appreciation of the Canadian dollar from 1985-1990 followed by its depreciation, and the pattern is consistent with the sticky nominal price/volatile exchange rate explanation for deviations from the law of one price outlined by Engel and Rogers (1996). The fact that both tradeables and non-tradeables followed this same exchange rate pattern casts doubt on the importance of trade agreements in inducing price convergence. Indeed, the conclusion of the Baldwin and Yan study contains the following observation: “Our expectation that trade and increasing integration of North American markets would remove price differences over time is, however, not supported by the data” (Baldwin and Yan 2004:10).

### Convergence of Costs of Labour

To date, there has been relatively little analysis of the labour market effects of trade liberalization on relative wages in Canada and the United States. Gaston and Trefler (1997)

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**Table 1. Regression analysis of border width.**

(a) All CPI Items

	1978-88	1989-03	1978-03	1989-93	1994-97	1998-03
<b>Border</b>	1.132 (0.015)	1.225 (0.011)	1.171 (0.009)	1.235 (0.016)	1.057 (0.013)	1.416 (0.022)
<b>LogDistance</b>	3.215 (1.42)	2.446 (0.866)	2.944 (0.735)	-0.598 (1.093)	0.754 (1.105)	5.391 (1.763)

(b) Health Care

	1978-88	1989-04	1978-04	1989-93	1994-97	1998-04
<b>Border</b>	0.946 (0.035)	1.345 (0.018)	1.093 (0.032)	1.267 (0.034)	0.908 (0.024)	1.658 (0.021)
<b>LogDistance</b>	-1.583 (2.90)	-1.213 (1.161)	-2.664 (2.65)	-2.229 (2.749)	0.413 (1.773)	-0.519 (1.702)

Note: Standard errors are in parentheses below the coefficient estimates.

Source: Analysis of CPI data from Statistics Canada and the Bureau of Labor Statistics

found that the high interest rates associated with the anti-inflation policy of the early 1990s had a greater impact on the Canadian labour market than the trade liberalization due to CUSTA. Beaulieu (2000) presented evidence that the CUSTA tariff reductions had no effect on average annual earnings in the manufacturing industries for either skilled or less skilled workers. He attributed this finding to the fact that Canadian real wages did not vary much after trade liberalization, so that there was not much variation to attribute to trade liberalization.

These existing studies of Canadian earnings do not permit analysis of relative labour costs in Canada and the United States. That is partly due to a lack of comparable occupational data, at least for long periods of time. Canada does not provide earnings data by occupation, and the industry data used in studies such as Gaston and Treffer and Beaulieu are not always comparable to industry definitions in the United States.<sup>2</sup>

### New Evidence On Convergence and Trade Liberalization

#### *Consumer Prices*

It is now possible to update and examine in greater depth the analysis of Engel and Rogers (1998). In these regressions, the equation to be estimated is:

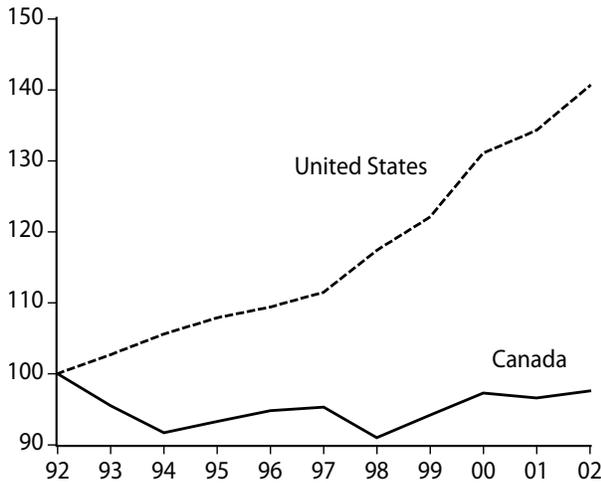
$$\sigma_{i,j} = \sum \alpha_k * city_k + \gamma * \log(\text{dist}_{i,j}) + \delta * \text{border}_{i,j}$$

In this equation,  $\sigma_{i,j}$  is the standard deviation of the two-month change in the ratio of the CPI in location  $i$  to the CPI for location  $j$ . All U.S. prices are converted to Canadian dollar terms by using the market exchange rate, and the dummy variable  $\text{border}_{i,j}$  is equal to one if locations  $i$  and  $j$  are in different countries. The regression includes a series of fourteen dummy variables for each city in the sample to pick up effects specific to each individual location. The two coefficients of greatest interest are  $\gamma$  which captures the effect of distance on variability in relative prices and  $\delta$  which captures the incremental “border” effect of having two locations in different countries.

It is not possible to extend the full Engel and Rogers group of U.S. cities beyond 1997 because the BLS switched several of the cities from even to odd month report beginning in 1997. Nevertheless, the results in table 1 broadly replicate the findings of the Engel and Rogers paper: the border effect seems to get smaller in the 1994-97 period relative to 1989-93 or 1978-88. There are, however, several reasons to doubt that this effect is related to trade liberalization. First, as was also the case in the Engel and Rogers paper, table 1 reveals that this decline in the border effect was also observed for categories of prices such as medical care that were not affected by the free trade agreements.

The similar trend for both goods that were and were not affected by CUSTA is shown quite clearly by figure 1 which plots the size of the border effect coefficients from table 1 for four different sample periods: 1978-88, 1989-03, 1994-97, and 1998-2003. The patterns observed are broadly similar for both the “all items” index and the health care

Figure 2. BLS indexes of hourly manufacturing compensation costs (U.S. dollar basis, 1992 = 100)



Sources: BLS website, series INU0007US0, and INU0007CA0.

index. The other fact revealed by figure 1 is that the border effect variable increases in size again after 1997. Over these four sample periods, the trend is a roughly increasing overall border effect with a temporary decline during 1994-97. This pattern is certainly not consistent with increased convergence of prices in Canada and the U.S. after the enactment of formal trade liberalization agreements.

### Labour Costs

Although existing studies of the impact of free trade on wages in Canada have not used the U.S. as a comparison, Canada-U.S. labour cost comparisons can be made using the U.S. Bureau of Labor Statistics (BLS) indexes of hourly manufacturing compensation. These indexes are available for the U.S. and several foreign countries, including Canada, and are expressed in U.S. dollar terms. Figure 2 shows the behaviour of these two series over the 1992-2002 period with the 1992 value indexed at 100. This graph shows a divergence in labour costs over the post-CUSTA period, with declining relative labour costs in Canada.<sup>3</sup> There are two reasons why this exchange-rate adjusted decline in relative wages in Canada is not consistent with the prediction that wages in Canada would be brought down to a lower U.S. level: real wage growth was fairly strong in the U.S. during this period and the market exchange rate was lower than the generally accepted PPP level.

Similar trends appear when average weekly earnings are compared for manufacturing, transportation equipment, and lumber. For each industrial sector, the weekly

wage increases in the United States relative to Canada, so that labour costs are uniformly lower in Canada by the end of the sample period (1991-2001).<sup>4</sup> While the levels of relative labour costs differ by industrial sector, the trends are almost identical for each sector and seem to reflect the large depreciation of the Canadian dollar combined with the relative stickiness of nominal wages.

### Convergence of Costs of Capital

Integration of the Canadian and U.S. economies should lead to a convergence of costs of capital and rates of return on investment. At the margin, the cost of capital should equal the return on capital. Cross-border investment flows should tend to equate these returns and costs. Divergence between returns on capital in the two countries could reflect, among other things, barriers to non-resident investment in certain sectors (such as banking, broadcasting, or healthcare in Canada) or risk premia related to exchange rate risk or political risk.

One method of examining the convergence of rates of return in Canada and the United States is to examine firm-level data on profitability such as return on equity (ROE) or return on investment (ROI). Both of these ratios take Income Before Extraordinary Items (IBE) and divide by different measure of the resources devoted to earning this income. The Compustat database has measures of these two returns using the following definitions:

$$\text{ROE} = \text{IBE} / \text{Common Equity as Reported}$$

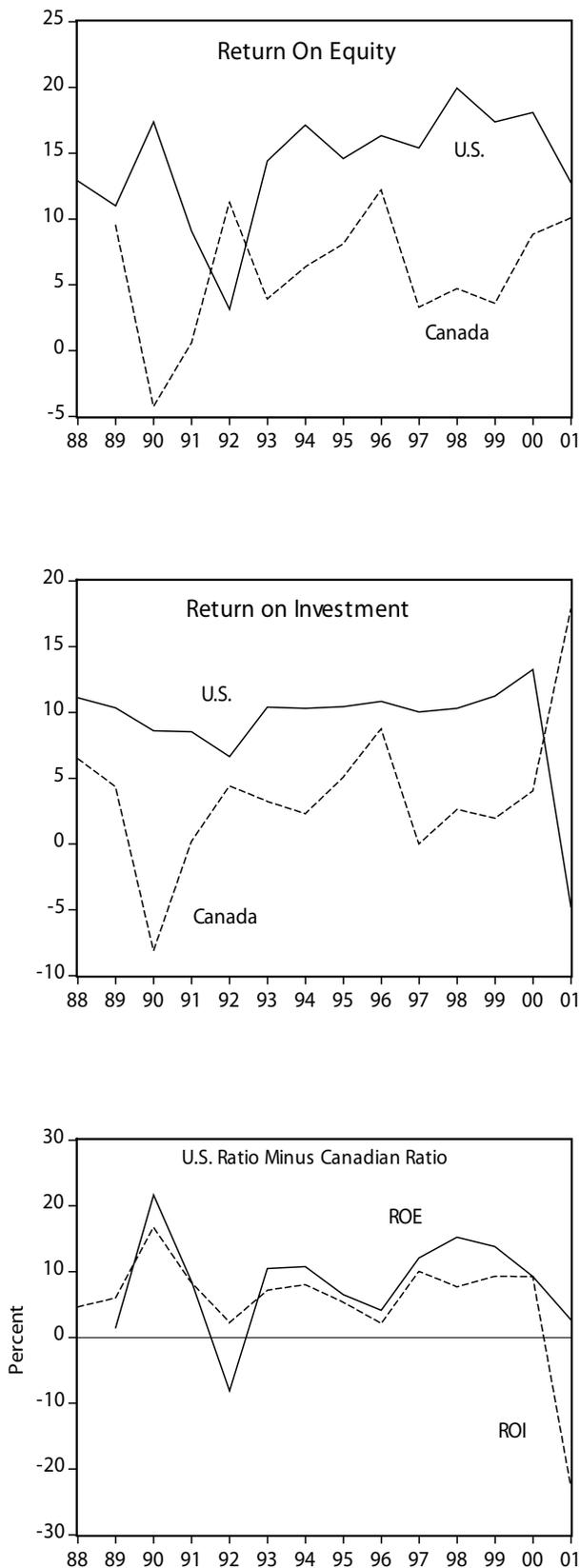
$$\text{ROI} = \text{IBE} / (\text{Long term debt} + \text{Common equity} + \text{Preferred Stock} + \text{Minority interest})$$

Values for these two measures of the return on capital invested are presented in figure 3 (next page). The U.S. series is the average of returns for the companies in the S&P 500 index while the Canadian series is for the TSE 300 index. Unfortunately, the Compustat data for Canada begins in 1988 (for ROI) and 1989 (for ROE), and that does not permit a long-term comparison. In the event, the bottom panel of figure 3 examines the spread between returns in the United States and Canada and shows little evidence of convergence of rates of return on capital, with the possible exception of 2001 where the deeper economic downturn in the U.S. is apparent.

Another source of profitability data is the national accounts. Professor John Rodgers of Western Washington University has compiled comparable measures of the Net Profit Rate (NPR) for Canada and the United States. Rodgers defines the profit rates as:  $\text{NPR} = (\text{Output} - \text{Total$

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Figure 3. Returns on equity and investment



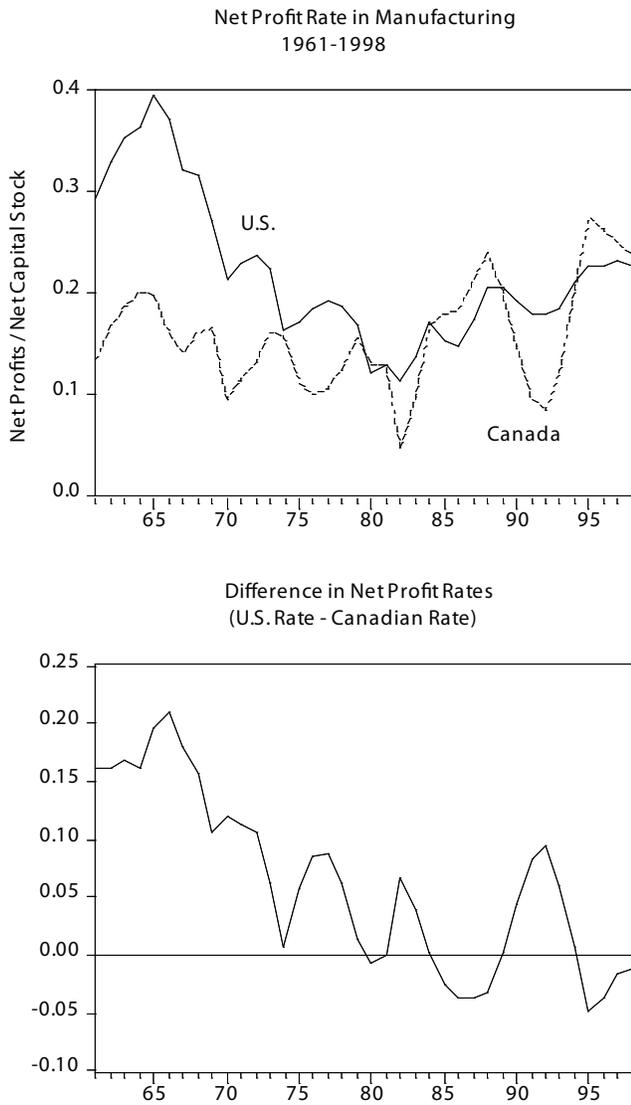
Compensation—Depreciation)/ Net Capital Stock. One advantage of using Rodgers’ data to measure the return on capital is that it does not require the use of firm-level accounting data but rather relies on national accounts data. Recent concerns over standards at public accounting firms have led to increased reliance on profitability measures based on national accounts. Rodgers’ data (shown in figure 4, next page, for the manufacturing sector) does show a definite trend toward convergence of net profit rates in Canada and the United States, but it appears that this trend mainly occurred before 1980. Moreover, the convergence primarily reflects a marked decline in the net profit rate in U.S. manufacturing from 1965 through 1980. While increasing integration between the two economies during this period (particularly that related to the Canada-U.S. Auto Pact) could have reduced differences in rates-of-return to capital, it does not seem plausible to us that this integration-driven equalization would have happened almost exclusively through adjustment of the net profit rate in the United States.

**Why Didn’t Canada-U.S. Free Trade Produce More Convergence?**

The evidence presented thus far suggests that Canada-U.S. price, wage, and profit rate convergence related to formal CUSTA and NAFTA trade liberalization has been relatively modest. This result might surprise both the supporters and opponents of the 1989 free trade agreement, and it is natural to seek an explanation for this surprising result. One possible explanation of the relevant evidence is that the Canadian and U.S. economies were already so tightly integrated prior to the CUSTA that additional efforts by governments and business to link the two economies further were likely to have quite modest results.<sup>5</sup> For instance, while auto-sector tariffs were quite high prior to the Auto Pact, Most Favoured Nation (MFN) tariffs for many goods had already been reduced to a significant extent by 1988.

Also, it is worth noting that the Canada-U.S. exchange rate fluctuated within a very narrow band from 1962 through 1970, the period during which the Auto Pact seemed to foster convergence. That leads to a natural question of whether economic integration is more likely to lead to price and wage convergence when the exchange rate is fixed. Finally, the fact that the CUSTA and NAFTA established a free trade area rather than a customs union, combined with exemptions from the trade agreements for items such as agricultural products, means that internal customs inspections are still required on the Canada-U.S.

Figure 4. Manufacturing net profit rates in Canada and the U.S.



border. This section considers each of these potential explanations for limited price and wage convergence.

**Was the liberalization too small to induce convergence?**

This dismissal of the relevance of anticipated closer integration, at the margin, is unsatisfactory for at least two reasons. One reason is that relative price divergences in North American markets actually increased in specific cases in the post-CUSTA period, and this result is inconsistent with the “exhaustion of incremental integration opportunities” assertion. Rather, it points one in the dir-

ection of looking for factors that may have contributed to a greater balkanization of North American markets in the post-CUSTA period. A more direct response to this comment is provided by Kunimoto and Sawchuk who list both NAFTA and MFN tariff rates and conclude that there is still a “large NAFTA preference ratio (i.e. the MFN rate minus the NAFTA rate)” (Kunimoto and Sawchuk 2004:26).

An anomalous fact that needs to be set against this evidence is that tariff reductions under NAFTA were greater for U.S. imports from Canada than vice versa. That does not fit comfortably with the finding of Helliwell (1998) that the intensity of Canadian exports to the U.S. increased significantly while the intensity of Canadian imports from the U.S. remained relatively stable. The resolution of this anomaly may be found in the secular increase in trade with countries such as China combined with the prolonged and significant depreciation of the Canadian dollar relative to the U.S. dollar over most of the 1990s.

**Does Exchange Volatility Prevent Price Convergence?**

Studies of wage and price convergence such as those of Engel and Rogers (1986) rely upon the comparison of exchange rate adjusted wages and prices. Accordingly, if wages and prices are relatively stable while exchange rates undergo significant changes, price and wage ratios will diverge over time. There is increasing evidence that that is happening because exchange rate movements are not being passed through to import prices. Evidence of this phenomenon is summarized in a recent Bank of Canada Review article by Bailliu and Bouakez who note that “pass-through to consumer prices since the early 1990s seems very low” (Bailliu and Bouakez 2004:26). Exchange rate effects are passed through to import prices, however, although the degree of pass-through is far from complete.

Incomplete pass-through is in some axiomatic sense evidence of incomplete integration because it can exist only when market segmentation and imperfect competition or both allow price differentials to exist. Economic theory provides several explanations for incomplete pass-through, each of which involves an element of market segmentation. For example, Krugman (1989) argues that expansion of business into a foreign market involves significant fixed costs that would need to be incurred again if the market is abandoned temporarily when exchange rates fluctuations render the market less profitable. As a result, firms may tend to allow profit margins to adjust with exchange rate cycles rather than adjusting prices in

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the currency of the importing country. The resulting local currency pricing is, thus, a consequence of the size of the fixed cost of moving into the other market. These fixed costs are a reflection of the barriers to entry in foreign markets and the resulting imperfect market integration.

Another explanation for reduced pass-through of exchange rate changes is the changing nature of trade. While traditional theories of trade focus on specialization and comparative advantage, deepening of economic integration is increasingly linked to the expansion of intra-industry trade. An example is the automotive industry in which Canada and the U.S. both export and import large volumes of automotive products. As in the automotive industry, a large fraction of this within-industry trade is between different entities within the same firm. That means that exchange rate fluctuations may have offsetting impacts on the revenues and costs of a firm. Consider the simple example of a Canadian firm that buys intermediate inputs from the U.S. at a unit price  $P_{int}$ , adds value  $V$  to them in Canada, and ships the finished product back to the U.S. for sale at unit price  $P_{fin}$ . If  $E$  is the value of a U.S. dollar in Canadian dollars, then profits in Canadian dollars for this firm are  $EP_{fin}Q_{fin} - EP_{int}Q_{int} - V$ .

This equation clearly shows that the firm is partially hedged against any change in the value of the U.S. dollar because the cost of imported inputs falls along with the Canadian dollar value of export revenues. If domestic value-added falls as a fraction of the revenues of the firm, it becomes increasingly possible to avoid changing the export price in U.S. dollars if the U.S. dollar depreciates. For a multi-national firm that produces finished differentiated goods in both countries and then ships them across the border for sale to consumers, the extent of this hedge might be even greater.

This analysis suggests that any trend towards increased trade in intermediate goods will raise the level of “natural hedging” available to exporters in North America and hence lower the degree of price pass-through. Accordingly, it is useful to seek empirical measures of intra-firm trade. The level of intra-industry trade is readily observable using detailed trade statistics, and the levels of intra-firm and intra-industry trade are likely to be correlated. That is true both at the theoretical and empirical levels. Models of intra-industry trade are typically set in an environment with differentiated products and increasing returns to scale. That is much the same environment that gives rise to multinational firms that engage in intra-firm trade. Also, empirical analysis confirms that industries such as the automotive industry tend to have high degrees of both intra-firm and intra-industry trade.

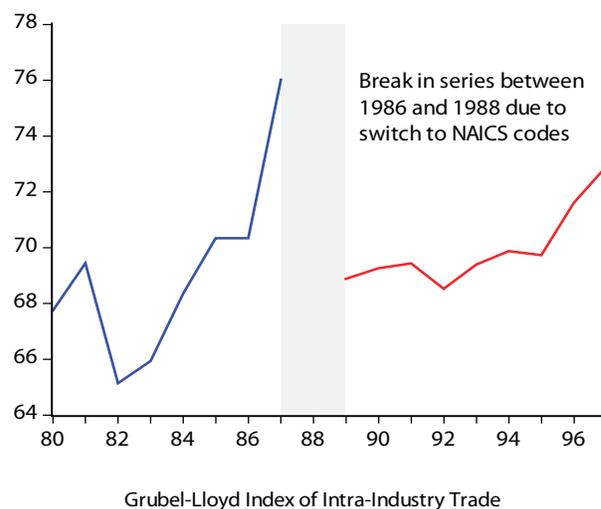
Several means of measuring intra-industry trade are typically used, but perhaps the most common is the Grubel-Lloyd measure defined, for industry  $i$ , as:

$$100 * \left( 1 - \frac{|X_i - M_i|}{X_i + M_i} \right)$$

If trade is completely balanced within an industry, exports equal imports and the Grubel-Lloyd index equals one. At the other extreme, if trade is completely specialized so that either exports or imports equal zero, the Grubel-Lloyd index also equals zero. For the entire economy, the industry-level indexes are summed with weights equal to the industry’s share of total trade. While this is not a direct measure of within-firm trade, changes in the Grubel-Lloyd index do tend to be associated within intra-firm trade as is the case in the automotive industry, for example.

Figure 5 shows the recent behavior of the Grubel-Lloyd index since 1980 based on 34 BEA manufacturing industry classifications from the World Trade Database CD-ROM distributed by The Center for International Data at UC Davis. The data break in the series between 1986 and 1988 reflects changes in the recording of categories caused by the switch to the Harmonized Tariff System from the former national Canadian system. As documented by Kehoe and Ruhl (2003), this transition resulted in classification switches at the data recording level, and these changes create inconsistencies in the value of exports and imports by BEA industry category. Despite this re-basing effect, there

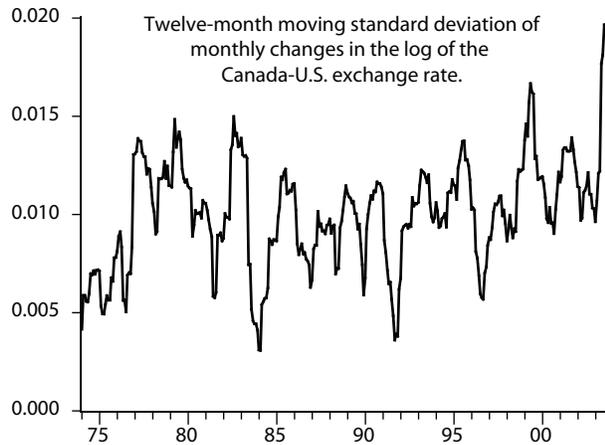
**Figure 5. Index of intra-industry trade**



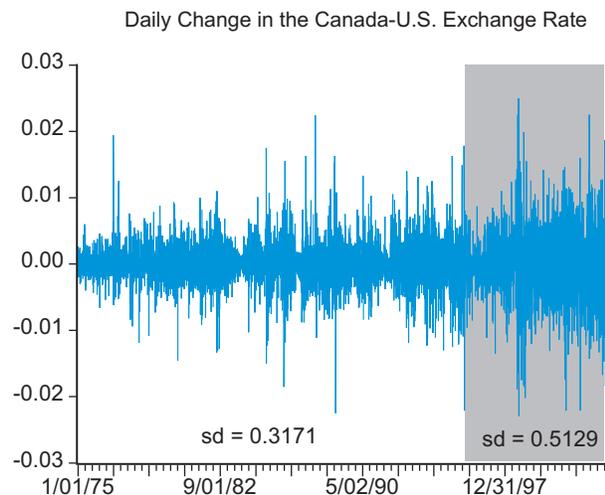
Source: World Trade Database from UC Davis

Figure 6. Volatility of the Canada-U.S. exchange rate

(a.) Devereux-Lane Volatility Measure



(b.) Daily Exchange Rate Changes



was a clear upward drift to the Grubel-Lloyd index both from 1980 through 1986 and 1988 through 1997.

The fixed-cost and natural hedge models provide an explanation for why exchange rates changes may not be passed through to consumer prices of imported goods. If exchange rates are sufficiently volatile and exchange rate pass-through is limited, then prices will not converge and may even diverge as we find here. To determine whether exchange rates have indeed been volatile, figure 6 presents two measures of the volatility of the Canada-U.S. bilateral exchange rate over the past thirty years.

The first panel looks at exchange rate volatility using the standard deviation of the change in the natural logarithm of the monthly change in the exchange rate (the

measure studied by Devereux and Lane (2003)). The graph shows rolling twelve-month standard deviations of this variable and suggests an upward trend in volatility in the post-CUSTA period, which is confirmed by the increase in the average value of the 12-month moving standard deviation volatility measure of about 15 percent between 1980-88 and 1989-2003.<sup>6</sup> The increase in volatility is most pronounced after 1997. The bottom panel shows the daily change in the Canada-U.S. exchange rate as an alternative measure of exchange rate volatility. That is one of the descriptive measures of volatility studied by Murray, Van Norden, and Vigfusson (1996). The bottom panel here reveals a similar increase of short-term exchange rate volatility as evidenced by an increase in the standard deviation of this measure from 0.32 over 1975-1997 period to 0.51 for 1998-2003.

This evidence on volatility suggests that volatile exchange rates and limited pass-through may explain the lack of convergence documented in this paper. Indeed, it is also possible that limited pass-through also contributes to increased volatility of exchange rates because expenditure-switching effects of exchange rate changes are limited if they are not passed through to prices at either the wholesale or consumer level. When expenditure switching effects are weakened, exchange rates must change by a greater degree in order to eliminate international imbalances. Whether or not this feedback effect is present, limited pass-through has led authors such as Devereux and Engel (2003) to suggest that a fixed exchange rate regime might be preferable to a floating exchange rate. While that implication is worthy of further study, recent empirical evidence of limited price convergence in Europe after the adoption of the euro (see the discussion of Engel and Rogers (2004) below) must also be considered.

### *Did Liberalization Change the Things that Really Matter?*

Even if CUSTA tariff reductions were large enough to promote integration, it is possible that the level of tariffs was not the critical factor that was inhibiting further Canada-U.S. integration. For example, NAFTA rules of origin are complicated enough that some Canadian exporters find it less costly simply to pay the higher MFN tariff rate.<sup>7</sup> This type of cost clearly limits the value of tariff reductions both for smaller firms and for consumers. Also, product standards, labelling requirements, limited cross-border delivery options, single-country advertising campaigns, and restrictive distribution agreements are particularly likely

to impede price arbitrage at the level of retail prices of the type studied by Baldwin and Yan or Engel and Rogers.

Some support for this view is yielded by recent work by Engel and Rogers (2004) that used multi-city European price data collected by the Economist Intelligence Unit to investigate price convergence in Europe. Engel and Rogers found that prices in the euro-zone countries converged fairly significantly during the early 1990s as the EU countries implemented programs designed to create a single market. The magnitude of this convergence was almost the same for both traded and non-traded goods. Interestingly, the authors found little evidence of additional convergence after the introduction of the euro in 1999. That last finding may seem to suggest that moving to a currency union does not accelerate price convergence, but that may not be a valid conclusion because the countries in the sample had been part of the EMS exchange rate peg system for several years prior to the introduction of the euro.

### Conclusion and Policy Implications

Our paper represents an attempt to assess the extent of wage and price convergence between Canada and the U.S. in the post-CUSTA period using a range of different indicators. On balance, the evidence provides only modest evidence, at best, for increased convergence in the post-CUSTA period. Indeed, evidence is available suggesting greater divergence of Canadian and U.S. input and output prices in recent years.

We consider several factors that explain the failure of price convergence and conclude that exchange rate volatility combined with limited pass-through of exchange rate changes is a likely cause of the observed divergence. We also note that other features of CUSTA/NAFTA may explain why product market integration had larger convergence effects after the Canada/U.S. Auto Pact and the European move to a single market.

Our evidence certainly does not enable us to conclude that the benefits of exchange rate flexibility in terms of enhancing adjustments to external influences are less than the costs associated with exchange rate volatility. However, we believe our findings contribute additional evidence to the debate already begun by authors such as Devereux and Engel (2003).

### Notes

- \* A version of this paper appeared as “The Effects of Canada-U.S. Free Trade and Economic Integration on Wage and Price Convergence in North America” in *The American Review of Canadian Studies* Volume 35, Number 3, Autumn 2005 (<http://www.acsus.org/display.cfm?id=276&Sub=297>).
- 1 Rice is an example of these “basic heading” product groups.
- 2 This latter problem will be reduced as more data using the NAICS industry classification become available.
- 3 The graph in figure 2 uses the market exchange rate to convert Canadian dollars.
- 4 Wage comparisons for these individual sectors are not shown in order to conserve space. The relevant data are available from the authors upon request.
- 5 This assertion is made by Helliwell (2001), among others.
- 6 The difference is statistically significant.
- 7 Kunimoto and Sawchuck (2004) report a sample of NAFTA utilization rates by Canadian importers that vary from 15 percent to 98 percent for jewellery versus fats and oils.

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# *Free Trade, Federalism and Regional Redistribution*

Robert G. Finbow

This essay assesses how integration within the North American Free Trade Agreement (NAFTA) has affected regional development and disparities in Canada and the United States. It evaluates regional economic opportunities and disparities in the open, continental economy. The essay compares policies for regional redistribution in Canadian and American federalism and focuses on how each federal system promoted policies encouraging commonality in essential services and opportunities for citizens in regions with disparate economic performances. Free trade has made national economies more porous, and undermined previous benefits to “have” regions (in return of purchases of goods and services) of redistribution. Therefore, poor regions are immersed with few safeguards in a transnational economy with high adjustment costs. Can national policies promote equity between states or provinces in development, services, taxes and social opportunities still be pursued? If so, will common policies be adopted?

The impact of economic integration on domestic models of federalism is significant. The North American federations present interesting contrasts in the representation of regional interests at the centre. Canada’s decentralized, competitive federalism induces sharing of fiscal resources as determined in federal-provincial bargaining; the U.S. has centralized fiscal and policy dominance but with a localized Congress ensuring receptiveness to the regions. Moreover, these societies are affected very differently by economic integration. The U.S. economy feels less effect from free trade than smaller, trade-dependent Canada.

Therefore, these nations, featuring unique policy histories, varying effects from integration, and different institutions, deal with uneven development and regional disparities in distinct ways which have been resistant to convergence.

This essay examines the impact of NAFTA on regional disparities in each country. It contrasts their federal structures—parliamentary and congressional-presidential. It will then assess regional policy, contrasting Canada’s explicit regional development and equalization transfers with America’s more patch-work matching grants, procurement, and regional initiatives. It will contrast the redistributive character of these policies and their contributions to regional development and alleviation of disparities. It will propose a conceptual contrast between Canada’s “redistributive” approach and America’s “distributive” system for federal spending on less developed regions. Based on a comparison of the institutional representation of regional interests in national politics, this essay will contrast the emphasis on remedial redistribution in the Canadian system with a wider distribution of development opportunities via American congressional pork-barrelling. It will then assess whether CUSFTA or NAFTA have promoted any convergence or whether these distinctive approaches to regional disparities persist. Finally, the paper will assess whether national policy aimed at interregional equity allows optimal adjustment to transnational integration, or whether local or transnational policies are required.

### Free Trade, Integration, and Regional Disparity in Canada

In Canada, analysis of regional effects of free trade is limited by a lack of provincial statistics for exports and foreign investment, which makes the impact debatable (Chambers 2002:105). In general, all provinces increased their trade after free trade, as Canada's trade dependence on the United States rose. Trade with Mexico is up but is more limited, for NAFTA tends to favour interactions by cross-border regions. Western Canada substantially increased its exports to U.S. markets under the CUSFTA, and NAFTA integration, though trade gains were focussed on the American Great Lakes states. Alberta has increased its exports most dramatically; exports to the U.S. rose by over 136 percent from 1988 to 1998, versus 90 percent for Western Canada as a whole (Mirus 2000:6). Energy exports to the U.S. lead the way, though agri-business has made inroads in Mexico (Warren 2003). Western Canada proved the biggest winner in trade with Mexico under NAFTA, showing the only substantial gains in recent surveys (Wall 2003:20). Again, Alberta showed the most rapid increase in exports to Mexico, rising from roughly 15 percent to 20 percent of Canada's total trade with that country. High value added exports like processed meats, paper, furniture, and electrical and precision equipment have increased as a percentage of Alberta's exports (Mirus 2000:7). Alberta has been adversely affected by a cross-border ban on cattle trading after BSE was discovered in a few cattle. British Columbia, with its dependence on lumber and forestry, was not as well served by NAFTA, especially given recent U.S. restrictions and trade actions on softwood lumber. Alberta and British Columbia have done well in foreign investment since free trade, relative to their populations (though statistics remain imprecise) (Mirus 2000:12). The other Prairie provinces increased energy and agricultural exports under free trade. Therefore, free trade potentially lessened Western Canada's historic grievances by limiting federal restrictions on energy and reducing nettlesome tariffs long thought to favour the centre.

There have been only limited gains for have-not Atlantic Canada. Wall argues that, since NAFTA, the "estimated effects on both directions of Eastern Canada's trade with the United States and Mexico are negative and large" (Wall 2003:21). The Atlantic Provinces Economic Council (APEC) notes that, although exports to the U.S. increased slowly after free trade, the same pattern was true for other major markets such as Europe, Asia and Latin America; hence it was not NAFTA but rather the limited export potential of regional products which was at fault (Chandy

2001:14). Exports as a percentage of provincial GDP rose from 26 percent to 32 percent since free trade, and some firms produced new export products. But the region is dependent on low value-added primary products, vulnerable to market fluctuations, and trailed Canada in productivity and competitiveness (Chaundy 2001:145-47). Atlantic Canada receives only five percent of foreign investment in Canada, despite having about six percent of the GDP and eight percent of the population (Chaundy 2002:v).

Ontario and Québec improved their trade surplus with increased exports to most American regions. Effects on trade with Mexico were not significant (Wall 2003:17-18). Some branch plant closures forced adjustment, but Central Canada remains attractive to foreign investors. Ontario has had increased prominence in international service and manufacturing markets, though its role in Canadian inter-provincial trade has decreased as a result of import competition, and has experienced a decline in the retail sector (Britton 1998). Courchene and Telmer note the dramatic swing in Ontario's trade from domestic to continental markets, which reflects the decline in the east-west economy, as most provinces export more to the U.S. than to other provinces (Courchene and Telmer 1998:278-79). Ontario went from 20 percent to 40 percent of provincial GDP dependent on exports to the U.S. market (McCallum 1998:3). Canadian industry, concentrated at the centre, close to the border, is optimal from a trade perspective and little location adjustment has been needed (Gundersen 1998). Ontario still attracts the lion's share of foreign investment, garnering three times Québec's levels and 50 percent of the national total, adding to its economic lead (Mirus 2000:12).

In Québec, debate over free trade became tied to the issue of sovereignty (Latouche 1995); nationalists believed that free trade would protect the new nation's economy after independence by preserving its close economic ties with Canada and the United States (though automatic Québec accession to NAFTA and GATT was questioned) (Drover and Leung 2001:214-15). Despite Québec's openness to North American integration, analysts suggest adjustment has followed predictable lines, based on locational advantages (Polese 2000). Nevertheless, Québec saw significant increases in manufacturing exports to U.S. locations (McCallum 1999:3) in areas like furniture and wood products, defying predictions of Mexican dominance in labour-intensive fields (Chipello 2003:A2). Québec's balance of trade with the United States improved substantially in the decade after free trade, led by a boom in manufacturing (Ratté 1998).

Hence, despite nationwide growth, NAFTA increased disparities in economic potential, as the have-not Eastern provinces saw less positive trade and investment trends. Free trade also limits regional policy by prohibiting some local preferences and imposing constraints on subsidies and development incentives. Prior to the signing of the CUSFTA, analysts worried about the potential gutting of Canada's regional development policies as a result of the terms of the trade deal (Watson 1987). Although the worst fears have not been confirmed, in the context of fiscal constraint Ottawa has provided limited assistance to have-not regions. Economic openness reduces the commitment to east-west integration, equalization and national programs whose benefits no longer accrue to the centre but dissipate in international markets, making transfers and social programs appear zero-sum to have provinces.

### **Free Trade, Integration, and Regional Disparity in the United States**

The United States has always shown wide disparity between states; the richest state in GDP terms (Delaware) has about twice the GDP per capita as the poorest (Mississippi) (Létourneau and Lajoie 2000:12). Inter-regional inequalities declined for a number of decades, with the phenomenal shift of industry to the "Sunbelt" in the previously marginal south and southwest. From the late 1970s, when the energy crisis decreased competitiveness and trade deficits hurt the economy, regions began diverging (Hsing 1995:83). In the 1980s, fiscal conservatism limited federal programs, and high technology development favoured urban clusters where incomes were high (Bernat 2001:36, 43). The U.S. experienced phenomenal growth in the 1990s, accompanied by increased disparity among the states.

Debates over NAFTA remain politicized, and it is difficult to obtain objective information; so estimates of regional benefits vary quite widely. Some early studies predicted widespread job losses in all regions and states with the surge in imports and relocation of industries to Mexico, especially textiles, clothing, automobiles, computers and other electronics. States specializing in these sectors saw higher per capita job losses, though other states also suffered lower wages and high unemployment (Rothstein and Scott 1997:2). However, the Council on the Americas' annual reports emphasize the gain in exports for most of the states and paint a positive picture of NAFTA's overall impact. Data from 1997 to 2001 indicate that, with the exception of New England and Alaska, most regions have increased trade with NAFTA partners. The north

and south central regions showed increased trade with Canada, whereas the Pacific region had a smaller gain. The mountain states remained modest exporters, and New England's exports to Canada decreased, though that decrease reflected a decline in trade after the 2001 slowdown. All regions increased exports to Mexico, though with wide variations in trade levels. Some individual states fared poorly, notably Alabama, Arizona, Colorado, North Dakota, Indiana, and Rhode Island (Council on the Americas 2000-02). Canadian and Mexican investment in the U.S. did not increase relative to EU investments, despite the easing of rules on investment flows; so foreign direct investment (FDI) did not have a significant new regional impact after NAFTA (Guillen 2002:6).

Western and southern states have exported the most after NAFTA, as high technology and automotive industries are increasing their continental exports. A report for the Federal Reserve indicates that the southern states had an average rise in exports of 48 to 200 percent (Wall 2000). Many other states in the west and northeast had lesser but significant gains, but only a few states experienced net trade losses. California and Texas, both major engines of U.S. trade, showed higher than average increases in trade with Mexico as a percentage of state GDP. Both these border-states had increased trade with Mexico after NAFTA was adopted, though California's trade with Japan remained most important (Gerber 2002:153-54). A few states, including Hawaii, Maryland, New Mexico, New Hampshire and Vermont showed a drop in trade to the NAFTA region; New England and the southern mountain states showed negative trade performance since NAFTA, and northern Midwest states showed limited increases (Wall 2000).

While employment creation was cited as a major potential benefit from NAFTA, critical studies suggest job losses, which, although modest relative to the overall economy, have affected all states, though some more substantially than others (Rothstein and Scott 1997). Other studies suggest minimal employment impacts, concentrated in trade sensitive leather, shoes and apparels, where Mexico and other developing states have considerable wage cost advantages (Century Foundation 1997:21). The extent of these employment effects are highly contentious, but some scholars, using state certifications of eligibility for the NAFTA component of Trade Adjustment Assistance (TAA), approximate NAFTA-linked regional job losses. The Institute for International Economics found that in no state was there a high impact, with less than one percent of the workforce certified for TAA by 2002, but there was a considerable range in such certifications, from a

high of .8 percent in North Carolina and Arkansas, to a low of .01 percent in Maryland (Hufbauer, et. al. 2002). A recent study indicates that whereas all regions benefited from cheaper imports, states with low wage industries in the south-central and southwest regions experienced job losses from competition with cheap imports, whereas export dependent regions (such as the West coast) fare much better (Silva and Leichenko 1994:283).

The concentration of trade around border regions provides stimulus to growth in the Sunbelt. But adjustments have nonetheless occurred, with loss of employment, ironically in Mexican migrant communities, along the border as U.S. firms move to Mexico to benefit from cheaper wages in order to meet increased competition from Asia (Millman 2002:A20). Border incomes have continued a steady decline relative to the national average (Peach and Adkisson 2000:486-87). In the north, trade with Canada, enhanced since the 1989 Free Trade Agreement, provides business and employment; trans-border commerce remains the most active on the planet, accounting for three million U.S. jobs (Fry 2003:25). Thus NAFTA contributed to regional differentiation in economic performance. In some regions like the South, competition from Mexican imports caused job loss, but exports helped to redress economic decline.

Thus, NAFTA has affected the regional economic balance in both nations, creating new opportunities and challenges. Both must deal with inequalities in regional economic performance, community and individual adjustment and the political fallout this causes. This essay demonstrates, however, that the specific federal institutions of each country promote variations in approaches to regional redistribution and national spending. Moreover, unlike the EU, there is no commitment among the parties to work towards levelling the economic performance of strong and weak regions across nations (Pastor 2002:397-8). Hence, these countries pursue different approaches to regional adjustment, shaped by specific social conditions and political institutions.

### **Federalism and Regional Spending in the United States**

The American federal system has tended to favour a *distributive* model in federal spending, which located major federal initiatives, infrastructure and investments more evenly among the regions and states. The courts gradually centralized U.S. federalism, but the Senate's equal representation of states ensured that national policies receive support from a variety of regions. Low party discipline

and frequent elections make representatives emphasize local needs in policy debates; in the committee system, long-serving, senior members, give regions like the South disproportionate influence, requiring ever-changing coalitions of legislators to cooperate across regional lines (McNiven and Plumstead 1998:46). The intra-state strength of small states in Congress produces national policies which are attentive to regions. The institutional matrix of congressionalism and its pork-barrelling model contributes to adjustment between regions of differing economic capacity.

The United States "has never had a consistent long-range regional policy with adequately funded programs specifically directed to the redistribution of economic activity and the resolution of spatially based structural problems" (Sweet 1999:235). Economic management was historically state and local, though Washington affected regional economies through policies on railways, roads, canals, harbours, land settlement, and tariffs. Later on, training, agrarian diversification, land reclamation and irrigation became part of pork-barrel politics (Sweet 1999:237). New Deal era programs were more regionalised. The Public Works Administration funded local infrastructure, and the Natural Resources Policy board briefly tried regional planning. The Tennessee Valley Authority (TVA) built hydro dams and waterways, and improved transportation, mining and energy production for "defence" purposes in this poor region. The TVA later funded libraries, flood control, recreation, workforce improvement and industry incentives (Poole 1996:23-24). The anti-state heartland of the country, the "farm payments region," stretching from Texas to the northern Plains and the Rockies, relied on federal income support for 33 percent of farm incomes (Drabenstott and Sheaff 2002:59). Washington developed water resources in the west, via massive projects like the Hoover Dam, which brought irrigation and power to vast areas. Federal lands policy granted access to resources at premium rates, further stimulating growth.

Several regional commissions were introduced in the 1970s, but most were short-lived, victims of limited Congressional support and fiscal crisis. The Appalachian Regional Commission's strategic plan outlines the problems of the region, including a 33 percent poverty rate, incomes 23 percent below national averages, and an outflow of young people. The ARC coordinates planning between state and national agencies and funds highways, health, education community and human development, and improvements in local governance. It serves "as an advocate and broker for the Region with public and private organizations to ensure coordination of all available resources

to support Appalachia's development" (ARC Strategic Plan 2003). The Delta Regional Authority (DRA) was created in 2000 for eight states on the lower Mississippi to fund "Basic public infrastructure in distressed counties ... [t]ransportation infrastructure to facilitate economic development [and] ... [b]usiness development with an emphasis on entrepreneurship" (DRA 2003:2). DRA also covers work-related training costs through existing educational institutions in the region. The political patrons of this program have NAFTA in mind, seeking to link this region to Mexico, Canada and the U.S. heartland with a new interstate highway. The modest budget of this agency has decreased steadily, but other funds for farm research and rural development are also used to support "free enterprise" in southern states with strong connections to Congress and the administration (Emmerich 2002).

The Economic Development Administration (EDA) of the Department of Commerce dispenses grants aimed at "economically distressed areas" as measured by income, unemployment, poverty, out-migration, bankruptcies, layoffs, military base closures, declining industries, natural disasters, and decreased tax revenues. EDA programs seek to "create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and higher-skill, higher-wage jobs through world-class capacity building, planning, infrastructure, research grants, business assistance, and strategic initiatives" (Sampson 2002). EDA assists communities via planning, technical aid, public works, research, evaluation, and trade adjustment assistance to help industries meet the challenges of continental and global integration (see EDA website). The Department of Housing and Urban Development (HUD) operates Community Development Block Grants (CDBG) for low income "entitlement communities" via projects like infrastructure, community facilities, educational and technology centres, and affordable housing (OMB 2002:2). Urban policies, such as the Model Cities Program, Housing and Urban Development Initiatives, and Urban Development Action Grants target poor centres and serve an equalizing purpose. The Clinton administration's Empowerment Zones have a similar stimulus effect in less developed cities (Sweet 1999:242). The Department of Agriculture operates the Rural Community Advancement Program which targets strategic development tailored to rural needs. Such programs are assailed as wasteful and distorting of national priorities; yet as one critic acknowledged, they persist because "Congressmen dispense these grants to their constituents like candy" (Bandow 2000:68-69).

Strong regional representation in Congress encourages distribution of growth-inducing expenditures in defence, aerospace, research and development across the country. Some observers see defence spending, usually exempted from regional policy on national security grounds, as a form of covert regional assistance. Military spending helped peripheral states advance in industry and international trade. Congressional coalitions affect spending on defence procurement and research which are beneficial to south and south-western states (Leonard and Walder 2000:30; McNiven and Plumstead 1998:46). States which do well in defence spending are often outside the urban-industrial areas, and some saw increased spending even in general periods of retrenchment in defence spending (Leonard and Walder 2000:38). One analyst notes that growth in motor vehicles trade also reflects "direct state-sponsored incentives" (Warren 2003).

Grants in aid, which provide 20 percent or more of state revenues, establish national standards and balance resources across states. The *State and Local Fiscal Assistance Act* distributed \$30 billion for public safety, environment, transportation, health, libraries, social services, and recreation. This program transferred funds from affluent suburbs to inner cities and rural communities, which provided some fiscal equalization. Sizeable tax expenditures related to the enterprise and empowerment zone concepts runs as high as \$2 billion a year (OMB 2002:7). These grant in aid programs clearly permit citizens of states to receive more of certain services (i.e. in health, welfare and education) than they would receive without federal assistance. As federal transfers for Medicaid skyrocketed, the redistributive effect increased, and these conditional grants are indistinguishable from unconditional equalization in their fiscal equity effects (Keen 1997:791-2), and transformation in some spending patterns in the 1980s and 1990s actually augmented the redistributive effects. A Harvard study shows that defence retrenchment occurred more in wealthy states than poor ones, whereas Medicare, Medicaid and social security spending, on the increase, generally favours low income states as well. "The net result is that although no explicit policy on the federal funding-allocation pattern has ever been adopted, the actual trend of recent years has been toward greater redistribution from higher-to lower-income states" (Leonard and Walder 1998:15).

More recently, decentralized federalism has seen "new initiatives devolve into a fragmented set of unrelated programs" (Poole 1996:22). But programs like the EDA and CDBG, which keep support in Congress by channelling funds to constituencies, survive with reduced funding.

New policies assist firms, sectors, and indirectly, regions which suffer from trade adjustment in CUSFTA and NAFTA. The Trade Adjustment Assistance Program pays firms to adjust plants, management, human resources or technology to meet global competition. The 1990s economic boom also facilitated state adjustment to new realities. Fry reports on the impressive progress of many states as exports become an increasingly important part of their economic activity. There remained strong variations among states with declining industrial bases, like Michigan in automobiles, eroding agrarian economies, and the vibrant IT centres of Silicon Valley or North Carolina's research triangle. But some states have succeeded in bringing their economies into a strong competitive position, despite poor planning and insufficient commitment of resources for information technology and trade initiatives (Fry 2001). However, the increased security costs since September 11<sup>th</sup>, and the extensive tax cuts of the Bush administration have devastated state treasuries (Fox 2003:11-12). That has forced painful cuts in education, health and other fields, which will again increase regional variations in life chances (Agranoff 2003).

### Federalism and Regional Spending in Canada

Canada employs a *redistributive* approach in addressing regional economic disparities, which reflects a very different system for regional representation in national politics. Canada's institutions provide smaller, have-not regions with limited influence on national policy. Canada's appointed Senate provides no meaningful regional input, and MPs in the Commons are bound by party discipline to support national platforms which lack regional focus. Simple plurality elections favour majority governments which often exclude small regions and are dominated by the two large central provinces. Regional representatives in Cabinet wield some influence, but their regional role is limited by cabinet solidarity and small regional caucuses in peripheral provinces have less weight, giving their ministers limited influence (Weaver 1995:59-63). Court rulings restricted Ottawa's residual power, but criminal law and spending powers allow federal influence in provincial affairs. Canada's fusion of power means that federal-provincial fiscal issues are resolved via "executive federalism"—inter-governmental relationships between officials, ministers and premiers. That means the primary means for regional input is through provincial governments via meetings of officials or first ministers.

Canada has a general constitutional guarantee for fiscal equalization so that all provinces can provide essential

public services of average quality. These payments permit poorer provinces to hold down taxes while investing in education, health and other social services which make them more competitive and prevent inefficient emigration of productive factors. Equalization has been challenged by critics as a wasteful disincentive, but it has reduced the burdens of richer regions, for have-not provinces thereby supply them with better markets and sources of skilled labour. However, this pledge has been "honoured in the breach" for the most part in the current era of deficit reduction. The program has fallen far short of the ideal of comparability. Ottawa uses a five-province standard which excludes Alberta to prevent distortions from fossil fuel royalties and has linked equalization to increases in GNP, and that keeps payments below actual entitlements, increasing disparities in essential services. In addition, other provinces have challenged the redistributive efforts of Ottawa. Québec's sovereigntist politics and Western provincial assertiveness have swung the balance away from cooperative federalism which featured federal coercion of provincial cooperation through conditional cost-sharing. As Canada engages in free trade with its continental neighbours and global partners, the old pattern of re-circulation of redistribution and spending back to the centre has diminished, and more of this redistributive element is dispersed to transnational firms. This reduced support of the electoral heartland for redistribution challenges the commitment to national programs and comparable standards.

"Collaborative federalism" has emerged, featuring agreements such as those on Internal Trade among provinces and on the maintenance of the social union and on health care (Simeon 2000:238-39). That has resulted in a stronger assertion of influence by the four largest provinces (Ontario, Québec, British Columbia, and Alberta), changing the balance of many intergovernmental agreements. Federal conditional grants for health, post-secondary education and welfare no longer have an equalizing effect as political pressure from the four largest provinces led to adoption of a per capita formula in the Canadian Health and Social Transfers (CHST). As federal funding is restored after previous cutbacks, this program will worsen disparities as the three "have" provinces (traditionally Ontario, Alberta, and British Columbia) make significant gains in constant dollars relative to 1993 levels, whereas the have-not provinces still fall short of previous levels (Beale 2000:19). Hence, primary federal transfers to provinces for education and health may now be less redistributive than American block grants. So have-not provinces must provide more services with lower federal contributions, which could erode the quality of essential

services in Atlantic Canada (Chaundy 2001:4) at a cost to the unity and competitiveness of the entire federation.

Centralized policy making also prevents a fair distribution of policies and spending to stimulate more even economic growth. When federal decisions are made on spending and procurement, electoral calculus favours centralization because productive spending is concentrated at the centre and limited redistribution is provided for have-not provinces. For instance, new programs, such as Technology Partnerships Canada, Canada Research Chairs, and the Canadian Foundation for Innovation are geared towards the larger provinces for political reasons. Because its pre-existing research capacity in private enterprises and public and educational institutions is inadequate, the Atlantic region cannot easily attract such investments (Beale 2000:18). Western provinces like British Columbia also complain of low per capita levels of federal spending on scientific and research activities. (Western Premiers Conference 2000:14).

Prior to adoption of the Canada-U.S. FTA, regional analysts expressed fears that the use of subsidies to encourage regional development could be hindered. So far, the free trade deals have provided some exemption in the form of non-actionable subsidies to offset these concerns. However, the U.S. and EU have recently considered using the WTO process to question Canada's regional development programs. So in future, the ability of Canada to provide special promotion for regional economies could become more limited as action against such subsidies becomes more likely. The likelihood that national policy will evolve thereafter in more favourable directions is minimal. The asymmetries in electoral strength and political power in the confederation are reflected in a continued lack of responsiveness in major policy decisions. As external competition increases, Canada lacks a mechanism like the American Senate which requires trans-regional coalitions for adoption of policy and encourages distribution of growth-inducing national expenditures and programs across the country. For peripheral regions like the Atlantic or Prairies to flourish, the Canadian federal system must be altered to ensure that major national policies reflect the interests of all regions. However, this reform is unlikely, given central electoral dominance. Therefore, regional leaders must find alternatives to replace lost federal support while coping with discriminatory effects of major national policies.

As yet, the existing system of transfers has not been entirely unravelled. Equalization remains in place, though exclusions for some resource royalties meant that it did not bring the have-not provinces up to an effective na-

tional standard, thus creating new disparities in service levels despite the constitutional guarantee. Furthermore, disadvantageous trends have emerged for have-not provinces. In response to fiscal crisis and debt-service costs, the federal government engaged in a program review and concentrated its efforts on reducing the fiscal burden during the early years of NAFTA; for instance, the Atlantic Canada Opportunities Agency (ACOA) saw a reduction of 40 percent in its budget, and recipients were required to repay all assistance (Savoie 1997). Ottawa also limited its contributions to established programs financing (EPF) (health and post-secondary education) and the Canada Assistance Plan (CAP) (welfare and social assistance) from the 1970s (Bernier and Irwin, 1995, 284). Established program financing for health and universities was cut extensively by Conservative governments in the 1980s as the federal regime solved its deficit problem by downloading costs to the provinces. The blending of the EPF and CAP programs into the CHST in the 1990s removed the implicit equalization of these transfers to the detriment of have not provinces. Overall, Ottawa's position as enforcer of national standards in major social policy fields (even health) appeared to be in serious doubt after extensive cuts transferred more of the burden to provincial governments. It is not surprising that recent studies of regional disparities indicate that a trend towards convergence in provincial prospects ended by the mid 1980s (Coloumbe 1997:9-10).

Despite earlier retrenchment, the Liberals recently returned to a regionally differentiated model, with an increase in spending in response to balanced budgets and electoral pressures (though this was predicated on surpluses which may disappear in light of the security crisis). The Chrétien government developed programs, such as the \$700 million Atlantic Investment Partnership, to augment research spending and technological investments. More significantly, the minority Liberal government of Paul Martin has renegotiated deals on offshore resources to reduce the claw back of funds from equalization payments for both Newfoundland and Nova Scotia (though to the chagrin of other provinces in central Canada and the West) (Dunn 2005). But overall, the trend to decentralization will likely continue, and Ottawa has reduced its ability to insist on national standards, even in health care, by reducing its financial support. Hence rather than increasing attention to regional economic disparities and income inequalities to respond to the adjustment pressures from free trade, the federal regime has reduced its contributions overall. Greater divergence in the extent and quality of provincial programs in health care, education

and welfare has, therefore, developed despite efforts at commonality. (The recent health accords and child care initiative may help reverse this trend at least temporarily, again while the influence of small provinces is augmented in the minority Martin government).

### Contrasts or Convergence?

Free trade has affected the two North American federations differently. Canada, as a more open trading economy, has witnessed a greater overall impact on its economic activity and has seen an increase in disparities as regions take differential advantage of the new opportunities to trade with the United States and Mexico. This varied experience has tended to reinforce existing regional disparities in employment and per capita income. The best performers have been the resource rich provinces of the far West, followed by the economic heartland of Ontario and Québec. The have-not Atlantic provinces have received lesser benefits, though recent studies seems to show some export-led growth and not the negative performance indicated by earlier pessimistic accounts. America's economy has been less significantly affected as a whole, but there have been notable regional effects. They have been especially evident in both southern and northern border regions where trade and growth have been stimulated, but income and employment are under pressure from low wage competition. The effects are complex, and states fare differently in terms of exports versus employment; for instance both the South and West have gained from NAFTA induced trade with Mexico but some low wage sectors in the South have been adversely affected by competition from low cost imports. Regional effects are more muted and diffused than in the Canadian case, but nonetheless pose immediate and long-term challenges for policy makers.

Differing political institutions in North America promote different styles in federal- provincial and federal-state relations and regional development. Canada's parliamentary system and centralized electoral politics long favoured a redistributive model, featuring equalization and unemployment insurance and cost sharing in some programs, which ultimately returned to the centre in purchases of goods and services. The occasional electoral importance of peripheral regions in a regionally divided House of Commons, together with powerful regional ministers, required attention to regional concerns; but these initiatives are marginal to national policies, providing limited compensation for marginalization. Although federal spending is higher per capita for have-not provinces, it

does not distribute fundamental economic activities and programs as equitably as many American policies do.

America's intra-state representation via the Senate and the electorally-sensitive House creates a distributive model of federalism in which growth-inducing expenditures are more equitably dispersed. Although a free-market ideology mitigates against explicit equalization, some programs have equalizing effects which allow all states to provide critical services at comparable levels. That is especially true of some of the most massive grant in aid and social programs which equalize the quality of public services to a degree. Although most redistributive effects are non-intentional results of program development in complex Congressional policy-making, there is an equity component in nationwide programs in infrastructure, community development, health, welfare and education. Regional adjustment remains focussed on private sector provision of jobs and rarely creates very much space for government-run initiatives, outside of the massive security, research and defence fields which have significant redistributive effects across regions.

There remains a debate over the appropriate national response to regional disparities and the optimal arrangement of federalism for balanced economic development. Some see free trade as necessitating decentralization to provinces, states or communities and lessening the possibility and benefits of national economic management. Others suggest transnationalism causes a decline in federal revenues or capacities for regional redistribution or promotion; particular concerns are expressed over challenges to the use of subsidies or tax breaks in regional development. For some authors "allocative efficiency in terms of the correspondence of public goods to the preferences of individuals is best served by regional jurisdictions, which are 'closer' to their populations, than by a supranational government" (Farina 1999:2). Regions should be allowed to adjust to continental integration in the free market to permit optimal, efficient outcomes.

Others warn that decentralization threatens common citizenship or opportunity in less developed regions and creates costs for developed areas through spill-overs (e.g. emigration of less skilled or healthy workers to the centres) or tax competition (states artificially reducing revenues and programs to attract capital). Boadway calls for a federal role in securing fiscal equity in taxes and services across states or provinces to allow for a more efficient ultimate allocation of factors (Boadway 2001). In the Canadian case, a precipitous move towards decentralization without a corresponding constitutional change to enhance regional input in national economic policy

would place disadvantaged regions in a worse position than their American counterparts. Such a move would undermine the redistributive character of Canadian policy and augment inequality in essential programs and services without fairer distribution of economic activity or federal policy stimulus which compensates for the absence of redistribution in U.S. federalism. That could undermine Canada's ability to compete in global markets if it results in a reduction in quality of education, worker training or adjustment measures in some have-not provinces.

Robert Pastor calls for transnational programs to promote regional equity and economic adjustment across the entire NAFTA region. Pastor notes that, with the adoption of the Maastricht principles on social cohesion and the growth of associated funds, the EU developed structural funds directed at problems of slow growth regions, declining sectors, high long-term, youth unemployment, skills development, and adjustment in primary resource and rural economies. Pastor argues that a similar initiative may be required in North America to permit less developed regions to adjust successfully to continental integration (Pastor 2002:417). The likelihood of such a generous transnational initiative seems remote, given the asymmetrical wealth, power and interests of participating nations and the liberalizing tendencies of the NAFTA and FTAA projects. Economic integration may increase pressure for convergence, especially if issues of inter-provincial or inter-state trade barriers and subsidies are addressed by bilateral or multilateral trading regimes. Nevertheless, institutional constraints, electoral incentives and the inertia of past policies may preserve fundamental variations in approach, notwithstanding these pressures.

Hence divergent approaches are likely to remain the norm. The American system of distributive federalism appears inviolable and unchanging; the intricate regional policy alliances in Congress will continue to translate into a wider dispersion of federal spending in core areas. The piecemeal results of this system mean that it will lack a logical pattern of adjustment to the intricate regional effects of continental and global economic interdependence. Canada is perhaps more ripe for change, if the influence of neo-liberal politicians and pressures to conform to transnational norms on government spending and decentralization take hold. Such transition would come, as argued elsewhere, at a cost to common social citizenship in Canada (Finbow 2004), because reduced redistribution would not be accompanied by fairer distribution of federal spending, unless fundamental constitutional changes were adopted, a distant prospect at present.

Moreover, free trade and continental interdependence have decreased the common benefits of federal redistributive programs, for these expenditures dissipate into the entire free trade zone, rather than redound to the benefit of the electorally dominant central provinces. That may be undermining the national commitment to redistribution and common standards, a potentially more subtle, but in the long run, important contributor to increased disparities among Canadian regions.

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# *NAFTA Chapter Eleven and the Implications for the FTAA: The Institutionalization of Investor Status in Public International Law<sup>1</sup>*

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There is a newly emerging tyranny attempting to suppress democratic discourse about issues of economic policy that are vital to prosperity... (Stiglitz 2002:10)

## **Introduction**

Joseph Stiglitz, former chairperson of President Clinton's Council of Economic Advisors and subsequently Chief Economist of the World Bank, bemoans the decade-long economic policies of the United States administration for laying "the groundwork for some of the problems we are now experiencing" (Stiglitz 2002:3). Stiglitz advises that the corporate scandals of the 1990s serve as a chief reminder that "... government has an important role. Every game has to have rules, and government sets the rules of the economic game. *If the rules promote special interests*, or the interests of corporate executives, then the outcomes are not likely to promote general interests, or the interests of small shareholders" (Stiglitz 2002:7, emphasis added).

This article draws attention to a set of rules that promotes the particular interests of investors.<sup>2</sup> These rules represent a development in international law that raises

a myriad of new questions and challenges. The transformation of the General Agreement on Tariffs and Trade (GATT) into the World Trade Organization (WTO) contributed an array of definitions concerning firms and private parties (reflected in the WTO agreements) and confirmed that firms and private actors were often considered "units of account"<sup>3</sup> in trade and investment activity. There is, therefore, a need to clarify the legal status of these actors. It is in this regard that the North America Free Trade Agreement (NAFTA) and not the WTO,<sup>4</sup> has played a pivotal role and exerted a strong influence. Since NAFTA, the increased usage of investor-State dispute resolution mechanisms within intergovernmental bilateral investment treaties (BITs) (Mann et al. 2004; Waelde 2004a) and free trade agreements (FTAs) has been impressive. It allows the investor to seek settlement of investor-State disputes outside the State's domestic courts, or any domestic court for that matter, through alternative dispute resolution (ADR) mechanisms—specifically, but not exclusively, arbitration. Furthermore, NAFTA's influence on regional FTAs is unmistakable. The negotiations of the Free Trade Area of the Americas (FTAA)<sup>5</sup> (that may result in a future regional agreement<sup>6</sup>) reflect acceptance of the spirit of its NAFTA forerunner. Combined, NAFTA's influence on BITs and bilateral trade agreements, on the

one hand, and on regional free trade negotiations, on the other hand, illustrates an institutionalization of these legal developments, suggesting that they have become common standards.

Two issues have emerged from the innovation spurred by Chapter 11 of NAFTA, which deals with the issue of investors. First, the State, which is the only subject of international law with a right of standing<sup>7</sup> in disputes arising from intergovernmental accords, has *de facto* recognized the natural and/or corporate legal person—when acting in the economic capacity of investor—as an equal subject of international law, on par with governments. Second, the State adopted long ago ADR mechanisms to substitute for court litigation as a means to resolve its disputes. ADR mechanisms, however, are based on the principle of mutual consent, i.e. their application is dependent on the voluntary agreement signed between the parties to it that is referred to as “privity of contract.”<sup>8</sup> In introducing the investor as party to the ADR mechanisms, with rights and duties as complainant or respondent, but not as party to the treaty or to an arbitration agreement, the drafters of international law have been moving away from a principle fundamental to the logic of a dispute resolution system that distinguishes itself from court litigation.

This article suggests that the time is opportune for thoroughly addressing and debating these issues because the negotiations of the FTAA have not yet been concluded, and its reconsideration is still possible. Also, due to its importance,<sup>9</sup> the ramifications of either adoption or revision of the investor-State concept in the FTAA will have considerable influence on the future evolution of public international law.

Section two discusses the history and purpose of international commercial ADR in order to contextualize the main argument, namely that the draft FTAA may represent the final stage of confirming and sealing the institutionalization of NAFTA’s Chapter 11 in public international law. Section three explains the innovation introduced by Chapter 11’s investor-state ADR mechanism and section four discusses its implications for international law. Section five investigates the implications emerging from the interpretation of international law by the Canadian courts;<sup>10</sup> section six describes the FTAA Investment Chapter (Chapter 17) ADR provisions; and section seven concludes.

### **The history and purpose of international commercial ADR**

For over a century, ADR (notably arbitration<sup>11</sup>) has figured as a major tool of choice to resolve economic disputes,

and arbitration has been seen as playing a significant role in economic and political affairs. International ADR has its roots in medieval commerce, but contemporary international commercial ADR began only in the late nineteenth and early twentieth centuries with the use of mixed claims commissions<sup>12</sup> that attempted to resolve State-to-private-party (or State-owned companies) disputes. In the 1980s, the practice of by-stepping court litigation in favour of ADR expanded. ADR was considered an ingredient of a pre-emptive strategy designed to minimize investment risks particularly in developing countries. Foreign investors were increasingly assured protection through State contracts concluded between governments and the private sector (Bjorklund 2001), as well as in inter-governmental BITs. The provisions for dispute resolution adopted in these accords represented mostly “soft law,” and formed part of the re-vitalized doctrine of *lex mercatoria* (or merchant law) (Cutler 2003).

Figuring as an important factor in the process of economic globalization, ADR has indeed carved out a private justice system within international trade law shadowing, and competing with, the court system. In United States terminology, it was coined as “offshore litigation” (Dezalay and Garth 1996:173), a new type of justice service engaging different classes and political positions. The argument in favour of international commercial<sup>13</sup> (i.e. involving a private party) ADR identifies numerous disadvantages associated with litigation via the court system at either the national or international level. Domestic litigation has been said to entail disadvantages such as time, cost (capital and personal), limitations regarding personal jurisdiction, and subjection to a judicial process in foreign courts with differing legal systems. Furthermore, private sector concerns about the potential non-enforceability of foreign judgments resulted in unpredictability and uncertainty, thereby threatening commercial stability. All this was seen to cumulate into a “general chilling effect on international business transactions” (Naranjo 1996:118) resulting from court litigation and considered as a great disadvantage to the conduct of international business.

In addition to the private sector’s dissatisfaction with the system of justice, trading States were looking for mechanisms to supplement or substitute for the weakness of the International Court of Justice (ICJ).<sup>14</sup> For a long time, governments relied on the GATT dispute settlement rules, which they later refined in the 1995 WTO Dispute Settlement Understanding (DSU) governing also intellectual property and service trade disputes. Along with the WTO Appellate Body, the DSU has represented a more viable and effective law enforcement option than the GATT and

ICJ. Thus, in a consistent evolutionary process, ADR, and particularly arbitration, adapted from the international private sector,<sup>15</sup> has shifted the resolution of disputes arising under public international law out of the public arena of the courts and into the private arena of tribunals. In the process, many legal inconsistencies were created, which remain unresolved. These include the status of the investor in international law and the teleological foundations for ADR investor related provisions incorporated within public international trade law.

The discussion of international ADR involves the distinction between “hard law, soft law, and softer law or extra-legal standards” (Mistelis 2001:16) which represent different aspects of public international law, including commercial law. “Hard law” comprises international conventions, national statutory law and regional and international customary law reflecting the traditional axiom that international law is the system of law primarily regulating the relations between and among States and traditionally known as “public” international law (Parry 1968:1). “Soft law” comprises model laws, legal guides and scholarly “renditions” of international commercial law, all of which are not incorporated into national law, as well as private contractual terms that do not conflict with public policy. Soft law is legally binding and enforceable only upon consent of the parties. “Softer law” comprises extra-legal standards used for the purpose of assessment of legal questions (e.g. product quality measurement codes—Mistelis 2001).

*Lex mercatoria*, a more recent category of rules permeating public international law, is also the most indeterminate source of public international law, still in the process of crystallization. While NAFTA is a binding treaty ratified through implementing legislation by each of its signatories, and BITs are similarly intergovernmental agreements, the dispute resolution provisions of *lex mercatoria* emerging in NAFTA,<sup>16</sup> BITs and possibly a future FTAA, have their origins somewhere in between soft and softer law—a category yet to be determined. Indeed, as soft law became incorporated within hard law (e.g. the United Nations Commission on International Trade Law (UNCITRAL) *ad hoc* arbitration rules model law or the World Bank’s International Centre for Settlement of Investment Disputes (ICSID) Additional Facility Rules), the question arose whether this practice sufficed to transform the nature of soft law and “codify” it into hard law when incorporated in treaties.

ADR has gained high regard within the legal profession, business and government—and to a certain extent (depending on sectors and interests)—also in the public

eye. It has successfully mobilized the symbols of the public justice system in legitimizing the out-of-court dispute resolution concept and its mechanisms. The overall outcome has seen judges acting sometimes as mediators, as senior partners to lawyers on both sides of the dispute or as counsellors to the parties, and employing skills that are not unique to judges alone. The ensuing economic opportunity for the legal and para-legal professions has nourished the emergence of over 120 arbitration centres and more general ADR service providers (Dezalay and Garth 1996). Yet, from a theoretical legal perspective it has been observed that “the recognition of a ‘private enclave’ within the official justice system ... clashes with law’s universal ideology” (Dezalay and Garth<sup>17</sup> 1996:118) representing a dilemma that remains to be resolved. One way to illuminate this issue is to engage in a close examination of the incorporation of elements from *lex mercatoria* within public international law (Berger 1996) which is “relatively permanent and independent of individual states, in that it is not subject to any ratification” (Mistelis 2001:23).

### **The innovation introduced in Public International law by NAFTA’s Chapter 11**

Because of NAFTA’s importance,<sup>18</sup> its Chapter 11 has become the spearhead of a reformative—perhaps revolutionary—front in intergovernmental trade agreements. This has been explicitly recognized by professionals sceptical of the Chapter’s intent to, and ability to, protect investors (IISD and WWF 2001:6), and who maintained that “[u]ltimately, the chapter came to include stronger elements of investor protection and liberalization than found in the Canada-U.S. Free Trade Agreement, or in any existing BIT” (International Institute for Sustainable Development & World Wildlife Fund 2001:8). Also, the Government of Canada has implicitly expressed reservation noting that: “[t]he mere fact that Chapter 11 has generated so much widespread commentary—whether based on deep analysis or pure emotion—indicates that something is seriously wrong with the status quo and signals pressing unfinished business within the NAFTA framework” (cited in Alexandroff 2004:463).

Underscoring the novelty of Chapter 11 is the fact that, unlike the WTO DSU and many other previous international legal ADR provisions included in earlier FTAs and BITs,<sup>19</sup> it reformulates the investment relationship. These provisions, which stipulate a binding dispute settlement mechanism between the investor and the State, are of unprecedented nature<sup>20</sup> (IISD and WWF 2001) and supplementary to terms addressing investment disputes between

the contracting parties. Ever since NAFTA, Chapter 11 has been reflected (in varying measures) not only in many BITs (e.g. in all United States BITs) but also increasingly in FTAs (in a comparatively limited version in the European Energy Charter), the sub-regional Treaty on Free Trade among Columbia, Venezuela and Mexico, the bilateral free trade agreements between Bolivia-Mexico, Costa Rica-Mexico, Canada-Chile (SICE 2003) and most recently in the United States-Chile Free Trade Agreement (USCFTA 2004).<sup>21</sup> All these agreements provide for terms addressing investment disputes arising between a contracting party and an investor and permit the investor to bring a claim against a government in an arbitration procedure. This represents a salient novelty in intergovernmental agreements for two reasons: investment provisions now draw into their realm the broader context of the trade (not just investment) agreement within which they are incorporated (prior to Chapter 11, similar provisions were related to specific issues and were limited in scope); and they allow for binding arbitration initiated by an investor.

The rationale for enhanced foreign investor protection agreements was based on the expectation that such protection, while encouraging investment in developing economies, would also provide opportunities for investment and encourage job creation in the home country of the investor (Mann 2002:2-3). Recent studies show that BITs have not led to these effects (Mann, et al. 2004), although NAFTA members more than doubled their foreign investment in their NAFTA partners between 1994 and 2000 (Government of the United States 2003a). In addition, stakeholders and commentators have been vocal in criticizing Chapter 11's ADR provisions for causing harm to social interests (i.e. labour and the environment), for interference with national sovereignty and for undermining the democratic rules of the game at the national and sub-national levels of government. Furthermore, according to these critics, alongside the foreign investment gains, evidence has been mounting of unintended side effects in the form of foreign investors' recourse to the new ADR protection hindering government efforts to implement measures aimed at improving public welfare, through environmental legislation for example.<sup>22</sup>

*Subject of international law.* The extensive focus on the adverse labour and environmental impacts of Chapter 11 has overshadowed its larger and deeper reaching implications on international law. What Chapter 11 has effected—without much public debate—is the addition of a new subject of international law to its already expanding list of new subjects.<sup>23</sup> Chapter 11 is innovative because it does away<sup>24</sup> with the more than century old international legal

principle that the government of a State is the only subject that has (full) standing in international public law and is representing its citizens in its governmental capacity.<sup>25</sup> Intergovernmental trade and investment agreements (unlike commercial contracts<sup>26</sup>) are instruments of public, not private, international law. With this development, governments have now allowed (solicited) the investor to become a direct subject of international law since, under certain conditions stipulated in the investment dispute resolution mechanism, the investor is entitled in law to file directly—not via representation by government—a complaint against a foreign government. Concerned by the fact that international investment law is endowing its new subject—the investor—with rights and no corresponding responsibilities (by definition, a subject of international law carries both rights and duties), Howard Mann, like other critics, has protested against “the absence of a sense of basic justice in such a system of law” (Mann 2002a:2).

*Privity of contract.* The logic of ADR, which distinguishes it from adversarial court litigation, is premised on the mutual consent given by the parties that have concluded an ADR agreement. The question which therefore arises from Chapter 11 is, whether an investor, who is not party to an international public trade or investment treaty, may be considered as having expressed consent to the procedure. Is actual recourse to the ADR provision sufficient proof of voluntary acceptance? Since, as private parties, investors cannot negotiate the ADR terms of a treaty, their only choice remains acceptance or rejection of the agreement “as is”. Rejection, however, will not lead to a more attractive alternative.<sup>27</sup> Unlike the State, which has negotiated the ADR provisions adopted in the agreement, the investor is in a weaker bargaining position, or has none at all. But even if the very option of having recourse to ADR satisfies the test of free consent, the investor still will not be legally bound by the treaty. Or, is it now the case that, according to this scenario, proof of voluntary acceptance of the treaty's ADR terms renders an investor a party to the intergovernmental agreement? Arguably, while such a position is sustainable from a *lex mercatoria* contract law based perspective, it is significantly less persuasive when approached from a public international law angle.

*Human rights and international trade law.* “Through the transfer between contexts the meaning of norms becomes contested as differently socialized actors apply them. The analytical challenge is to provide a methodological link between these practices” (Wiener 2003:1).<sup>28</sup> Expanding the definition of the subjects of international law requires overcoming the analytical challenge—a task that has characterized the discourse on human rights law, but only mar-

ginally the discussion of the re-definition of the subjects of public international law in an economic context. In the debate between Philip Alston and Ernst-Ulrich Petersmann, the latter maintains that his “proposals for empowering individuals” pursue the same human rights values as Alton’s through decentralized and more complex “market governance mechanisms which treat citizens as legal subjects rather than mere objects” (Petersmann 2002:8). In contrast to mainstream discourse, the political is distinguished from the economic, social and cultural spheres of human rights. Petersmann emphasizes the “mutual synergies between economic integration law, human rights and social welfare” because “[e]conomic welfare depends on constitutional guarantees for the division of labour, savings, investments and trade among individuals and on the protection of human rights” (Petersmann 2002:6).

A “social market economy” hinges on reconciling liberal and social values through legislative protection, where international economic law includes procedural rights in addition to substantive rights. This would require one to “suggest [interpret] national and international guarantees of freedom, nondiscrimination, rule of law and social justice (e.g., in the Bretton Woods and WTO agreements) in a mutually coherent manner as empowering citizens, obliging governments and reinforcing individual rights (e.g., to ‘negative’ as well as ‘positive freedoms,’ non-discrimination and individual access to courts)” (Petersmann 2002:3). In other words, against the backdrop of Petersmann’s argument, the innovation of Chapter 11 might be viewed as a first step towards the enfranchisement in international law of the individual legal person in their capacity as an investor and beyond—encompassing all economic matters. If and when the human rights debate extends beyond the intellectual backroom and is positioned in the political forefront, the extension of the definition of the subjects of international law embarked upon in Chapter 11 may well prove not just innovative but revolutionary indeed.

*Chapter 11 developments ten years later.* Recurrent calls for increased public access to the process of negotiation and implementation of NAFTA effected a minor drift in this direction when almost ten years after its entry into force, governments have begun paying attention. Both Canada and the United States are now committed to having their hearings in public (provided the arbitrating investor agrees). The NAFTA Free Trade Commission took the unprecedented initiative of issuing a joint interpretive statement designed to clarify key aspects of its dispute resolution mechanism for the purpose of future arbitrations. The October 2003 statement promised that the par-

ties would take greater steps to share documents filed in connection with Chapter 11 proceedings with members of the public and other levels of government, in the hope of alleviating fears and concerns created by the procedure (Tollefson 2002:186). The Commission’s decisions have led to the establishment of a procedure for *amicus* briefs submissions,<sup>29</sup> and have also paid attention to the separate concerns of the private sector (private party-to-private party) by accepting the recommendation of the NAFTA Advisory Committee on Private Commercial Disputes and calling for a harmonized legal framework for the resolution of private commercial disputes (Government of the United States 2003a). All of this, however, still leaves the core element of the NAFTA investor-State dispute resolution formula (i.e. privileged extension of the definition of the subjects of international law and privity of contract) intact.

### The implications of Chapter 11 for international law

The reach of Chapter 11’s innovations extends beyond international trade, commerce and investment, or labour interests and environmental concerns. It further amplifies earlier changes in human rights law that have been modifying the architecture of international law, and in particular the distinction in international law between public and private disputes. Comparing trade and investment liberalization in NAFTA with that under the agreements of the WTO or the European Union (EU) illustrates the magnitude of this evolution. WTO members have not reached agreement about negotiations on investment, and the DSU governs only State-State disputes.

However, the European Court of Justice (ECJ) has carved out an approach for the EU that reconciles features of both international and national law. It chose to follow the classical theory of representative democracy and to apply it as a standard measure to secure adherence by EU institutions to democratic principles.<sup>30</sup> Most ECJ cases reflect jurisprudential attention to questions of institutional balance within the EU, and provide lessons to be learnt with regard to the “osmosis” (Ninatti 2003) permeating the EU’s regional and national levels. It is widely accepted that the ECJ’s deliberations have affected the conceptualization of the EU as a regional integration area, a proposition that is foreign to NAFTA’s adjudicative process simply because NAFTA lacks the relevant institutions. Consequently, although it has served as a model for providing investment-related ADR mechanisms, the course that international trade and investment law has taken in the 1990s, and which has been influenced by the

innovations introduced in NAFTA's Chapter 11, reflects an only partly conceptualized approach. The investment aspect of *lex mercatoria* has not yet been integrated within the theory of international law.

It has been inferred in defence of Chapter 11 that—similar to *lex mercatoria* at large—it represents the evolutionary process of law (Berger 1996; Cutler 2003). Moreover, “the investment law now emerging is that the process of norm development is no longer an exclusively intergovernmental project. Rather, it deploys the legal procedures developed in the largely privatised systems of commercial arbitration and itself mediates between the traditional inter-governmental character, and the new privatised character, of investment arbitration, with ‘legal entrepreneurs’ providing impetus and dynamics” (Waelde 2004b:478).

Some advance this argument as grounds to embracing the change: “we are not straying into the unknown, but rather are correcting the aberration manifested in the nationalization of international economic and business law during the nineteenth century ... we are merely returning to our roots ...” (Jan Dalhuisen cited in Waelde 2004b:478). However, one must question whether in the context of a globalized twenty-first century environment, such an approach remains applicable to an increasingly complex sociopolitical post-modern order. Arbitration, which is the hallmark of the Chapter 11 investor-State provisions, is, according to Michael Reisman in fact, “a delegated and restricted power to make certain types of decisions in certain prescribed ways. Any restricted delegation of power must have some system of control. ... Controls are necessary not only for efficient operation. Effective controls are the only assurance of limited government. In this sense controls are a *sine qua non* of liberty” (Reisman 1992:1). How does this assertion apply to trade liberalization that empowers the investor? Is the limitation on government as emerging from Chapter 11 contributing to control?

In Chapter 11, the issue of control relates to the designation of arbitration as a mode of dispute settlement involving two different types of subject of international law, the State and the investor. To fulfil its purpose, control must address the core characteristics of the subject of control. As mentioned above, in the EU, European institutions (specifically the European Parliament) are the beneficiaries of the ECJ's judgments, and the context for the Court's interpretation is designed to assure a democratic balance within the regional institutional system. In NAFTA, where delegated representation remains at the level of the national parliaments of the members and there

is no regional NAFTA body to counter-balance the executive, control will remain elusive. Chapter 11 provisions that have expanded the definition of the subjects of international law to include only certain (not all) actors in the market place (i.e. the investor), are insufficient to secure against unlimited control by the economically powerful. It rewards the powerful corporate investor, but leaves other actors outside the scope of protection (Gal-Or 1998a, 1998b, 2002). This has been recognized in the debate regarding public goods—of which the State has traditionally been the guardian. According to Michael Hart and William Dymond quoted in Alan Alexandroff:<sup>31</sup> “States face a choice. One option is to retreat from obligations governing the treatment of foreign investors and investments. ... A better choice would be to extend rights of private access beyond investment issues to encompass the full range of international economic exchanges and to expand access to those rights to their own citizens, corporate or otherwise” (Alexandroff 2004:469).

Chapter 11 fails to satisfy the control requirement for yet another reason: it overlooks the central role played by privity of contract in the very mechanism of arbitration. It transposes “arbitration rules [that] were created to remove investment disputes from the heated political arena of state-to-state controversy to the cooler ... tribunal” (Laird 2001:225) and places them within the arena of investor/private party-to-State disputes, but with an unclear legal or political grounding. The conversion of a private contract law-based principle into a treaty law context has not been thought through adequately. From a political perspective, State-private party relations involve a set of implications different from those arising in a State-to-State relationship. Consequently, from a legal point of view, Chapter 11 contributes to self-contradictory norm development (regarding investor-State disputes)—which applies not only at the point of initiation of the arbitration procedure but also at the stage of judicial review of an arbitral award.<sup>32</sup> For instance, clearly the argument that investor-State arbitration under NAFTA is invalid becomes irrelevant in the context of Chapter 11 because “none of the bases for invalidity common in the commercial arbitration context, such as coercion, fraud, lack of identity of the parties, and so forth, can apply where arbitration is ‘without privity’ ...” (Jan Paulsson cited in Rubins 2004:363).

The insights gained in the EU may provide guidance for NAFTA signatories as well as the drafters of the FTAA,<sup>33</sup> particularly because of the role played by the adjudication process in the transformation of norms. As observed in the EU, it is significant that “often, jurisprudential affirmations

appear to prefigure those normative reforms to which the treaties have conformed throughout the history of European integration” (Ninatti 2003:5). The ECJ has become “a privileged interlocutor, a concrete starting point for understanding the affirmation of democratic principle in European integration” (Ninatti 2003:5), even a “privileged ‘political’ agent” (Ninatti 2003:5). To be sure, it is reasonable to expect that the adjudication process within NAFTA may yield a similar influence. This is all the more important when considering the role that the national courts of NAFTA signatories may play in recognizing foreign arbitral awards.

### The national court as an agent in mediating the impact of Chapter 11: Canadian examples

Which institution plays the role of “privileged political agent” with regard to the NAFTA area? Arguably, by analogy, the international-national law “osmosis” proposition may also be valid with regard to NAFTA. In such a case, the osmosis will be effected through a combination of NAFTA arbitration panels of the one hand, and United States, Canadian and Mexican national courts on the other, which, through judicial review, would be performing a role similar to that of the ECJ. The Canadian example serves to illustrate this proposition.<sup>34</sup> Not surprisingly, and in contradistinction to the ECJ, the Canadian court has adopted a deferential attitude to international adjudication. The literature on the role of judges in the domestic internalization of international law, and the jurisprudence regarding the implementation of international law by Canadian administrative tribunals, is relevant here.<sup>35</sup>

For instance, the part of the decision in *Baker* (*Baker v. Canada* 1999) discussing the Court’s method of interpretation to determine whether to incorporate international legal norms in domestic law is illustrative of a relatively new trend in Canadian courts. The question raised in *Baker* was whether to substitute the teleological interpretation of laws, which was based on legislative intent and historical origins, with a more engulfing contextual (“non-originalist”) and persuasive approach. Shifting to the latter, the Court endorsed a broad construction, undertaking to consider all national indicators that could suggest approval of international conventional law (Houle 2003:4). According to this approach, interpretation depends not only on the literal text of the international norm, but equally incorporates both axiological and empirical contexts of the norm (Houle 2003:7).<sup>36</sup> The implications are significant. Since *Baker*, a judge may no longer be required to examine the conformity of national and international law, for a

simple ascertainment of compatibility will suffice; and in the absence of conflict between international and national laws, the judge will remain free to give effect to the former in the latter’s laws (Houle 2003:7).

Another example of the deferential approach to international law is the *Metalclad* decision<sup>37</sup> (Government of Canada 2001). Mexico, supported by the Intervener Attorney General of Canada, urged the Court to review the traditional judicial deferential approach to private commercial arbitral awards. The grounds advanced by Mexico were based on the principle of privity of contract, i.e. the argument that Chapter 11 represented a departure from that principle since the investor was not party to the treaty within which the dispute originated. In this example, the Court deferred to the NAFTA tribunal without clear explanation (Rubins 2004:376).

Considering the Court’s positions in both cases—regarding the arguments challenging the transposition of international within national law (*Baker*), or those concerning the interference of private, within public, international law (*Metalclad*)—suggests that, in practice, the Court prefers to follow, rather than “struggle” to resolve complex issues arising in international law. Consequently, it could be inferred that Canadian judicial deference to international law might be signalling a tendency to go beyond simple judicial reluctance to interfere with international law on a legal plane. The Court is seen to be considering political reasons as justifying the presumption of conformity of international and domestic law even in the absence of clear legislative intent (Houle 2003:9; Rubins 2004:379).

Scholars have also drawn attention to the role of the Court in transforming domestic law as a by-product of the Court’s interpretation of international law, particularly as result of its deference to international commercial arbitration and the reverberations on domestic arbitration (Watson Hamilton 2003). Party autonomy, which is corollary to the legal principle of privity of contract, represents a legal principle designed to “level the playing field” formally among disputing parties with different socio-political traits. The parties are supposed to be of “relatively equal bargaining strength” and “want to be free of national procedural and substantive law” (Watson Hamilton 2003:1). This intent, however, is lost in the context of a globalized world economy in which new and powerful non-State actors (NSAs) participate in the process of intergovernmental rule making (i.e. treaty negotiations)<sup>38</sup> and have been advocating a body of rules “free from the idiosyncratic differences that arise between national legal systems” (Watson Hamilton 2003:3). Promoters of such “liberation”

(mainly from the business sector) have advanced contractual theory as a means to secure the independence of the arbitrator's authority in conducting international commercial arbitration as well as choosing the law governing the contract. In practice, however, the irreconcilability of the legal principle of party autonomy with the principle of judicial scrutiny (court procedure) may entail situations in which party autonomy (of economically unequal parties) will conflict with the imperative of fairness.<sup>39</sup>

Jurisdictional theory, which challenges contractual theory, represents the opposite extreme on the spectrum of argumentation. It recognizes the State's primacy as the actor governing the arbitral procedure incorporated in treaties. "The real authority of arbitration derives not from the contract between the parties, but from the recognition accorded by the state" upon which the enforcement of arbitration awards depends (Watson Hamilton 2003:5).<sup>40</sup> The enforcement itself, or the extent of enforcement, is subject to the state's interest in the fairness and uniformity of law and order (Watson Hamilton 2003). Sensitive to this dissonance, promoters of international ADR have been increasingly equating an arbitrator's to a judge's status, amongst others, by considering for settlement via arbitration issues previously considered as not being subject to arbitration (Watson Hamilton 2003).

The compromise struck by the Uniform Law Conference of Canada of 1990 in the Uniform Arbitration Act represents a mix of contractual and jurisdictional theories,<sup>41</sup> suggesting a degree of (belated) alignment of Canadian courts' with United States' courts' deferential attitude towards arbitration (Watson Hamilton 2003). Interestingly, statutory reform in New Zealand and the United Kingdom have circumscribed the reach of contractual theory where a contract was dictated by a more powerful party (Watson Hamilton 2003:55).<sup>42</sup> These precedents may create reverberations throughout the international trade and commercial legal regime, both with regard to State-to-State disputes involving states of unequal economic power, as well as Chapter 11 type State-to-private party disagreements.

In conclusion, the NAFTA Free Trade Commission and the legal profession have been sensitive to the need for further fine-tuning. The Commission has felt uneasiness with regard to the absence of privity of contract and the fact that, as investors were not party to the treaty, the parties' federal governments were torn between irreconcilable commitments at the international versus national levels. Other issues of concern have emerged from the definitional shortcomings of Chapter 11, for instance, when shareholders were considered as being investors;

fault with an arbitral tribunal's scope of jurisdiction where arbitrators applied excessively generous interpretations of the substantive rights provided under NAFTA; problems with the reconciliation of arbitral law with international law, particularly in cases in which, according to NAFTA, a party to a dispute that had unsuccessfully applied a treaty remedy was blocked from having recourse to domestic remedies "even though the full exhaustion of remedies (without order of priority) is a principle of international law (Cowpler 2002).<sup>43</sup> Finally, governments have come to realize the high financial costs of arbitrating Chapter 11 disputes (particularly when appealing the tribunal award in a party's domestic court) and consequently undertook to reduce the number of claims. This is, however, a double-edged sword because it may either encourage improvements to Chapter 11 ADR mechanisms or, alternatively, lead to a reluctance to challenge NAFTA arbitral awards.

### **The institutionalization of the NAFTA investor-state ADR mechanism through the FTAA**

The previous section discussed the impact of the NAFTA investor-State ADR mechanism on public international law. It pointed out the two innovations in investment law ADR—the expansion of the definition of subjects of international law, and the problem of reconciling the ADR requirement of privity of contract with a treaty framework that enfranchises non-parties. It showed that NAFTA provisions have been a major force in popularizing these innovations, its model being embraced in many BITs as well as bilateral (and even some regional) FTAs. The article now turns to a discussion of the incorporation of the NAFTA investor-State ADR mechanism in the draft FTAA. It is argued that if this treaty is signed and ratified, it will represent the completion of an institutionalization process of new norms in international law, a process reflected in NAFTA, that in turn became a catalyst for its further development.

At the occasion of NAFTA's tenth anniversary celebration, the three member countries' trade ministers declared: "The FTAA will build on the existing free trade agreements and on expanding the links that the NAFTA countries have elsewhere in the hemisphere, allowing them to take full advantage of emerging hemispheric markets" (Government of the United States 2003a:6). Indeed, a cursory review suffices to show that the FTAA dispute resolution provisions have been drafted based upon both the WTO and NAFTA models. Some criticisms of NAFTA's Chapter 11 have been addressed by the FTAA drafters, who have refined several relevant terms. These concerns

were raised, among others, in the Canadian multistakeholder consultations, where participants expressed doubts concerning selected NAFTA Chapter 11 provisions. For instance, participants were troubled by the fact that Chapter 11 includes everything unless excluded, and favours a bottom-up approach; that no investor obligations are attached to the already granted rights; and the fact that individuals who do not fall within the investor definition, are, in this agreement, legally inferior to investors. The discussion on the dispute settlement mechanism weighed the right of direct corporate access to arbitration against access administered through government representation (i.e. contract theory vs. jurisdictional theory) and considered the issues of transparency and voice through *amicus* briefs. The composition of tribunals and the choice of panellists were also discussed (Government of Canada 2003a). The analysis begins with a review of the provisions of the draft FTAA Investment Chapter that incorporate these (and other) criticisms, and then juxtaposes them with those provisions that remain unchanged.<sup>44</sup>

Chapter 17 Section C Procedures and Institutions is an overall statement (re-iterated throughout the Chapter) designed to secure business interests and simultaneously reassure civil society. For instance, several articles address civil society's relentless demand for transparency. Section C.1. Article 21. Transparency provides: "... 21.1. Each Party shall ensure that its laws, regulations, administrative practices and procedures of general application, and adjudicatory decisions, that affect or pertain to covered investments or investors are *promptly published or otherwise made publicly available*. Where a Party establishes policies that affect or pertain to covered investments or investors, which are not expressed in laws or regulations or by other means listed in this paragraph, that Party shall promptly publish them or otherwise make them publicly available" (FTAA 2003:29, emphasis added).<sup>45</sup>

Non-bracketed Section C.2.b. Dispute Settlement between a Party and an Investor of Another Party Article 30 Transparency of Arbitral Proceedings states that:

1. 30.2. The tribunal shall conduct hearings *open* to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. *However*, any disputing party that intends to use information designated as *protected information* in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

2. 30.3. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article XX (Essential Security) or Article XX (Disclosure of Information) of Chapter XX (Exceptions) (FTAA 2003:53-54, emphasis added).

Transparency in arbitration hearings is addressed in Subsection C.2b. Article 50. Public Access to Hearings and Documents, which reads: "50.1. Hearings held under this Section shall be open to the public" (FTAA 2003:48). Some degree of standing for the affected non-Party is provided in Article 51 Non-Party Participation stipulating that: "51.1. A Tribunal may grant *leave to a non-Party petitioner to file a written submission*. In making this decision, the Tribunal shall consider, *inter alia*, whether: a) there is a *public interest* in the arbitration; b) the petitioner has a substantial interest in the arbitration ...; and c) the *non-Party's submission would assist the Tribunal* in the determination of a factual or legal issue related to the arbitration by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties" (FTAA 2003:48, emphasis added).

Progress has been made with regard to the issues of public goods, sovereignty and sub-level government jurisdiction. Subsection C.2. Dispute Settlement Article 22. Dispute Settlement reads: "22.2. Disputes that arise as a result of direct or indirect governmental administrative decisions of a regulatory or enforcement nature shall not be subject to the dispute settlement provisions of this Agreement, provided that such decisions are consistent with the legislation of the respective Party and with Articles 4 (National Treatment) and 5 (Most-Favored-Nation Treatment)" (FTAA 2003:29, emphasis added).

Securing the competence, impartiality, and independence of arbitrators are issues addressed in Subsection C.2.b. Article 32. Arbitrators requiring that: "32.2. Arbitrators shall: a) have expertise or experience in law, international trade, other matters covered by this Section, or the resolution of disputes arising under international trade agreements; b) be independent of, and not be affiliated with or take instructions from, any Party or disputing party; and c) comply with the Code of Conduct for Dispute Settlement procedures (Annex XX of Chapter XX (Dispute Settlement))" (FTAA 2003:38).<sup>46</sup>

Based on the above, promoters of a social-justice and public-good<sup>47</sup> oriented FTAA may see the outcome so far as giving reason for optimism. The shift effected by way of "amending the NAFTA in the FTAA" may suggest that

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consultations (and civil society's public protest) have born positive results. Also, while this may signal willingness on behalf of the drafters to respond to trade-and-investment *related* concerns, the modifications remain incomplete. The core problem identified above in the development of international trade and investment law and related dispute settlement—namely the expansion of the definition of subject of international law and arbitration without privity—have yet to be acknowledged. The NAFTA "*status quo*" is overshadowing the corrective FTAA drafting accomplishments as several major concerns have not yet been addressed. They include, for instance, the direct access of an investor to the dispute resolution process to the exclusion of any other private or public (sub-government level) party. Section A General Aspects Article 1 Definitions states that: "disputing investor means an investor who makes a claim under [Subsection C.2.b. (Dispute Settlement between a Party and an Investor of Another Party) of this Chapter];" (FTAA Draft 3:8) and "[disputing party means [either the claimant or the respondent] [the disputing investor and the disputing Party]" (FTAA 2003:8).

Having adopted the NAFTA innovation of extending the definition of the subjects of international law, Chapter 17 of the FTAA does not move towards a further (equalization) expansion of the definition to include other private (or public) actors in addition to the investor.<sup>48</sup> In fact, the drafters distinguish between trade and commerce, i.e. the public and private economic spheres as they draw attention (in another dispute resolution chapter) to the settlement of private-to-private disputes, which are considered no less important to the promotion of free trade than settlement of investor-State and State-to-State disputes.<sup>49</sup> They recommend assisting private parties in settling their disputes through mechanisms similar to those governing State-to-State disputes. Article 47 Alternative Dispute Resolution between Private Parties in Chapter 23 encourages the parties as follows:

1. 47.1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes *between private parties*.
2. 47.2. To this end, *each Party shall provide for appropriate procedures to ensure observance of [international arbitration conventions] [agreements to arbitrate] [that have been ratified] and the recognition and enforcement of arbitral awards granted in those disputes.* [A Party shall be deemed to be in compliance with this paragraph if it is party to [and is in compliance with] [the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards] [or the 1975 Inter-American Convention on International Commercial Arbitration].]

3. 47.3. The Parties *may establish an Advisory Committee on Private Commercial Disputes*, comprising persons with expertise or experience in the resolution of international private commercial disputes. The Committee shall present reports and recommendations of a general nature respecting the availability, use and effectiveness of arbitration and other procedures for the resolution of these disputes in the FTAA. (FTAA 2003: Chapter 23, emphasis added).

The emphasis on commercial (not trade) relations was reiterated at the January 2004 Monterrey Special Summit of the Americas, when the leaders of the Americas addressed the disparity between large corporations versus small and medium-sized enterprises (SMEs). They endorsed the granting of financial assistance to SMEs (Government of the United States 2004b) and the development of various regulations in support of SMEs. For instance, in a move towards promoting a business friendly environment, the United States suggested to strengthen and enforce individual property rights at the national level.<sup>50</sup> It called on the American States to establish effective property rights systems and proposed to facilitate remittances to Latin America by streamlining transactions costs (Official Agenda 2004:4). Also, in a bid to encourage job creation in Latin America, the United States suggested to remove roadblocks to starting new business, including impediments to good governance, by declaring anti-corruption as a top target because "[o]nly 25 percent to Latinbarometro's 2002 survey] expressed confidence in their government or judiciary, the lowest level in six years" (Government of the United States 2004a:5, emphasis added). The United States proposal did not include suggestions for the setting up of institutional means to overcoming barriers to justice. It is also regrettable that the leaders at Monterrey did not address the possibility of developing additional (less expensive) ADR mechanisms designed to facilitate access by SMEs.

The NAFTA *status quo* is reflected in the FTAA also regarding the issue of "privity of contract." The formula

of “arbitration without privity” reminds of the small letters section within standard contracts, a practice that has been source of discontent in debates on the common law of contracts. Similar to the NAFTA provisions, the investor is invited to accept or reject the FTAA ADR formula. However, rejection of the only available procedure shuts the door on any truly negotiated option.<sup>51</sup> The sole alternative to “arbitration without privity” is recourse to the parties’ national courts, the distrust of which has led to the adoption of ADR in the first place. Loyal to the NAFTA *status quo*, FTAA Chapter 17 (Subsection C.2.b Dispute Settlement between a Party and an Investor of Another Party, Article 30. Conditions Precedent to Submission of a Claim\* [*sic*] to Arbitration) stipulates:

30.1. A disputing investor may submit a claim [on its own behalf] to arbitration [under this Section] [under Article 26.1 and 26.2 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) only if: a) the *investor consents* to arbitration *in accordance with the procedures* set out in [this Section] [this Agreement] (FTAA, 2003, p. 35, emphasis added). The article continues: b) ... Accordingly, once the investor or the enterprise has submitted its claim to an arbitration procedure under this Section, *the choice of such a procedure shall be final, precluding the possibility of submitting the claim to the competent national court* of the disputing Party or to other dispute settlement procedures, without prejudice to the exceptions set out above with respect to preventive measures and administrative remedies.... (FTAA, 2003:35, emphasis added).

Article 30.2 repeats:

30.2. A disputing investor may submit a claim [, on behalf of an enterprise] [under this Section,] [under Article 26.3, 26.4, 26.5 and 26.6 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise)] to arbitration *only if both the investor and the enterprise*: a) *consent* to arbitration in accordance with the procedures set out [in this Section] [in this Agreement; and b) *waive their right* to initiate[or continue] any proceedings [before a competent national court under the law of the disputing Party, or other dispute settlement procedures with respect to the measure of the disputing Party that is al-

leged to be a breach of the provisions of Article 26.1 and 26.2 ... Accordingly, once the investor or the enterprise has submitted its claim to an arbitration procedure under this Section, *the choice* of such a procedure shall be final, precluding the possibility of submitting the claim to the competent national court of the disputing Party or to other dispute settlement procedures, without prejudice to the exceptions set out above with respect to preventive measures and administrative remedies]) (FTAA 2003:35, emphasis added).

Arbitration without privity is reinforced in Subsection C.2.b. Dispute Settlement between a Party and an Investor of Another Party Article 31. Consent to Arbitration where the stipulation reads: “31.1. Each Party consents to the submission of a claim ... to arbitration in accordance with the procedures [and requirements] set out [in this Chapter] [in this Agreement] [in this Section]” (FTAA 2003:36).

## Conclusion

This article has highlighted two developments in international public law that are flowing from the blurring of the boundaries between private international commercial law and public international trade law. Resulting in the adoption of private law ADR mechanisms within public international law, two legal principles have been affected. One principle provides that only the State is a subject of international law with right of standing in disputes arising under intergovernmental accords. The other reflects the rationale underlying ADR, namely that to be fair ADR must apply exclusively where the terms of the dispute resolution mechanism are adopted by mutual and free consent. NAFTA Chapter 11 challenges both these principles; many BITs have adopted the NAFTA model; and it is possible that the FTAA could follow suit. Consequently, NAFTA Chapter 11 would emerge as a path-breaking development with revolutionary implications. This is a matter of great concern because these changes to the above mentioned doctrines and traditions are being institutionalized without paying attention to the ensuing inconsistencies created within international law.

While the incorporation of ADR within international trade law is salutary, such a development must be conditioned on a thorough, consistent and teleological assessment of the implications for international law. This

calls for (a) a head-on debate of the re-definition of the subjects of international law, and (b) an examination of the rationale underlying the extended (private-public) version of the ADR option in international law. While NAFTA critics have contributed to a comparatively “kinder” draft FTAA, the core issues raised by NAFTA in these respects have not yet been addressed. In these debates, it is advisable to be mindful of the economic, political, social, and cultural characteristics of the North American as well as Latin American regions. Although comparisons of NAFTA with the EU abound,<sup>52</sup> trade and investment are still perceived differently on both sides of the Atlantic. The creation of such institutions as the European Court of First Instance or the ECJ<sup>53</sup> may be inappropriate for NAFTA or the FTAA, but this should not overshadow other possibilities for improving access to justice. For instance, FTAA drafters might consider setting up FTAA administrative tribunals and small claims courts open to any citizen of the contracting parties (Gal-Or 2002e). As the issue of justice becomes increasingly regulated within the framework of both NAFTA and the FTAA, an overhauling of the ADR mechanisms to bridge the divide between trade and commerce, i.e. between public and private international law, is imperative. The evolution of trade and investment law must go beyond the resurrection and revision of *lex mercatoria* traditions and respond to twenty-first century socio-economic realities and needs with imagination.

## Notes

- 1 This paper has been previously published in the *Transnational Corporations*, vol 14, no 2, August 2005 ([www.unctad.org/TNC](http://www.unctad.org/TNC)).
- 2 The State inviting investment also has interests that are reflected in this set of rules. This article focuses on the rules that serve the interests of the investor and, to the extent that the interests diverge, does not discuss the issue from the State’s perspective.
- 3 The author is indebted to an anonymous referee for this formulation.
- 4 In which private actors do not have standing.
- 5 Throughout, the article refers to the third draft FTAA.
- 6 Although declared “dead” by many commentators, the recent endorsement of the NAFTA by the American National Association of Manufacturers (NAM) and Brazil’s Federation of the Industries of the State of Sao Paulo, which just signed a memorandum of agreement reiterating support for the FTAA (NAM 2005), and the 2004 reaffirmation by the heads of State of Canada and Brazil of their commitment to the FTAA (Government of Canada 2005) tend to suggest otherwise. The FTAA may, however, take the shape of a *de facto* web of FTAs linking various States together in a “spaghetti bowl” mix of treaty provisions rather than one detailed and explicit regional treaty framework.
- 7 The State is to be distinguished from other international actors, e.g. non-governmental organizations (NGOs). These enjoy a new legal status in international law as participants in the process of international law adjudication and making, however not as subjects of law equal in legal status to the State. See WTO (1998).
- 8 This may differ from domestic law where arbitration has been legislated as a means to resolve disputes concerning the public good (e.g. in disputes between labour unions and employers) or where government guarantees, assurances or certification are involved (e.g. insurance, construction) and regarding administrative law at large.
- 9 It would represent the world’s largest free trade area.
- 10 Which serves an example for the implications of Chapter 11 for domestic law.
- 11 Among the various ADR tools are facilitation, consultation, negotiation, mediation and arbitration and various combinations thereof.
- 12 For example, in cases of nationalization of private oil companies in the Middle East.
- 13 “Commercial” denotes private-to-private and State-to-private business relationships, while “trade” infers State-to-State commerce.
- 14 For example, in the settlement of intellectual property rights disputes (Hertz 1997). Its weakness was related, among other things, to its lack of power to enforce judgments.
- 15 And the domestic adjudicative sphere wherein it developed rapidly in the post-World War II era.
- 16 Note that, even within NAFTA, ADR remains partly dependent on the judiciary (e.g. for the enforcement of arbitral awards or mediated settlement agreements, or where the impartiality of an arbitrator is at stake).
- 17 Bryan Garth is past President of the American Bar Association.
- 18 While some investment agreements predate NAFTA, most of today’s BITs and FTAs, which include investment provisions, were signed after, and were predisposed to follow in the path of NAFTA. This gives an additional reason to consider NAFTA’s Chapter 11 as the banner for new international trade agreements.
- 19 UNCTAD documents the existence of over 2,000 BITs by 2005, of which 1,800 were concluded concurrently with/or after NAFTA, many of them between developed-

- developing and developing-developing countries. Between 1994 and 2005, Canada alone has signed over two dozen (Alexandroff 2004; Waelde 2004b). To be sure, ICSID was established in 1966 precisely to regulate disputes between a State and a private party. These investments, however, were largely of a “concession” type contract designed to address investment risks in a cold war climate (Waelde 2004a). Moreover, “it is recognized that international law enforced by investment arbitration tribunals can not become a supranational legal system for the infinite number of government procurement and other contract disputes just because foreign operators are involved;” and the footnote to this statement adds that “[t]his theme is repeated in many recent arbitral awards . . . , but is rarely thought through: Formally, investment arbitral tribunals are never supranational appeals body [*sic*], but from a more material perspective, they provide—as appeals do—a recourse to judicial decision-making when the domestic option either appears non-appealing or in some cases when the domestic recourse has failed to satisfy the aggrieved investor” (Waelde 2004a).
- 20 In large measure due to the enlarged scope of the possibilities open to an investor seeking recourse, which have turned the legal protection of the investor into a double-edged sword—protective shield but also sword (IISD and WWF 2001).
  - 21 The USCFTA is the first comprehensive free trade agreement between the United States and a South American country.
  - 22 “Since the adoption of the high-profile NAFTA, many of these uses are now directed at blocking or seeking compensation from government measures designed to protect the environment or public welfare in other areas, but which impact upon an investor’s interests” (Mann, et al. 2004:1).
  - 23 This has been noted by experts on human rights; see the discussion by Alvarez (2004). More generally, on the expansion of the definition of subjects of international law, see Petersmann (2002) and Rights and Democracy and ICCLRCJP (2000).
  - 24 More than any other similar provision (e.g. Article 26 of the European Energy Charter 1991).
  - 25 Even in matters of human rights (the most progressive development to date is the International Criminal Court), the party against which a natural or corporate legal person may submit a petition, is a natural person, not a State (IISD and WWF 2001).
  - 26 See Waelde (2004a).
  - 27 After all, distrust of the local justice system in a host country formed one of the original reasons to incorporate ADR provisions in investment agreements.
  - 28 Boehmler (2004) provides an interesting philosophical contribution to the analysis of the issue.
  - 29 Representing a reinforcement of the WTO Shrimp decision. The NAFTA’s three trade ministers agreed “on measures to further improve the transparency and efficiency of Chapter 11 (Investment) dispute settlement process, including guidelines for submissions from non-disputing parties and a standardized Notice of Intent Form” (Government of Canada 2003b:1).
  - 30 Accordance with democratic principles is also a guiding tenet of NAFTA.
  - 31 See also Rubins (2004) and IISD and WWF (2001:19-20).
  - 32 Under UNCITRAL, which is referred to by NAFTA (Rubins 2004).
  - 33 Although NAFTA and (a possible future) FTAA are both free trade agreements and do not establish a common market.
  - 34 This article discusses only a limited number of examples to show the reach of arbitral decisions under the “evolving law” of Chapter 11 as they reverberate within international law and affect domestic law.
  - 35 Although only one example addresses trade and international commerce directly, the insights from the literature and jurisprudence are suggestive of an overall trend relevant also to international trade and commerce law.
  - 36 It should be noted that *Baker* applies to the incorporation of international law through an administrative agency based on the latter’s discretion and pro-active orientation. Nevertheless, it is argued here that this signals a general pattern regarding the incorporation of international law within national law, particularly in the absence of unequivocal decisions to the contrary in non-administrative issues.
  - 37 A NAFTA Chapter 11 appeal heard by the Supreme Court of British Columbia, Canada. See also Rubins (2004:375-380).
  - 38 On this issue, see for example, Angela Banks (2003): “Not only are non-state actors instrumental in generating soft law, but they can also be influential in accelerating the political process to motivate states to create hard law, . . . through lobbying efforts, informational campaigns, and coordinating action among various organizations and segments of society” (Banks 2003:295).
  - 39 See also Gal-Or (2004, 2005).

- 40 Jurisdictional theory is concerned more with the status of the subject of international law and less, if at all, with privity of contract.
- 41 The three relevant conflicting principles are: fairness or equality of treatment (reflecting jurisdictional theory); and control by the parties and efficiency (both reflecting contractual theory) (Watson Hamilton 2003:8).
- 42 The fact that investors can avail themselves of Chapter 11 only by accepting it “as is” is an example of a contract dictated by a powerful party (the State). Critics would probably argue that the State negotiated and drafted the agreement under the influence of investors (transnational corporations) and therefore is not more powerful than the investor.
- 43 Geoff Cowpler acted as counsel for the Metalclad Corporation in *Metalclad*. Note that the ADR mechanism writ large provides for a succession of what has lately been referred to as “amicable dispute resolution” (excluding arbitration, ADR Rules 4 (ICC 2001)) whereby consultation and negotiations are in most cases prerequisites to arbitration. Some BITs require the prior exhaustion of recourse to local courts (SICE 2001:18).
- 44 The FTAA refinement of investor-State ADR provisions coincides with recent steps undertaken in the United States to reconcile social justice issues with trade and investment relations. For instance, the United States-Jordan FTA represents the first FTA to which the United States is a Party that incorporates labour and environmental provisions within its main text and, in addition, provides a single dispute resolution mechanism for both commercial and social issues (Hornbeck 2003).
- 45 Brackets represent pending negotiations regarding both content and language and may also reflect complete rejection of the text by one or more negotiating parties.
- 46 Details on Annex XX were not available at the time of writing of this article.
- 47 Including equality: concerns regarding the development gap between rich and poor member States, and the development constraints experienced by the smaller (poorer) economies, have been accommodated in Section C.2. Dispute Settlement Article 22.3. “Smaller economies shall be allowed access to technical assistance and an extended time period, where necessary, for dealing with state-to-state and investor-state disputes” (FTAA 2003:29). Subsection C.2.b. Dispute Settlement between a Party and an Investor of Another Party 24. 2. Investor-state Disputes provides that “... [w]here an investor of a large or developed economy is involved in a dispute with a smaller economy State and the matter is submitted to arbitration, at least half of the legal costs incurred by the State should be borne out of a Regional Integration Fund” (FTAA 2003:30, emphasis added).
- 48 See Gal-Or (1998a, 1998b, 2002, 2004) and de Mestral (2005) regarding amendments to NAFTA’s Chapter 11 investor-state provisions.
- 49 See Dispute Settlement Chapter 23, which deals only with State-to-State disputes.
- 50 See Petersmann (2001) regarding international individual property rights, in the section on innovations introduced in Chapter 11.
- 51 The legal ramifications (consistency in the law) of applying ADR in a manner contradictory to ADR’s own teleology was discussed in the previous section.
- 52 Former United States Trade Representative Robert Zoellick recognized that “[t]he extent of the New World’s new influence will depend on the pace and scope of the economic synthesis, *similar* to the way Europe’s Union worked to combine visions with realities over time” (Government of the United States 2003b, emphasis added).
- 53 To be sure, the FTAA consultations have evidenced increasing caution regarding concern over a possible democratic deficit and attention to the EU’s influence. In addressing the Americas’ (both hemispheres) commitment to the Inter-American Democratic Charter and its relation to the FTAA, it was noted that: “[a]greements between countries in the Americas and the European Union (EU) and its Member States offer other examples of the application of ‘democracy clauses’ to trade and democratic agreements. ... Since then EU practice has evolved, and clauses establishing respect for human rights and democratic principles as an ‘essential’ element of the treaty relationship are standard in EU trade and economic agreements. Such a clause is found in the EU’s agreements with Mexico, Chile and MERCOSUR, and in the Cotonou Agreement to which many Caribbean countries are party .... There will be many challenges in developing an appropriate way to give effect to the relationship between the FTAA and the Charter....” (Government of Canada 2003c:3-4).

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# *The Price to Maintain Canadian Distinctiveness in North America*

Daniel Cohn

## Introduction

In 2001–2002 the House of Commons Standing Committee on Foreign Affairs and International Trade undertook a far ranging and in-depth study of Canada's relations with the United States and Mexico. Although the challenge posed to Canada by the post-September 11<sup>th</sup>, 2001 American security environment was one concern of the report, it was by no means the only one. At a wider level, the study can be seen as asking four questions: How much autonomy does Canada have in its relations within North America and with the wider world as a result of its situation in North America? How can that autonomy be used? How should that autonomy be used? And finally, what is that autonomy worth?<sup>1</sup> My thinking in regard to these matters began with a brief that I submitted to the Committee when called to be a witness during their public hearings.<sup>2</sup> An underlying premise of both the above mentioned briefing and this present work is that it is indeed possible for countries that are closely integrated to remain distinct in terms of social, cultural and economic goals, to hold divergent attitudes towards the wider world and to pursue public policies aimed at maintaining these differences. To see what is possible, the reader needs look no further than Québec and the many unique paths that it has chosen to take even while it became increasingly integrated with the rest of Canada.

This paper begins by briefly summarizing Canada's position within North America. For the most part, Canada is not directly experiencing globalization. The pro-

cess Canada is directly experiencing is best described as regionalization.<sup>3</sup> To date, North American regionalization has been primarily driven by the decisions that Canadians, Americans, and Mexicans have made to reduce the role that democratically accountable institutions play in determining the life chances and opportunities that we each enjoy and to enhance the role played by capitalist markets. That is often referred to as neo-liberalism.<sup>4</sup> I then proceed to lay out an argument based on the concept of a median consumer as to why Canada will inevitably and increasingly be called on to choose when and where it is worth paying the price to be different, given the state's preferred policy paradigm of neo-liberalism and the regionalization on North America which this policy paradigm has sparked. Maintaining a distinct path might entail the need for Canada to bear extra costs (not all of which are necessarily monetary). Some groups never want the state to accept the need to pay these costs, no matter how insignificant they might be. Others believe it is essential to maintain almost every difference, no matter how insignificant, at almost any cost. How can decision makers determine when it is worth paying the costs that being different might entail? In partial answer to this question, the paper proceeds to evaluate the different methodologies that have been proposed for guiding decision makers when they are required to evaluate competing policy options. Following Vining and Boardman, these can roughly be described as cost-benefit analysis, embedded cost-benefit analysis,

efficiency analysis and finally, multi-goal analysis.<sup>5</sup> To be up front, I should state one of my key beliefs in regard to these matters. This belief is that the costs involved in being different are often much smaller than usually assumed and that properly constructed analyses of the options available to decision makers would often help to reveal this.

I conclude by noting that whichever approach is taken, a fundamental pre-requisite is accurate information about Canada, Canadians, and the workings of Canadian social, economic, and political systems. In this sense, Canadian Studies is becoming even more relevant to the well-being of Canadians in this increasingly globalizing era, as it is only through an appreciation of its outputs that sound decisions can be made as to what differences make Canada distinct and are consequently worth paying the price to maintain.

### **Regionalization on Neo-liberal Terms, Canada's Choice**

Writing about the difference between money and capital, Engels observed that when the wealth under a person or an organization's control grows to a certain point, it takes on characteristics, and exhibits impacts, very different from those of smaller sums.<sup>6</sup> The process of globalization seems to possess a similar nature. A number of trends that have been going on since the end of the Second World War have reached a point where their characteristics and impacts are very different from those observed previously. In academia there has been a cascade of books purporting to be about, to describe, or take account of globalization as more and more social researchers begin to perceive the influence that this process is having on the phenomena which they study. The impact of globalization on societies, organizations, and individuals is seen by many researchers as being variable, depending on our location within the different aspects of the world order.<sup>7</sup> Therefore, geographically and demographically specific studies, as well as studies of how globalization is affecting different aspects of life, are critically important to the development of a better understanding of the process. An important distinction is that between countries experiencing globalization and those experiencing regionalization. Held et al. employ the following definition of globalization: "A process (or set of processes) which embodies a transformation in the spatial organization of social relations and transactions – assessed in terms of their extensity, intensity, velocity and impact – generating transcontinental or interregional flows and networks of activity, interaction, and the exercise of power."<sup>8</sup> If this definition is accepted, then it becomes clear

that in many areas of daily life – and especially in the area of the economy – Canada is not directly experiencing globalization. Rather, Canada is directly experiencing another process which Held et al. define as regionalization. "Regionalization can be denoted by a clustering of transactions, flows, networks and interactions between functional or geographical groupings of states or societies... [I]t is crucial to signal that globalization is not conceived here in opposition to more spatially delimited processes but, on the contrary, as standing in a complex and dynamic relationship with them."<sup>9</sup>

As Canadian economic activities are ever more closely integrated into those of the Western hemisphere and those of its core capitalist country, the United States, Canada experiences globalization second hand. Canadians integrate with the United States, and the United States reaches out from the region to integrate with the world. That becomes particularly clear when the statistics on direct foreign investment are considered. Although for a long time the far away single largest owners of direct investments in Canada, American ownership continued to rise during the 1990s so as to reach two-thirds of the total held by all foreigners. Although nowhere near the level of American ownership in Canada, Canadian ownership in the American economy has also been rising as Canadian investors and corporations continue to make acquisitions south of the border. In 2003 new Canadian investments in the United States outstripped those by all other nations (even if the European Union is treated as one entity). Canadians are now the third largest owners of direct foreign investment in the United States, and the imbalance in direct foreign investment (the degree to which American direct foreign investments outweigh Canadian direct foreign investment in the United States) also reached its narrowest recorded point in 2003.<sup>10</sup> It is this regional integration of investment and ownership, rather than trade growth,<sup>11</sup> which represents the true economic impact of the Canada-United States Trade Agreement (later revised so as to offer greater protection to investors with the entry of Mexico to become the North American Free Trade Agreement). However, this continental structure of capitalist ownership is not a new trend. Rather, it is the reassertion of an older one. As Williams documents, North American regionalization was officially promoted by Ottawa from the end of the Second World War up until the 1970s. At this point "continentalism" came to be challenged by economic nationalists, who encouraged Ottawa to adopt an independent development strategy that would see Canada directly engage the global economy. With the defeat of

economic nationalism in the early 1980s, regionalization reasserted itself.<sup>12</sup>

Consequently, one has to accept that to the degree Canadians care whether or not they see positive material change in their lives as individuals and in Canada's position as a society, then they will care about Canada's relationship with the United States. In order to understand what can practically be done to counter-balance this and allow for the assertion of Canadian autonomy in this situation it is important to remember that – unlike during the previous post-war era – regionalization is being driven, not by public policy, but by the decisions that Canadians themselves have made to reduce the role that public policy plays in determining the life chances and opportunities that each individual, family, and community enjoys and to enhance the role played by markets. That is often referred to as neo-liberalism.<sup>13</sup> In essence neo-liberalism is about giving markets greater freedom to allocate resources and rewards.

Therefore, when Canada chooses to act autonomously, to adopt policies that differ from those adopted by the United States, the Canadian state is not just disrupting Canada's chosen avenue to the wider world via regionalization but also imposing burdens on the freedom of markets to develop as investors wish, a freedom that Canadians and their state have chosen to promote as a primary matter of public policy.<sup>14</sup> Given these circumstances, it is simply unrealistic to believe that any government of Canada would allow its policy to diverge from that of the United States to any significant degree without having a very good reason, supported by evidence as to what the costs and benefits of such deviation are likely to be.

### Median Consumers and Policy Autonomy

Before proceeding to look at ways in which the above noted evidence can be produced, it is necessary first to explore the reason why it is that Canada – should it wish to act autonomously – has the opportunity to “buy its way out” of conforming to American determined policies. In seeking to answer this question, I will again draw on the idea that Canada is not just experiencing regionalization but regionalization that is driven by neo-liberalism. Incompatibilities that deter economic action in a free market (and that serve no other purposes) are generally resolved through disaggregated individual preferences of consumers and firms, which cumulatively serve to set a market norm.<sup>15</sup> All other things being equal, the “market norm” will be whatever happens in the largest part of any market, or the choices made by the actor with the greatest economic power. Therefore, the “market norm” will most

frequently be whatever the United States chooses to do, whether we are talking about policies the American state chooses to make, standards American corporate actors choose to adopt (such as those that attest to product quality) or preferences American consumers express.<sup>16</sup> When Canadians choose to do things differently, that does not just represent deviation from the policies of the country's economic partners but from the solution favoured by market principles.

In theory, markets provide what people want at a price that they are willing to pay. However, that does not mean that they always provide customers exactly what they want or that customers always have a great deal of choice in the price they will pay. Sometimes market choices are restricted to accepting an inadequate product or no product at all, paying an outrageous price or foregoing consumption of the product altogether. Sometimes – even when there is a willing cadre of buyers – producers choose not to supply a product. That often occurs when suppliers cannot figure out how to produce and price the product, or both, so as to meet the level of returns demanded by their investors.<sup>17</sup> Competition is supposed to ensure that negative outcomes such as these occur as infrequently as possible by tilting the balance of economic power in favour of consumers.<sup>18</sup> What markets will not or cannot provide, can sometimes be provided by not-for-profit organizations or the state. An important concept in this theory is an actor we can call the median consumer. In theory, the competitor who can best match the wants of this actor and deliver the goods at a price that the median consumer is willing to pay will reap the largest market share and rewards. Once the balance of quality and price that realizes the needs of the median consumer are identified, most producers will gravitate towards that norm.<sup>19</sup> Anthony Downs used this idea to explain why political parties will sometimes converge on a given set of policies and, as a result, appear no different from tweedle dee and tweedle dum to voters. This is not a conspiracy among the parties; they are simply trying to maximize the number of voters that they appeal to and the potential electoral rewards that they can reap.<sup>20</sup> Voters, whose needs are not met by parties focusing on the median voter, can and do vote for alternative parties. The short-term goal of these parties is less to maximize votes than to give voters with non-median views a voice and work towards the sorts of social and cultural changes that reshape mainstream views. Similarly, consumers who feel their needs are not met by products aimed at the median consumer often have the option of purchasing niche products. However, they usually have to pay a premium to get them.<sup>21</sup>

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Given that regionalization is being driven by investor choices, they are likely to choose to meet the needs of the median consumer, and in the North American market, a simple glance at population figures once again indicates that just as the market-norms are not going to be those rules that prevail in Canada, neither is the median consumer going to be a Canadian.

As we have already seen, Canadian firms have a vested interest in choosing to meet the regulatory burdens imposed by the United States. The notion of a median customer points to the fact that not only will they choose to meet these requirements but also that they will base their pricing on this norm. We can perhaps call this burden the market determined regulatory norm. If Canada wishes to impose different burdens on economic actors (not even heavier ones, just different ones), Canadian consumers and tax payers will have to pay the full cost associated with these differences. In other words, Canada can choose to buy its way out of convergence if Canadians are willing to pay the price, just as consumers of non-median goods pay the additional price associated with specialty goods.

This capability of countries to buy their way out of convergence might help to explain one of the great puzzles of regionalization and globalization under neo-liberalism. This puzzle is that there is little evidence so far that regionalization or the wider phenomenon of globalization is severely restricting policy choices available to countries over such basic matters as taxation rates and policies that promote social equality. Furthermore, Canada appears no different from the wider trend.<sup>22</sup> At present, most explanations emphasize issues such as the fact that capital mobility is not as all determining as it first appears. Social structures create rival pressures that leaders must respect and the impact that these rival pressures can produce are either magnified or diminished by political institutions.<sup>23</sup> Another explanation is that changes such as these take a while to filter down from the high realm of international political economy to public policies, and these in turn take longer still to have visible impacts that can be captured by social statistics. This process is said to take even longer than normal in Canada given the federal division of powers which provides the federal government with powers over trade and most major macro-economic policy areas and the provinces with powers over health, education, welfare and most labour market issues other than unemployment insurance.<sup>24</sup> However, Canada's corporate leaders certainly believe that global competition for investment exists and have been using the threat of widespread capital flight as part of their strategy to persuade governments to

lower tax levels and adopt other corporate and investor friendly policies.<sup>25</sup>

Nevertheless, if what has been proposed above is correct, there is no need for companies to leave Canada so as to meet the differing burdens that autonomous choices might impose as long as corporations can extract the total cost of these burdens from the Canadian market and tax payer rather than distributing it equally across the entire breadth of their customers and the regional markets that they operate within. That is apparently how Canadian based energy and chemical producers will deal with the Government of Canada's deviation from the United States over the Kyoto Protocol.<sup>26</sup> Canadians will have to foot the total bill in terms of compliance, for producers will not pass the costs of meeting Kyoto obligations on to their American customers. Specifically, both the Canadian Petroleum Producers' Association and the Canadian Chemical Producers' Association state that their members are ready, willing and able to reduce greenhouse emissions. However, if Canadian governments and consumers do not adequately compensate them for the costs involved in going further than competitors in the United States, their members will reduce investment in Canada.<sup>27</sup> As the cost of behaving differently escalates, Canadian governments will have to assess carefully when and where it makes sense to exercise their right to be different and what the costs of acting differently are likely to be. Once again it is worth repeating that even if the costs of being different from the United States are rising, careful analysis will often reveal that in many cases they are still not great. Again using Kyoto as an example, it is instructive to note that global oil giant BP met its own Kyoto target (verified by external audits) ahead of schedule, even though it has considerable operations in the United States. Furthermore, far from damaging the interests of shareholder or reducing the firm's competitiveness, the measures taken by BP actually created net savings for the firm and increased its profitability.<sup>28</sup>

This logic, that countries can buy their way out of convergence, can be translated from the world of business decisions to the wider problematic of Canada – United States relations to some degree. Canada's problem is essentially the opposite of that faced by the people of Puerto Rico. A recent volume dealing with that island's status vis-à-vis the United States is titled *Foreign in a Domestic Sense*.<sup>29</sup> Puerto Rico is somewhere between an incorporated portion of the United States (states and territories that have been designated as future states by Congress) and a foreign country. The degree to which the protections of the United States

**Table 1. Vining and Boardman’s classes of policy analysis**

	Single Goal of Efficiency	Multiple Goals Including Efficiency
Comprehensive Monetization of Efficiency Impacts	Cost-Benefit Analysis	Embedded Cost-Benefit Analysis
Less-than-Comprehensive Monetization of Efficiency Impacts	Efficiency Analysis	Multi-Goal Analysis

Source: Vining and Boardman forthcoming

Constitution apply to Puerto Rico and Puerto Ricans is completely in the hands of Congress.<sup>30</sup>

It is possible to conceive of Canada as being Domestic in a Foreign Sense to the United States. Canada is clearly an independent country. However, the degree to which Canadians enjoy immunity from the constraints, duties, and burdens imposed on the domestic United States of America, yet still enjoy the benefits usually reserved for domestic actors, is solely at the discretion of the Congress. When Canadians choose public policies that differ from those adopted in the United States, to the extent that problems are created (such as through using rival safety codes, differing accounting procedures or by adopting policies that just plain annoy U.S. politicians such as the decriminalization of marijuana), Canadians are essentially challenging their American partners to grant them immunity from the behavioural norms that they expect of domestic actors, yet still allow Canadians to enjoy benefits usually reserved for Americans.<sup>31</sup> When they decline to grant Canadians such immunities, Canada will have to pay the cost that this friction imposes or change its policies. Economic actors will not impose the costs associated with this burden on customers in the United States – their median customers – wherever, and whenever they can avoid doing so.

**Methodologies for Evaluating the Costs and Benefits of Difference: The Need for a Holistic Approach**

So far, the argument has been made that Canada continues to have the possibility of choosing autonomous action over simply mimicking the policies and state behaviour of the United States even while neo-liberal inspired regionalization is occurring. Furthermore, it has been argued that because this regionalization is indeed inspired by neo-liberalism, these decisions by Canada to act autonomously have generally to be seen as not only imposing costs on Canadians but as standing in contradiction to the policy paradigm that has structured state action during the last twenty years. If that is accepted, it is not too far a stretch

to suggest that before governments will accept the need to act differently from the United States, they will want to see convincing evidence that the benefits of such actions outweigh the costs, either because benefits are so great, costs are so slight, or because some combination of the two situations exist. This section will explore the methods that are available to assess the costs and benefits that are attached to autonomous action. Vining and Boardman lay out four distinct forms that any policy analysis can take. These differing approaches can be understood as separate cells in a two-by-two chart that result from categorizing approaches to policy analysis according to two characteristics:

- Whether or not efficiency is the only goal that the policy has to meet
- Whether or not it is possible to comprehensively monetize efficiency impacts.<sup>32</sup>

Cost-benefit analysis is the best known of these methods of analysis and probably needs little introduction. What does need to be noted is that it works only on relatively simple problems, for it assumes that there is but one goal, efficiency,<sup>33</sup> and that all impacts of change can be quantified and assigned a monetary value. If these impacts cannot be quantified and cost-benefit analysis proceeds by ignoring non-monetizable impacts, what occurs is an implicit choice to ignore some consequences of policy change and privilege others. Efficiency analysis recognizes that some consequences of changing policy to maximize efficiency cannot be adequately monetized while maintaining maximum efficiency as the sole goal that the analyst wishes to achieve. For example, a government agency might be able to “cost” the change of policy on its own budget, other initiatives it has to forego, etcetera, but not be able to monetize fully the impact on society. These societal impacts might be measured by other benchmarks. For example, an analyst might calculate the cost and benefit of using differing taxes to raise the revenue required by the state as well as the number of job losses or gains attached to each option. Embedded policy analysis assumes that

there are other goals beyond efficiency that ought to be maximized. For example, most democratic states temper their search for efficiency with a desire to maximize other goals. One such commonly sought goal is "equity." In an embedded policy analysis it is assumed that consequences of both seeking efficiency and the other goals can be fully monetized. For example, our tax analyst might be charged with finding both an efficient and equitable way to raise the revenue required by the state. Alongside calculating the net revenue each tax option might raise, the analyst would also calculate the way in which each option would change the tax burden facing different groups of tax payers. As Vining and Boardman note, these sorts of analyses are not only common but, in fact, it is the official policy of the government of Canada to consider "distributional issues" when conducting policy analysis. Finally, there is multi-goal analysis. In this form of analysis it is assumed that there are goals beyond efficiency that the state wishes to maximize and that some of the impacts of these goals cannot be fully monetized. That is also sometimes called socioeconomic analysis, and it is used in a surprisingly large number of instances. Keeping with the tax policy theme, our analyst might be instructed to find an option that is efficient and equitable and which also has the most positive environmental impact and least negative impacts on employment.<sup>34</sup>

Returning to our topic of how Canadian government's can determine when and where it makes sense to act autonomously of the United States, either by adopting different policies or policies that create difficulties for market exchange across the border, it should be apparent that if all that was done was a traditional cost-benefit analysis, many important factors would never be considered; and given the share of the Canadian economy tied up in trade with the United States, there would almost be a systemic bias built into the analysis against taking any action that deviated from American practice. On the other hand, multi-goal analysis allows for a more holistic approach to be taken. Yet, a major problem with multi-goal analysis is that it can be taken as a way to avoid rigorous analysis rather than form the basis of analysis. Care has to be taken that it does not become an excuse to cherry pick so as to make any case the analyst wishes to demonstrate and thereby justify all deviations from American practice.

One attempt to add some rigour to multi-goal analysis involves the creation of "genuine progress indicators." These are indicators of socio-economic development that include both monetizable variables, such as change in gross-domestic product, savings rates, and trade growth, as well as non-monetizable variables such as environment-

al sustainability, social equality, and cultural survival. As such they provide an indication of a society's well-being rather than simply a yard-stick of the wealth that it is producing.<sup>35</sup> If used as a tool to assess the costs and benefits of policy options, they hold the potential to provide the sort of 360 degree view of the impacts of a given policy that multi-goal analysis promises but finds difficult to deliver in a rigorous manner.

However, there are some significant problems. The first of these problems is that these measures are still very much in their infancy. Although work has been conducted on genuine progress indicators since the Second World War, it is only with the advent of powerful and low cost computing that the development of such heterogenous measures scaled in a wide variety of units (dollars, years, level of respiratory health, etc.) has become practical. Nevertheless, many countries, subnational governments and local authorities are developing them. Anielski reports that in North America alone there are 300 genuine progress indicator projects underway,<sup>36</sup> each using its own peculiar twist on the theme of "measure what you want to be."<sup>37</sup> Not only does that mean that there is no standard methodology, making comparison difficult, but it also points to a third problem. The development of these indicators is very values charged. Nevertheless, as we will later see, this specificity and relationship to unique values expressed by different communities is also the greatest strength of these measures. Consequently, it is unlikely that these holistic indicators will ever achieve the sort of standardization seen in indicators such as those that comprise the national accounts of OECD member states.

The potential value of holistic measures has been recognized by the federal government. One particular proponent is Prime Minister Paul Martin. As finance minister, Martin used his 2000/01 budget speech to announce that the federal government would fund development of a Canadian system of indicators that would take account of environmental status as well as economic activity.<sup>38</sup> Since then, progress has been made on developing rudimentary sustainable accounting for Canada. The National Round Table on the Environment and the Economy (set up in response to the 2000/01 budget) has recommended that six new indicators of sustainability and human capital be added to Canada's system of national accounts. These include air quality, fresh water quality, greenhouse gas emissions, total forest cover, total wetlands, and participation in post-secondary education.<sup>39</sup> Another federal government agency is working on developing tools for measuring social capital.<sup>40</sup> A far more developed project is the Pembina Institute's genuine progress indicator for

**Table 2. The Alberta genuine progress indicator**

Economic	Personal-Societal	Environment
Economic Growth	Poverty	Oil & Gas Reserve Life
Economic Diversity	Income Distribution	Oil Sands Reserve Life
Trade	Unemployment	Energy Use Intensity
Disposable Income	Underemployment	Agricultural Sustainability
Weekly Wage Rate	Paid Work Time	Timber Sustainability
Personal Expenditures	Parenting and eldercare	Forest Fragmentation
Transportation Expenditures	Free Time Volunteerism	Parks and Wilderness Fish and Wildlife
Taxes	Community Time	Wetlands
Savings Rate	Life Expectancy	Peat Lands
Household Debt	Premature Mortality	Water Quality
Public Infrastructure	Infant Mortality	Air Quality & Emissions
Household Infrastructure	Obesity	Greenhouse Emissions
	Suicide	Carbon Budget Deficit
	Drug Use	Hazardous Waste
	Auto Crashes	Landfill Waste
	Divorce(family breakdown)	Ecological Footprint
	Crime	
	Problem Gambling	
	Voter Participation	
	Educational Attainment	

Source: Anielski 2002:12.

Alberta. This measure employs indicators covering 52 different factors chosen both with an eye to general theory as to what makes for the well-being of society and also the unique needs of Albertans.

The table above points to both the complexity and sophistication of genuine progress indicators. It also points to two crucial elements that must be in place to construct successfully such measures (or even engage successfully in more rudimentary analysis of whatever type). The first of these elements is a detailed knowledge of the values and goals that a given society wishes to promote. The second element is an understanding of the unique features of the environment, economy, and structure of the given society, as well as how these influence its ability to reach these goals and fulfill these values. Such specific knowledge must complement a general theoretical understanding of a given topic or policy analysis will provide recommendations that are either inaccurate or which prove infeasible.

### The Increasing Policy Relevance of Canadian Studies

As noted in the last section, effective policy analysis requires detailed knowledge of the society that the analyst serves and how the various features of the society combine to create idiosyncratic phenomena, as well as the goals and values that the society wishes to achieve and promote. Consequently, if we wish to create accurate predictions of when and where it is worthwhile for Canada to pay the price to be different from the United States, then Canadian Studies has to be seen as one of the most crucial forms of research that Canadians can invest in during an era characterized by neo-liberal hemispheric regionalization.

That raises one further, and perhaps complicated, burden that “being domestic in a foreign sense” to the United States creates for Canada. Canadians are the foreigners most domestically similar to the Americans, in our behaviour, tastes and values.<sup>41</sup> The greater the freedom given to market forces to promote regional integration, the more the pressure builds to cater to the median customer and his or her needs, and finally, the more difficult it becomes to see, study and understand how Canadians are different

and why that matters. As those differences that persist are likely to be the most important, this problem holds the potential to create considerable difficulty for Canada. Canadians might never lose the ability to act autonomously, provided they can accept the costs. However, Canada might lose some or all of its capacity to understand when it is in the national interests to act autonomously and accurately to assess both the costs of action and inaction.

A small incident that perhaps illustrates this phenomenon is the concerns regarding immigration issues voiced by the official Opposition in the House of Commons after the September 11<sup>th</sup> attacks on the United States. The inspiration for their concerns was not Canada's national security, nor reports in the Canadian media, but rather, a program on an American television network that framed Canada's immigration policies as a problem for the United States, a problem that could be solved if Canada were to adopt the American outlook on immigration and solutions to the problems so defined (see Appendix I). This observation is not meant to fault the official Opposition. Their responsibility is to use every legitimate tactic to highlight possible weaknesses of the government and to offer alternatives. However, it does show the degree to which Canada's own political agenda (both problems and solutions) is set, not in the context of Canadian needs, but instead is defined by the United States and Americans.

More substantively, and less visibly, this problem is also occurring in the ordinary ways in which Canadians view the world on a daily basis and in the policy prescriptions that researchers and analysts create. To some degree Canada has always engaged its own policy problems by learning from other countries, most often the United States and the core capitalist countries of Western Europe.<sup>42</sup> However, the consensus on neo-liberalism and the regional integration it is driving is accentuating and transforming this trend. Whereas Canadians once looked abroad for solutions, it is now common to look abroad for both definitions of Canada's problems and solutions with possibly damaging consequences. These consequences are all the more damaging when the country being looked to is the United States, a global hegemon, and when such inquiry is not balanced by an appreciation of the substantive ways in which Canada's situation and Canadians themselves differ from Americans.

There are no easy solutions to this problem. The government of Canada has already committed a portion of its now regular surpluses to supporting academic research and graduate and undergraduate students. These efforts have been undertaken both directly (such as through increased scholarships and increasing the tax-exemption threshold

on scholarships) and indirectly through increases in what is now called the Canadian Social Transfer. However, there are still serious problems. Most notably, tuition costs for graduate and professional studies are still high and rising for most students in Canada relative to their ability to pay and potential scholarship incomes.<sup>43</sup> It will be remembered that Canadians are not the median consumer, yet these students are being told that they should consider their ever rising tuition as an "investment" that will pay dividends in terms of increased labour-market potential. That consideration holds the potential to create a situation where it increasingly does not pay to study or do research on Canada. However, if Canadians reduce tuition at the cost of quality in the nation's universities, it will simply accelerate the number of Canada's best students who choose to go to school in the United States, where there is even less chance that they will learn about or conduct research that deals with the unique aspects of Canada's condition. It is also worth remembering that many Canadian students who choose to study in the United States will never return home. That is especially the case with graduate students. The U.S. National Science Foundation found that 43 percent of the Canadian students who received science and engineering doctorates from American universities between 1988 and 1996 either had stayed put in the U.S. or had firm plans to stay.<sup>44</sup> There is no reason to believe the figures are any different in the social sciences or professions.

To recap, as Canada integrates with the United States through the process of regionalization under neo-liberal influence, market forces will make it more costly to deviate from both the international policy and much of the domestic regulatory policy set by the United States. Therefore, Canada and Canadians need better knowledge as to when and where it really matters to deviate from the policies of the Americans and better knowledge of what the costs of these deviations are likely to be. Ensuring Canada has the human resources to conduct such research and a proper base of knowledge ought to be a priority of Canadian governments, as few other parties are likely to be willing to pay for the creation of Canadian specific knowledge in a world focused on meeting the needs of the median customer.

## Conclusions

There can be little doubt that regionalization is being driven by the choice made by Canada and the other NAFTA partners to embrace neo-liberalism. There are certain risks that result from that. To date, we have turned over

to market forces a considerable amount of control over the shape regionalization will take. In that markets gravitate to the preferences of the median consumer, there can be little doubt that regionalization, if it continues on these lines, will involve Canada's adopting regulatory norms and international positions determined by the needs of the dominant partner in North America, or paying a premium so as to be different. The most serious risk is not so much that regionalization under neo-liberal principles will erase Canada's autonomy to act. Rather, the risk is that Canada might see a reduction in its capacity both to understand when it is in the national interests to choose alternatives to the market determined norm and to calculate how much it is worth paying to follow such a divergent path. Insuring that Canadians possess the human capital and knowledge base necessary for understanding the ways in which Canada diverges from the norm will likely require increased initiative by Canadian governments. It is perhaps an ironic consequence of regionalization under neo-liberal principles, convergence has served to increase both the policy salience of Canadian Studies and the needs of governments to invest in it.

## Appendix I

*Exchange between Mr. John Reynolds, M.P., Acting Leader of the Official Opposition and The Hon. John Manley, M.P., Deputy Prime Minister and Minister of Infrastructure and Crown Corporations. Oral Question Period 29 April, 2002 (extracted from Hansard)*

Mr. John Reynolds (Leader of the Opposition, Canadian Alliance):

Mr. Speaker, for years the government has ignored the warnings of the opposition and its own security services that terrorist organizations are operating in Canada.

For almost eight months it seems that the government has ignored the lessons of the September 11<sup>th</sup> attack.

Last night our U.S. neighbours heard from its most popular and respected news program, *60 Minutes*, that this government has been indifferent to reforming our refugee system. Americans are hearing that Canada is a safe haven for terrorists.

Will the Deputy Prime Minister now admit that our refugee system has failed and needs immediate reform?

Hon. John Manley (Deputy Prime Minister and Minister of Infrastructure and Crown Corporations, Liberal):

Mr. Speaker, one thing I can say in defence of *60 Minutes* is that it started its series by attacking its own system first.

What Americans did not hear last night was that so far in 2002, 72 percent of Canada's refugee claimants have entered Canada from the United States of America. Another thing they did not hear was that in the December budget the Government of Canada devoted over \$7 billion to increased defence and security measures. Another message that we need to ensure is repeated over and over again is that the 19 terrorists involved on September 11<sup>th</sup> entered the United States not from Canada.

Mr. John Reynolds (Leader of the Opposition, Canadian Alliance):

Mr. Speaker, last week the Liberals blamed our own media in Canada. They blamed the opposition. Now they are blaming the American media.

Ahmed Ressam did not go through the United States. He went from Canada. Nabil Al-Marabh went from Canada. PLO convicted 50 years still in Canada. It was not this party or the media that corrupted our immigration and refugee policy. It was that Liberal government over there.

Since September 11<sup>th</sup> Canada has accepted 15,000 refugee claimants. We are for real and legitimate refugee claimants and so are most Canadians.

When will the government help secure North America and stop surprise refugee claimants from walking the streets of Canada?

Hon. John Manley (Deputy Prime Minister and Minister of Infrastructure and Crown Corporations, Liberal):

Mr. Speaker, I remind the honourable member that a huge percentage of our claimants are entering Canada from the United States.

Let us face reality. If we want to have open, democratic societies where people move about freely, then there will be people in those societies who try to do it harm. That is not just true of Canada or the United States. It is true of Western Europe and other countries.

It was not the Canadian immigration service that issued a visa to Mohammed Atta six months after

he flew a plane into the World Trade Center. It was the U.S. INS.

Mr. John Reynolds (Leader of the Opposition, Canadian Alliance):

Mr. Speaker, it was Ahmed Ressam who tried to blow up parts of the United States who was allowed to stay in Canada for seven years because CSIS did not have the money. We did not catch him. The Americans caught him. It was the security service of Canada that warned two ministers on that side of the House not to go to a dinner but they went anyway.

We must take the lessons of September 11<sup>th</sup> seriously. The United States has a number of countries where it requires people from those countries to have visas. Canada, for those same countries, does not require visas.

Will the government ensure all Canadians that we will work with our American neighbours and make sure we blend together so that both countries--

The Speaker:

The Honourable Deputy Prime Minister.

Hon. John Manley (Deputy Prime Minister and Minister of Infrastructure and Crown Corporations, Liberal):

Mr. Speaker, we have certainly endeavoured to review visa requirements. The honourable member will know that we have a completely different system from the United States in terms of visa waivers versus visa requirements. At the same time these requirements are constantly under review.

The government will not simply accept U.S. visa requirements as being the standard against which we apply ourselves. We will look at the facts and determine for ourselves what is in Canada's interest.

## Notes

- 1 See the Committee's final report on the matter: Standing Committee on Foreign Affairs and International Trade. 2002. *Partners in North America: Advancing Canada's Relations with the United States and Mexico*. Ottawa: House of Commons.
- 2 Cohn, Daniel. 2002. *Regionalization in a Neo-Liberal Era: Risks and Opportunities for Canada. A Brief for the Standing Committee on Foreign Affairs and International Trade (North American Study) in support of the author's appearance during the Committee's Public Hearings*, 7 May. Vancouver, British Columbia.
- 3 Held, David, Anthony McGrew, David Goldblatt and Jonathan Perraton. 1999. *Global Transformations: Politics, Economics and Culture*. Cambridge: Polity Press. P. 16.
- 4 Cohn, Daniel. 2003. "Changing Conceptions of the Public Interest." In *Reinventing Canada: Politics of the 21<sup>st</sup> Century*. Edited by Janine Brodie and Linda Trimble, 67-71. Toronto: Prentice Hall. Although I have serious reservations about the appropriateness of a public policy paradigm informed by neo-liberalism, there is little electoral possibility in the foreseeable future of a Canadian government not wedded to this outlook. Therefore, I have chosen to treat neo-liberalism as a given.
- 5 Vining, Aidan R., and Anthony E. Boardman. Forthcoming. "Policy Analysis Methods in Canada." In *Policy Analysis in Canada: The State of the Art*. Edited by Michael Howlett, David Laycock, and Laurent Dobuzinskis. Toronto: University of Toronto Press.
- 6 Engels, Friedrich. [1882] 1939. *Anti-Dühring*. New York: International Publishers. P. 136-141.
- 7 See for example, Bakker, Isabella, ed. 1996. "Introduction: The Gendered Foundations of Restructuring in Canada." In *Rethinking Restructuring: Gender and Change in Canada*. Toronto: University of Toronto Press. P. 19-23; Cohen, Marjorie Griffin, and Steven Clarkson, eds. Forthcoming. *Governing Under Stress: Semi-Peripheral Countries Under Globalism*. London: Zed; Reich, Robert B. 1991. *The Work of Nations*. New York: Random House Vintage.
- 8 Held, et al. 1999:16.
- 9 Ibid.
- 10 The [Statistics Canada] Daily. 2000. "Canada's International Investment Position." 29 March; The [Statistics Canada] Daily. 2000. "Canada's Balance of International Payments." 31 May; The [Statistics Canada] Daily 18 May 2004; United States State Department. 2004. *Background Note: Canada*. <http://www.state.gov/r/pa/ei/bgn/2089>.

- htm; United States Bureau of Economic Analysis. n.d. *Foreign Direct Investment in the U.S.: Country and Industry Detail*. <http://www.bea.doc.gov/>. The proportion of direct investment in Canada owned by Americans drops sharply in Statistics Canada publications post 2001. For example in The *[Statistics Canada] Daily* from 18 May (2004), the American share of direct foreign investment in Canada is reported as 60.7 percent for 2000, 64.6 percent for 2001, 63.9 percent for 2002, and 63.8 percent for 2003. However, the United States government continues to report that Americans owned approximately 72 percent of direct foreign investment in Canada. See United States State Department 2004. This is possibly due to currency value changes.
- 11 Although it has become common for the supporters of the trade agreements to claim that these treaties have boosted trade between Canada and the United States, it is difficult to identify statistically significant change in the growth rate of trade between the two countries. In other words, there is a good chance that with or without these deals, Canada - United States trade would have continued to grow as it has over previous decades. See for example, Gould, David M. 1998. "Has NAFTA Changed North American Trade?" The Federal Reserve Bank of Dallas Economic Review First Quarter: 16-17.
  - 12 Williams, Glen. 1994. *Not for Export: The International Competitiveness of Canadian Manufacturing* 3rd ed. Toronto: McClelland and Stewart.
  - 13 Cohn 2003:67-71.
  - 14 Bradford, Neil. 1998. *Commissioning Ideas: Canadian National Policy Innovation in Comparative Perspective*. Toronto: Oxford University Press. P. 115; Drache, Daniel, and Andrew Ranachan. 1995. "Ground Zero: Rebuilding the Future, Fiscal and Social Policy Reform in Canada." In *Warm Hearts, Cold Country: Fiscal Reform in Canada*. Edited by Daniel Drache and Andrew Ranachan. Ottawa: Caledon Institute.
  - 15 Sykes, Alan O. 1995. *Product Standards for Internationally Integrated Goods Markets*. Washington, DC: Brookings Institute Press. P. 6.
  - 16 Perhaps the most obvious example is in the area of corporate accounting and reporting. In that most of Canada's large firms wish to have access to the American financial markets (the largest in the world) to sell shares and borrow, they must also comply with U.S. accounting norms and laws. See for example, Gagne, Claire. 2004. "Revenge of the Nerds." *Canadian Business*, 10 October, 46; Gray, John. 2004. "Down the Drain" *Canadian Business*, 15 August, 67.
  - 17 Lehmann, Donald R., and Russell S. Winer. 1997. *Product Management*. Boston: Irwin McGraw Hill. P. 73. A good example of this is the refusal of insurance companies refuse to provide coverage against a category of risk if the potential for losses seems too great. Iacobucci, Edward M., Michael J. Trebilcock, and Huma Haider. 2001. *Economic Shocks: Defining a Role for Government*. Toronto: C.D. Howe Institute. P. 29-30.
  - 18 Lipsey, Richard G., Douglas D. Purvis, and Paul N. Courant. 1994. *Economics, 8<sup>th</sup> Canadian Edition*. New York: Harper Collins. P. 237.
  - 19 We can see this process in action in the automobile market. In the 1980s Chrysler recognized an unmet consumer need and created the minivan. Soon the other large automakers were rolling out minivans and there was intense competition among producers of minivans while makers paid less attention to developing other varieties of automobiles. Woodruff, David. 1993. "The Minivan Free-For-All." *Business Week*, 26 July, 86.
  - 20 Anonymous. 1957. *An Economic Theory of Democracy*. New York: Harper. P. 73.
  - 21 Lehmann and Winer 1997:301.
  - 22 See for example, Jones, Erik. 2003. "Idiosyncrasy and Integration: Suggestions from Comparative Political Economy." *Journal of European Public Policy* 10(1): 140-158; Crepaz, Markus M.L. 2002. "Global, Constitutional and Partisan Determinants of Redistribution in Fifteen OECD Countries." *Comparative Politics* 34(2): 169-188; Oatley, Tom. 1999. "How Constraining is Capital Mobility? The Partisan Hypothesis in an Open Economy." *American Journal of Political Science* 43(4): 1003-1027; Garrett, Geoffrey. 1998. *Partisan Politics in the Global Economy*. Cambridge: Cambridge University Press; Watson, William. 1998. *Globalization and the Meaning of Canadian Life*. Toronto: University of Toronto Press. It is true that the combination of reduced social benefits and programs to assist those with low incomes and tax cuts for those capable of making their way in the market has gradually increased socio-economic inequality as the economy grew during the 1990s and that the poverty intensity profiles of the provinces are diverging (whereas pre-1995 they were converging). Picot, Garnett, and John Myles. 2005. *Income Inequality and Low Income in Canada: An International Perspective*. Ottawa: Statistics Canada; Frenette, Marc, David Green, and Garnett Picot. 2004. *Rising Income Inequality Amid the Economic Recovery of the 1990s: An Exploration of Three Data Sources Statistics Canada Analytic Studies No. 219*. Ottawa: Statistics Canada; Osberg, Lars. 2000. "Poverty in Canada and the United States: Measure-

- ment, Trends, and Implications.” *Canadian Journal of Economics* 33(4): 847-877. That is well in keeping with the tenants of neo-liberalism that markets, not politics, should determine rewards and opportunities. Therefore, it should not be surprising that the rewards of economic growth should be distributed with increasing inequality. However, saying that inequality in Canada is growing is different from saying that inequality levels in Canada are becoming similar to those in the United States. The evidence here is weaker (see Picot and Myles 2005:27-28).
- 23 Jones 2003; Swank, Duane. 2002. *Global Capital, Political Institutions and Change in Developed Welfare States*. Cambridge: Cambridge University Press.
  - 24 Cohn 2003:70.
  - 25 O’Brien, David P. 2001. “Making Canada A Winner – Progress and Challenges: Remarks to the Autumn General Meeting, Business Council on National Issues,” 1 November, [www.bcni.com/speeches/nov1a-00.html](http://www.bcni.com/speeches/nov1a-00.html); O’Brien, David P., et al., 2000. “This is Your Captains Speaking: Tomorrow, the Business Council on National Issues Presents its 21<sup>st</sup> Century Flight Plan for Canada.” *Globe & Mail*, 4 April, A13.
  - 26 Statement by the Prime Minister on the event of the signing of the Kyoto Protocol implementation agreement on 23 July, 2001, see: [pm.gc.ca](http://pm.gc.ca).
  - 27 Canadian Association of Petroleum Producers. 2002. *Submission to the Industry Canada National Summit on Innovation and Learning*. Calgary: Canadian Association of Petroleum Producers, [www.innovation.gc.ca/gol/innovation/interface.nsf/vSSGBasic/in02258e.htm](http://www.innovation.gc.ca/gol/innovation/interface.nsf/vSSGBasic/in02258e.htm); Canadian Chemical Producers’ Association. 2002. *Submission to the Industry Canada National Summit on Innovation and Learning*. Ottawa: Canadian Chemical Producers’ Association, [www.innovation.gc.ca/gol/innovation/interface.nsf/vSSGBasic/in02267e.htm](http://www.innovation.gc.ca/gol/innovation/interface.nsf/vSSGBasic/in02267e.htm).
  - 28 Cairncross, Rosalind. 2003. “Environment: Nature’s Economy.” *Canadian Consulting Engineer* (January/February): 37; n.a. 2004. “Welcome to Kyoto Land.” *The Economist*, 9 October, 73.
  - 29 Burnett, Christina Duffy, and Burke Marshall, eds. 2001. *Foreign in a Domestic Sense: Puerto Rico, American Expansion, and the Constitution*. Durham, NC: Duke University Press.
  - 30 In essence Congress can determine which of the U.S. Constitution’s provisions apply to Puerto Rico, other than in the very limited case of so called “natural rights.” For example, Congress cannot make laws that would deny Puerto Ricans charged with crimes the right to a fair trial, but Puerto Ricans cannot vote for President, which is seen as an “artificial right” created for the exclusive benefit of citizens resident in the incorporated portions of the United States. However, it is now accepted that although Congress can alter the details of this relationship, it will not alter the general nature of the relationship (by either incorporating Puerto Rico or granting it independence) without the consent of the majority of Puerto Ricans. Burnett, Christina Duffy, and Burke Marshall, eds. 2001. “Between the Foreign and the Domestic: The Doctrine of Territorial Incorporation, Invented and Reinvented.” In *Foreign in a Domestic Sense*. Durham, NC: Duke University Press. P. 8.
  - 31 At its most charitable to both sides, this might be the root of our dispute over softwood lumber. Much of the American industry is organized on principles different from Canada’s and, as a result, conditions will always seem somewhat unfair in American eyes. Add in the fact that Canadian softwood is superior, and you have a difficult dilemma (see for example n.a. 2001. “Home Depot CEO Defends Canadian Position in Softwood Lumber Dispute.” *Canadian Press Newswire*, 14 May). In that market power is on the side of the United States – Canadians want access to their market more than the United States wants to grant it – the Canadian industry will probably end up looking more like the American one regardless of whatever rulings are eventually extracted from NAFTA dispute panels and the WTO.
  - 32 Vining and Boardman forthcoming.
  - 33 Efficiency has many definitions. In terms of a goal to be furthered by policy analysis Vining and Boardman define an “allocatively efficient policy [as] one that achieves the maximum difference between the social benefits and social costs relative to the alternatives, including the status quo” (forthcoming:7).
  - 34 Vining and Boardman forthcoming:21-25.
  - 35 Anielski, Mark. 2002. “Is the Alberta Advantage Sustainable? The Alberta Genuine Progress Indicators.” *Proceedings of the Canadian Economics Association*, Calgary, 1 June. P. 1-4.
  - 36 Anielski 2002:4.
  - 37 This is the motto of the U.S. group “Redefining Progress.” <http://www.redefiningprogress.org>.
  - 38 Finance Department. 2000. *Better Finances, Better Lives: The Budget Speech 2000, Delivered by the Hon. Paul Martin*. Ottawa: Finance Department, 28 February. P. 14-15.
  - 39 National Round Table on the Environment and the Economy. 2003. *Environment and Sustainable Development Indicators for Canada*. Ottawa: Renouf. P. 16-17.
  - 40 Policy Research Initiative. 2004. *Expert Workshop on the Measurement of Social Capital for Public Policy*,

- Synthesis Report*. Ottawa: The Policy Research Initiative, 8 June.
- 41 Inglehart, Ronald, Neil Nevitte, and Miguel Basañez. 1996. *The North American Trajectory: Cultural, Economic, and Political Ties among the United States, Canada and Mexico*. New York: Aldine de Gruyter.
- 42 See for example Leonard Marsh's (1975) introduction to the reprint of *Report on Social Security for Canada 1943*. Toronto: University of Toronto Press.
- 43 Statistics Canada reports that tuition has increased on average by 165 percent for law students, 124 percent for graduate students and 79 percent for undergraduate students from the 1993/94 academic year to the 2003/04 academic year. McMullen, Kathryn. 2004. "Paying for Higher Education." *Education Matters* 3(September).
- 44 Johnson, Jean M., and Mark C. Regets. 1998. *International Mobility of Scientists and Engineers to the United States: Brain Drain, Gain or Circulation? NSF 98-316*. Washington, DC: National Science Foundation, Directorate for Social, Behavioural and Economic Sciences, 22 June, and revised 10 November 1998. <http://www.nsf.gov/sbe/srs/issuebrf/sib98316.htm>.



PART III  
CROSS-BORDER ASYMMETRIES

Cultural Identities, Resource Development, and Environmental Regulation



# *The Implementation of the Border in the Oregon Territory: Discourses of Divergence*

Lisa Philips Valentine and Allan K. McDougall

## Introduction

Historic treatments of the Oregon Territory typically take the subsequent border as the boundary for the discussion. That is, south of the border, the Oregon Territory is viewed as a U.S. domain despite the generation-long joint British and U.S. claims to the region. North of the border, the Oregon Territory ultimately became ‘British Columbia,’ conflating mainland and Vancouver Island colonial histories. In parallel fashion, privileging the present geopolitical boundaries, south of the border, histories trace either Oregon or Washington history, but rarely both. The histories, thus, become provincial Canadian or U.S. state histories with early events constructed to antecede their ultimate designation as part of the U.S.A. or Canada. In these histories, the border is extended and reified backward through time, creating insurmountable differences and distinctions that flavor all aspects of the representations. In this paper, we attempt to highlight how the distinctions and differences that are now taken as essential to those histories evolved with the imposition of the border in the Oregon Territory. We also show that the histories are symbiotic across the border and that the discourses of (national) identity were adapted from those formed in the old Northwest where, earlier, similar discourses of divergence arose as the border was imposed in that region.<sup>1</sup>

## The Oregon Territory

This paper examines the construction of identities from approximately 1825 through the 1850s, the period in which the state boundaries were imposed. In 1824–1825, the Hudson’s Bay Company’s (HBC) Chief Factor, Dr. John McLoughlin, working under HBC Governor George Simpson, was sent west to Fort Astoria,<sup>2</sup> renamed Fort George by the HBC, to build the Columbia region. Shortly thereafter, McLoughlin moved up the Columbia River to Fort Vancouver (now Vancouver, Washington State), established Fort Langley (British Columbia) and created and linked inland forts across the region for fur trading. Shortly after the move to Fort Vancouver, many French Canadian and Métis<sup>3</sup> traders, or both, who had worked for the HBC were encouraged to set up homesteads in the Willamette Valley, south of the Columbia River. That initial settlement was described by Archbishop Blanchett in an interview in 1878, fifty years after his arrival in the Oregon Territory: “In the year Dr McLaughlin became Chief Factor & Governor he gave their freedom to the old servants that had been in the Company’s service for many years. Some went farming on the Cowlitz & others in Willamette valley. The beginning of the settlement there was in 1829” (Blanchett 1878:2).

These predominantly French-speaking settlers were often referred to as Canadians<sup>4</sup> by the Americans<sup>5</sup> who arrived some years later. Blanchett’s interview also indicated that the influx of French Canadians and Métis continued to be encouraged by the HBC:

... For a period of time, Simpson encouraged members of the Red River Settlement to move to the Oregon Territory in order to fill positions around the posts. The HBC had at least 35 Iroquois men working for them in the Columbia district, and systematically hired young Kanakas, men from the Sandwich (Hawaiian) Islands to fill positions that the French Canadians and Métis held in areas further east. Like the 'Canadians,' these men typically married local women and became part of their communities (Blanchett 1878:2).

Until the mid 1830s, most settlers in the region were associated with the Hudson's Bay Company or other trading enterprises. One American trader, Nathaniel Wyeth, set up business near Fort Vancouver (on the west end of Sauve's Island in the Columbia) and at a post on the Snake River in the mid 1830s, but by 1837 he had sold his business to the Hudson's Bay Company. In 1834, the first wave of American settlers moved into the area along the Willamette River south of the Columbia River. McLoughlin, consistent with HBC goals of maintaining the district for fur trading and later agricultural ventures, discouraged settlement north of the Columbia, but he aided the needy settlers, giving them the necessities to begin life in the area. The first settlers were Methodists, guided by the Reverend Jason Lee, who established a universal mission, but in 1838, when the first Catholic priests arrived, the Methodists limited and finally ceased their efforts with the Indians<sup>6</sup> and Métis, many of whom had been Roman Catholic. Instead, the Methodists worked to set up churches and schools for their own people. Further east, the Presbyterians at Walla Walla under Dr. Whitman continued their Christianizing efforts among the Aboriginal peoples from 1836 to 1847.

Throughout this period, McLoughlin and Simpson had expected the British-U.S. border to be drawn along the Columbia River. Because of this, McLoughlin steered American emigrants to the south of the Columbia. This boundary was evident in Blanchett's discussion of his arrival in the Oregon Territory in 1838 to be Vicar General of the Oregon Country and his efforts to be able to work with the retired HBC employees south of the Columbia River;

Sir George Simpson was Governor of the Hudson Bay Co in England. As the British government & Hudson Bay Co expected that the Northern side of the continent would be theirs they forbade us as British subjects to have any establishments on the other side. We pro-

posed to have an establishment at Cowlitz; & then the Bishop consented. So the establishment was to be at Cowlitz & we were from time to time to visit our people on the Sound" (Blanchett 1878:3).

Another interesting exception to this policy occurred in 1844, when McLoughlin sent the first African-American settler, George Washington Bush, north of the Columbia.<sup>7</sup> Bush's deployment north of the river was in direct response to the anti-slave and anti-African American sentiments of the American settlers south of the river. (A more detailed discussion about American attitudes towards African-Americans is found below.)

### Discourses of Divergence

The initial trading explorations in the Pacific Northwest, the Spanish, Russians, French, British, and Americans, were focused on asserting claims or sovereign title to the land. Many of the famous explorations, including those of Captain Vancouver, Captain Gray, and the Lewis and Clark expedition, were attempts to establish their state's right to the territory. Given this focus on expanding sovereignty, it is not surprising that much of the early historical record of the Pacific Northwest by Americans focuses on the reasons for the U.S.'s ultimate control over much of the territory. In 1842, the *Webster-Ashburton Treaty* was signed; it set the border between Maine and Nova Scotia and established the forty-ninth parallel as the westward dividing line between the British colonies and the U.S. to the Rockies. Between 1843 and 1846, several large groups of American emigrants, primarily from New York and Boston, streamed overland into the area via Missouri and Illinois. Accounts by American settlers in the Oregon Territory interviewed in 1878–80 by H. H. Bancroft and his associates were consistent in their assertions of prior and continuing control by the U.S.A.

#### *The American Discourse*

One prevailing theme in the American stories was the individual initiative shown by the American emigrant to the Oregon Territory. In response to questions by Bancroft, several of the early settlers discussed their reasons for emigrating. One of those interviewed was Nineveh Ford, a farmer born in N. Carolina in 1815, who emigrated first to Missouri in 1840 and then to Oregon in 1843.

One grand object we had was the prospect of obtaining a donation of land if the country was worth staying in. That was the object of Burnett [later the first Amer-

ican governor of California, prior to its statehood] and others—to come and colonise this country, to take possession of the United States domain west of the Rocky Mountains. It was not at that time settled to belong to the United States. The controversy was up and there was some influence got to bear to induce people to colonise. The question was agitated in relation to the right and title of the United States to this country. I never heard that the government desired to colonise. It was all a private movement and we came on our own responsibility. We had not any assurance that the Government would assist or protect us in any manner (Ford 1878:1–2).

This theme was further stressed by Lafayette Grover (interviewed in San Francisco, California in 1878) who insisted that the settlers—not the American government—established the U.S. claim to the Oregon Territory:

What I want is that you develop this fact that the Northwest country was acquired for the United States by the people & not by the government. We went out there like the robins; & it was not acquired by any force of arms by the United States nor by purchase, but through the means and enterprise of American citizens.... You will find in that the first meeting of the settlers announced that they proposed to form a government until such time as the United States should extend its government over that country. That simple sentence indicated the controlling idea that they had in the forming that government—that it was American in form & American in purpose. You will find also a rude protest against that first organization from the Canadian<sup>8</sup> settlers at the French Prairie (Grover 1878:7–8).

John Minto, who arrived in the Oregon Territory in 1844, was born in England in 1822 and moved to Pittsburgh PA where he worked as a coal miner alongside his father, a “labor agitator.” Minto’s description of the “mind of the frontiersman” gave an excellent précis of the American arguments by an outsider who was actively seeking to understand the motivation for emigration west:

I found that the mind of the frontiersman of the extreme west was dazzled with the idea of planting his own form of government on the Pacific Coast, thereby at once redeeming the country from the possession of the Indians and the English claim upon it; gaining the public advantage of a shorter and more direct route for trade with Asia by coming westward and the personal advantage to the settler of a location near the

sea, whence the surplus products of the farm might be easily and cheaply sent to foreign markets.

A very short acquaintance with these frontiersmen showed me that they had full faith in the power and disposition of the U.S. Government ultimately to vindicate its right to the territory then known as Oregon and that when that time came, (if not before) each head of family or man able to bear arms would be liberally rewarded by a grant of land from the public domain there, as a reward for crossing the plains and by so doing assisting in establishing the American claim to the country by occupancy (Minto 1878:2–3).

The history of settlement in the Oregon Territory differed significantly from settlement in another region that had been held jointly by the British and the U.S., the Old Northwest Territory. There, American settlers fought British-aided Indians and had been forced to rely on their own resources for survival in that hostile environment. The British-controlled area in the Oregon Territory was, until the California gold rush of 1848, limited to members of the Hudson’s Bay Company, but the experiences and constructions that arose out of life in the Old Northwest were carried by U.S. emigrants to the Oregon Territory. In a study by Jesse Douglas of the 1850 census schedule for the Oregon Territory, he noted “74.2 percent of the adults who came to Oregon between 1840 and 1850 were born in the Atlantic states, but 80.8 percent of their children were born in a ‘child belt’ of midwestern states and territories ... ;” he concluded that, “... since it was possibly many of those born in the Atlantic states had removed as children with their parents to the Midwest and had lived most of their lives there, that region was the ‘crucible in which the population of the Pacific Northwest was molded” (Johansen 1986:42-43; Douglas’ work was published in *PNQ*, vol 41, 1950). Those experiences, and especially the images of self reliance in face of Indian and British threats, were well-formed before the settler experience of the far west had matured.

In the early years of settlement, the provisional government of Oregon was relatively inclusive as the co-founder of Portland, Oregon, A. L. Lovejoy, explained:

We were peculiarly situated, the Americans & the Hudson Bay people in the early history of Oregon as a government. We mixed up in the Provisional Government. In order to meet the case we prepared an oath that served for citizens of both countries, so that in taking it neither one expatriated himself from

his country. They were claiming this country at that time as British Territory. The Canadians and half-breeds voted, and all but the Kanakas and the Indians (Lovejoy 1878:1).

That inclusiveness held the seeds of later discourses of divergence. For example, the distinctions between “the Americans,” “the Hudson Bay people,” “the Canadians and half-breeds,” and the “Kanakas and the Indians” were critical. Such distinctions, as they were made by the American settlers, many of whom were themselves second or third generation North Americans, were part of the process of identity- and nation-building in the west. Later, Lafayette Grover defined the “real emigrants” as those who were not associated with the Hudson’s Bay Company. Grover’s analysis presented the means by which the agricultural settlements associated with Fort Vancouver and Fort Nisqually and the settlement in the French Prairies along the east side of the Willamette River south of Oregon City were dismissed by the later American settlers:

Oregon has an individuality of history which differs from that of any other state. Wagons began to go across the plains in 1842; & up to that time the Hudson Bay Co were in actual possession there of large portions of country by right of discovery, exploration & settlement.... [The American emigrants] were the real emigrants; the others were only fur trappers. And those were the first white women & children that ever came into Oregon (Grover 1878:2).

At a more specific level, F. W. Pettygrove, another early emigrant to Oregon in 1843, explained how, in the view of the American settlers, Dr. McLoughlin’s claim to land in Oregon City was not legitimate simply because he was associated with the Hudson’s Bay Company and not seen as an “individual.” His discussion illustrated the anti-corporate and anti-British focus of American emigrants:

The claim that Mr Waller set us was that they were American citizens and as settlers on this land were entitled to ownership of it; and that Dr McLoughlin being a member of the H.B.Co had no right to make a location as an individual, representing as he did an incorporated [*sic*]. The doctor replied that when the land was settled by the two governments that he intended to become an American citizen, and continue to make Oregon his home. At this time this whole territory was held conjointly by the two governments; eventually upon his becoming an American citizen he

received a donation of some 640 acres of land, which embraced the aforesaid land, and continued to live there during the remainder of his life (Pettygrove 1878:14).<sup>9</sup>

As illustrated by the two previous quotations, we find that the U.S. settler hierarchy of values used to assess entitlement to land was based on status as a white, male U.S. citizen who was married to a white female and who did not trap for a living. Most of the earliest American missionaries and settlers were utterly dependent on the Hudson Bay Company’s generosity, and especially the individual generosity of John McLoughlin, to supply them with the necessities including seed and cattle to make it through their first years in the area. The only way they could make their claim for priority as emigrants was systematically to discount association with corporate structures, other than mission boards, and to discount a person with any Native ancestry as perforce not an emigrant, regardless of the distance the Métis or mixed blood person had come in his or her emigration to the Oregon Territory. In areas such as the old Northwest, expanding agriculture had often been the argument for displacing the Aboriginal populations, despite the on-going agricultural endeavors of Native peoples in the region. Similarly, in the Oregon Territory, many Aboriginal groups cultivated crops, including camas root, nettles and bracken, and the Hudson Bay Company at Fort Vancouver was as successful in its trade of wheat as it was in furs. That meant that farming itself could not be used to distinguish the American “settler” from “trader” or “trapper” as it had been in other areas, so that the focus on the autonomous “individual” in contrast to the corporate member became pivotal. Individual endeavors and ancestry were promoted, although the distinction based on settlers as occupying homesteads remained central to their constructions. These discourses were at the root of emerging settler identity in the Oregon Territory.

While in the earliest years, only Indians and Kanakas (Hawaiians) men were excluded from voting in the Provisional Government, Oregon later became the only state to include a ban on emigration by African Americans, free or slave, in its constitution. Jesse Applegate, an emigrant in 1843 from Missouri (b. Kentucky 1811), speaking of the early government in the territory, outlined what was undoubtedly a common view by American settlers:

... As Mrs Victor states in her sketch of Oregon history (see *River of the West* page 353) perhaps the true reason that made Oregon a free State, was the presence of poor whites. Being one of the “Poor whites”

from a slave state I can speak with some authority for that class. Many of these people hated slavery, but a much larger number of them hated free negroes worse even than slaves—And if at the time the vote was taken on the adoption of the State constitution, a question of the status of negroes in Oregon had been submitted to the people they would have condemned them to servitude[.] “If we must have negroes among us let them be slaves” I have no doubt was the public sentiment at that time.... I am opposed to ignorant and irresponsible suffrage and believe none should have the ballot but those having both property and intelligence.... (Applegate 1878:56–57).

A theme in the American texts that continued through the early years of Oregon statehood and through the thirty-six years that Washington [State] remained a territory was the low status of Indians or First Nations peoples. That attitude was extended to the Native and Métis wives of the Hudson Bay Company employees. Again quoting Lafayette Grover:

The rule that the Hudson Bay Co promulgated from London was that the H.B.Co’s servants from head factor down to trapper should intermarry with the tribes, & no white woman was ever allowed in the Hudson Bay Company’s territory.<sup>10</sup> Mark that—that was the rule. That was the law of the company. And the Chief Factor of the Hudson Bay Co, Dr McLaughlin married a Red River Indian, & all his descendants have that blood in their veins. Sir James Douglas followed him. He married a Red River Chiefs daughter; & all of his descendants have the Indian blood in them (Grover 1878:3).

In this 1878 interview, the historical archivist, H. H. Bancroft, displayed a remarkable consistency in American discourse when he asked Grover: “Do you think it was necessary to make so severe a rule as that in regard to intermarrying [for HBC members]? *That was a pretty severe punishment, as it turned out—or would be to some men at least—to compel them to marry Indians or not at all*” (Grover 1878:4–5, italics added).

While Grover defined a “real emigrant” as a person who was non-Native and not married to one, his assessment of the Hudson Bay Company’s policy towards the Aboriginal population was full of admiration. The following was Grover’s outline of the reason that “peace has reigned throughout the Indian tribes wherever the Hudson Bay Company’s territories have extended”:

... the Hudson Bay Co, going into the great interior sought to supply the Indian tribes; they never sought to change the civilization of the country; they proceeded upon the standing ground of the Indian himself, married into his tribes, & furnished him guns, & traps, & blankets, & everything to give him a greater facility for carrying on his nomadic hunting life; never took away his hunting grounds for agriculture; preserved the wild animals for their furs, & for the purposes of trade of the Hudson Bay Co. That was their basis. Instead of doing away with the life of the Indian they cultivate his life; and aided the Indian instead of removing him. The American settlements would occupy the hunting grounds of the Indian for agriculture, & as a necessary consequence the elk & the deer were driven out & killed (Grover 1878:3).

The distrust of First Nations held by settlers from the old Northwest apparently traveled with them as they moved into the Oregon Territory; resonances of these attitudes are evident in the opening message from the Executive Committee of the Provisional Government of Oregon, dated 18 June 1844, which began:<sup>11</sup>

This country has been populated by powerful Indian tribes, but it has pleased the Great Disposer of human events to reduce them to mere shadows of their former greatness. Thus removing the chief obstruction to the entrance of civilization, and opening a way for the introduction of Christianity where ignorance and idolatry have reigned uncontrolled for many ages.... (Oregon Archives 1878:2).

In the histories of the Oregon Territory south of the Columbia River, the place of Methodist and Presbyterian missionaries remained central, with the Methodists uniting against McLoughlin’s claims on the Willamette River and the Methodists and Presbyterians adamantly opposed to the Roman Catholic missionary efforts. One of the Associate Judges of Oregon who arrived in 1849, William Strong gave an interesting account of the successes of the Roman Catholics with First Nations, which mirrors the earlier statements of the success of the HBC with the same groups. His discussion arose when questions about the possible involvement of Roman Catholics in the Presbyterian Whitman mission massacre in 1847:

And so far as the Catholic priests are concerned I see no cause for suspicion. We all know that the Catholics are more acceptable missionaries to the Indians than

the Protestants. In the first place, the Catholics go and settle among the Indians; they do not accumulate any property, and do not require any high standard of piety. They adapt themselves to the people they want to convert. If they should go to Lapland and find that there the idea of a hot hell was rather agreeable than otherwise they would immediately make a cold one to suit the country. As for the Protestants, our American people never did agree with the Indian character enough to assimilate themselves with them (Strong 1878:23).

### **‘Othering’ the Americans**

Following the *Oregon Treaty of 1846*, which set the forty-ninth parallel as the border, the Hudson’s Bay Company moved the center of its Columbia District operations, under Chief Factor James Douglas, to Victoria on Vancouver Island. About the same time, Dr. John McLoughlin left the HBC and moved to his holdings on the Willamette River, where he became a U.S. citizen when that area gained independent territorial status as the Oregon Territory. When that occurred, the land north and east of the Columbia River past The Dalles became Washington Territory, a status it retained for another thirty-six years until it achieved statehood in 1889, thirty years after Oregon did.

The Hudson Bay Company had its own constructions of the American settlers, which were quite different from those presented earlier by the Americans. According to William Fraser Tolmie, HBC Surgeon and Trader (also the father of a later premier of British Columbia, Simon Fraser Tolmie), who headed up the Puget Sound Agricultural Community from the 1840s through the 1860s the growth in the Oregon territories of the early 1840s proceeded as follows:

The Americans were steadily gaining ground, thereby increasing the HB Company’s uneasiness and troubles. The settlers annoyed the H B Co by being very slow in paying their debts, & by encroaching upon the companies cultivated and well stocked lands, at and around Ft Vancouver, Cowlitz, and Nisqually. These lands were claimed, and held by the company, and secured to them as the company understood, by the boundary treaty of 1846.... When, after 1846, the terms of the boundary treaty became known, pettifogging lawyers multiplied in the country, who giving their own interpretation to its stipulations, encouraged the unruly to squat on the lands of, and

otherwise among both companies. These troubles continued to increase until the agricultural interest of both companies [HBC and Puget Sound Agricultural Co.] were utterly destroyed (Tolmie 1878:12, 14).

Many of the records show that, indeed, both McLoughlin and Douglas gave livestock and seed to the early settlers expecting to be repaid. Most settlers did not repay their debts; by the mid 1860s, after the land squatting noted above began, over 6000 cattle and an equal number of sheep had been ‘stolen’ by neighbors (Murray 1986:33). Many of the early American settlers who arrived prior to the gold rush of 1848 also recounted the injustices done by settlers to McLoughlin, without whose help they would not have survived.<sup>12</sup> It would appear that part of the settler movement against McLoughlin following, and despite, his claim for U.S. citizenship might have been an unwillingness to acknowledge his large part in their successes as emigrants.

### **Emigration North of the Columbia River**

The area that became the Washington Territory had been settled, prior to the signing of the *Oregon Treaty* in 1846, almost exclusively by First Nations and HBC members, in no small part because of the HBC policy which refused to grant land to settlers north of the Columbia. Because of the continuing presence of the Puget Sound Agricultural Company, a HBC offshoot, the history of emigration into Washington territory was different from that of Oregon. Widespread immigration to the area did not begin until the California gold rush in 1848–49. In 1853, Major Isaac I. Stevens was appointed governor and superintendent of Indian Affairs of the Washington Territory. Trained in surveying, he worked to ensure that a railway route from the east terminated at one of the Washington harbors. Stevens was ambitious and, with his control of the governorship and Indian superintendency, he was able to extend patronage (Ficken 2002:24–25). By July 1854, he consolidated his power by prohibiting British trade with Washington Territory Indians, effectively cutting the HBC hold in the area (Ficken 2002:24).

The imposition of the border in 1846 precipitated many changes in the old Oregon and New Caledonia territories, which included the Columbia River valley and British Columbia, especially in regard to First Nations. South of the border, as soon as U.S. dominion was in place, both the Oregon and Washington Territories began to address the issue of extinguishing Aboriginal title to land. North of the border, in the (still separate) colonies of Vancouver

Island and British Columbia (then called New Caledonia), the Hudson Bay Company under James Douglas struggled to maintain its trading position and, simultaneously, attempted to assert British control through heavily controlled settlement. As described by former members of the HBC, these settlement efforts were, possibly intentionally, less than successful.

The Charter of the Hudson Bay Co. from the British Government to colonize the Island turned out a complete failure[,] the interests of the Company as fur-traders rendering it necessary for them to do all in their power (sub rosa) to discourage immigration altho' in accordance with the terms of said Charter they were bound to foster it and afford every assistance to settlers. [...] The obstructive and exclusive policy of the Hudson Bay Company continued unimpeded until some time after the expiry of my term of service with them (4<sup>th</sup> August 1857) when in the Spring of the following year occurred the first great gold excitement—people coming up from California by thousands and forcing their way up the Fraser River despite the frantic efforts made by the Hudson's Bay Co. to stay the (to them) unwelcome tide of immigration.... (Deans 1878:3–4).

The problems with settlement in the British territories appeared in part to be caused by the difference in the price of land south of the border. By the *Oregon Donation Act of 1850*, each married couple would receive a free grant of some 640 acres following a four- or five-year occupancy of that land. This Act of Congress, in force for only about five years, had been anticipated by the American Oregon settlers since the mid 1820s and was the impetus behind the move for many. HBC employee James Cooper (b.1821 Wolverhampton England), who served as master in command of trading from London to Fort Vancouver and Vancouver Island in 1844, contrasted the Oregon practice with Hudson's Bay Company control over settlement north of the border:

In 1848 the first overtures were made between the British Government and the Hudson's Bay Company with reference to the colonization of Vancouver Island, the Hudson's Bay Co. undertaking to send out certain numbers of Colonists and prepared a prospectus [to] hold forth certain inducements (as understood by the Company) to emigrants.

The price of land was held at £1 Sterling per acre, and for every 100 acres bought, the purchaser was

bound to import four persons, the price of land and the above restrictions precluded the possibility of colonization, the superior advantages offered by the U.S. government also greatly militating against the consummation of the scheme. The question might however fairly be put whether this arrangement was not more in consonance with the general trade and designs of the Hudson's Bay Co. to impede colonization than a bona fida [*sic*] inducement for the settlers to enter the country. (Cooper 1878:2–3).<sup>13</sup>

### Discourses of Divergence from the East

Just as the Old Northwest was the ideological and geographic starting point for many of the American emigrants to the Oregon Territory, so the ideologies of elite Upper Canadians and British informed the discourses of the post-HBC settlers on Vancouver Island and in mainland British Columbia. A particularly colorful description of this attitude is found in an interview with C.A. Bayley from England, who arrived at Victoria Harbor in 1849 to become a successful merchant and later a member of the colonial government:

One interpretation put upon the letters H. B. C. was Here before Christ judging from the rude customs and manners of the employees of the Company and *it was not till the introduction of white men from the old country that they became civilized*. It is a poor compliment to pay them but they deserve it. I had letters of introduction to Gov. Blanchard who received me cordially on their presentation; he told me he was so disgusted with his position that he had sent his resignation, as he had no power or authority, as it was all Hudson Bay Authority and his was not recognized, and no power to support his position (Bayley n.d.:5, italics added).

Bayley's description of the HBC members earlier in the interview was equally scathing: "The Officers of the H. B. Co. were in those days in as crude a state [as the 'half breeds Iroquois, French Canadians and Kanakas'], and were only one degree removed, they had a white skin. Proper allowance has to be made for men who had been raised and educated up to an Indian Standard" (Bayley n.d.:3). Notice that Bayley's attitudes about the Hudson's Bay Company officers was couched in similar terms to those used by the American settlers to discount the status of members of the Hudson's Bay Company.

This attitude about the leadership of the Hudson's Bay Company in the British colonies was followed by political shifts as well. In 1851, after a brief attempt by Richard Blanshard to function as governor, thwarted by "lack of preparations for the governor, the colonists, and farm bailiffs sent from England" (Fisher 2000:4), Blanshard quit, opening the way for James Douglas to step in as governor and vice-admiral of Vancouver Island as well as chief factor of the HBC. In the late 1850s, the gold rush reached the Queen Charlotte Islands, and Douglas was forced to address the tens of thousands of miners who streamed to the Vancouver Island and British Columbia colonies. One of Douglas's initiatives was to allow only "British subjects [to] purchase land, but all those who applied for naturalization could obtain it" (Fisher 2000:6). Because he relied on a limited number of contacts, many of whom were family members, to fill top positions in the government, Douglas's detractors, many of whom had come to Vancouver Island from the U.S., often complained of a new family compact in the Pacific colonies. However, Douglas effectively retained control of the colonies for the British through a variety of means, as recounted by Henry Roder, a native of Ohio who arrived in Bellingham Bay in 1852 after spending two years in California. In this excerpt, Roder presented a very American assessment of Douglas's skill in maintaining British ascendancy in the area. There is a certain degree of admiration for Douglas' ability to forestall the American effort that was countered by an obvious dislike for a top-down government where a single person determined law and policy:

During the Fraser River excitement the feeling of the Americans was that although the mines were in British Columbia they wanted the starting point on the American side rather than at Victoria. Whatcom was selected for that point. The California Stage Co were going to run a line of stages right into the mines, and when the thing was properly under way Gov Douglas issued a proclamation that all freight and passengers entering British Columbia should enter by the mouth of Fraser River and clear at the Custom House at Victoria. That just let everything out. The Americans had not looked ahead that far. Of course that just put a damper on everything at Whatcom. We had laid out a town. People ran up from San Francisco and Sacramento by the thousands. Those large steamers came up here and landed thousands of passengers at a trip. The steamers would land them there at Victoria too, whichever place they preferred. Whatcom would have had the ascendancy if it had

not been for the English obstruction that they laid against the route. It was like an embargo. All the laws enforced then were by proclamation of the Governor. That was before they had a house [sic] of Assembly (Roder 1878:6-7).

Joseph Trutch, who stepped in to follow Douglas in 1864, was an engineer and surveyor from Ashcott, England. Trutch went to San Francisco in 1849 and lived the next nine years in the U.S., working as surveyor and building contractor for town-sites in Oregon and Washington. In 1852, he became assistant surveyor in the surveyor general's office and in 1855, after marrying his supervisor's sister-in-law in Oregon, moved to Illinois where he worked on the Illinois and Michigan Canal and did some business in land speculation in Chicago (Fisher 2000:1). As historian Fisher wrote: "When the Fraser River gold-rush began in the spring of 1858, Trutch was attracted to the new colony on the west coast. British Columbia, he wrote to his brother John, who later joined him there, that it seemed like a place where Englishmen could live 'under our own laws and flags....'" (Fisher 2000:4). When Trutch came into office, he, like Douglas, surrounded himself with close friends and family who held key—and lucrative—positions. Unlike Douglas, his allegiances were all to England and when, 30 years later, he ended his political career in British Columbia, he moved back to England. The shift to Trutch's regime marked the end of the Hudson Bay Company's prominence and signalled the start of recruitment of "acceptable English" emigrants, such as retired officers of the Crimean War to oversee colonization.

### **Divergence and Convergence in First Nations Treaties across the Border**

The impact of the imposition of the border on First Nations or Indians, in the Northwest Pacific region was enormous. Because the Hudson's Bay Company was so well established in the Oregon Territory, its policies, noted earlier, took precedence. In the period of 1811-34, that meant that First Nations, or Indians, were viewed as trading partners and, often, as marriage partners. Later, these same people were constructed as "the enemy" by settlers north and south of the border. Settlers on both sides of the border dismissed people tied to the indigenous population and, on that basis, rejected claims for settler status and land by HBC employees as well as early Canadian, Métis, Kanaka, and other mixed blood settlers.

When the border was imposed, brought on by the overwhelming emigrations by American settlers, one of

the first concerns south of the border was to open land to settlement. The *Oregon Treaty of 1846* recognized Indian title to lands and clearly outlined that “settlers are not to settle on or occupy land in use by the different Indians until such land is ceded to the United States by treaty” (as cited in Robbins 1986:55). However, the negative attitudes about First Nations (Indians) that the settlers carried from the Northwestern Territory made it easy for them to justify removal by any means. The discourses promoting Indian wars was widely espoused by westward-looking Americans across the country:

Although the activities of settlers during this period [the 1850s] were directly responsible for both the destruction and the removal of native peoples, spokesmen for American expansion—men like Senators Thomas Hart Benton and Lewis F. Linn of Missouri—shaped the ideological fabric. Benton, who proposed earlier as editor of the *Missouri Enquirer* that “the Children of Adam” should march west to the Pacific Ocean later sponsored a land bounty for white settlers who would defend Florida against Indians: “Armed occupation was the true way of settling a conquered country. The children of Israel entered the promised land, with the implements of husbandry in one hand, and the weapons of war in the other” (Robbins 1986:58).

Following a memorial from the Oregon territorial legislature in 1849 asking the U.S. Congress to move Indians from the Willamette Valley, Anson Dart was appointed to extinguish Aboriginal title to all lands in western Oregon. According to Robbins the commissioner of Indian Affairs, Luke Lea,

believed that the white population was closing up the western frontier, leaving two choices for the Indian: “early civilization or gradual extinction.” [Lea] urged Dart to rely upon missionaries to use their influence “in restraining [the Indian’s] wild, roving and predatory disposition” and to bring them “to the habits of civilization.” ... Dart’s instructions explicitly state that he was to provide for the removal of all native people to an area east of the Cascade Range ... [but] Dart disregarded his instructions and made treaties with nineteen groups that provided for small enclaves of reservation land throughout western Oregon (Robbins 1986:56–57).

Dart’s successor Joel Palmer did away with the western Oregon reservations set up by Dart, moving the Indians onto four reservations on the Oregon coast. Dart wrote to the commissioner of Indian affairs about

the openly admitted war of extermination waged against the Rogue Indians. He attributed most of the trouble between Indians and whites in the valley ‘to the mistaken policy of permitting the settlement of the country prior to the extinguishment of the Indian title and the designation of proper reservations’... The renewal of fighting in southern Oregon, he insisted, ‘is wholly to be attributed to the acts of our own people ... The future will prove that this has been forced upon these Indians against their will’ (Robbins 1986:58–59).

In the Washington Territory, treaty making was approved by Congress in 1854. Governor Stevens “vowed to ‘accomplish the whole business, extinguishing the Indian Title to every acre of land in the Territory’ prior to arrival of the fall wagon trains in 1855” (Ficken 2002:45). Stevens’s model was the recently completed “Omaha treaties;” a treaty template for the Washington Territory was drafted by G. Gibbs, a Harvard-trained lawyer. Stevens added one further provision to the treaties: “The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians in common with all citizens of the Territory’ because ‘It was ... thought necessary to allow them to fish at all accustomed places since this would not in any manner interfere with the rights of citizens and was necessary for the Indians to obtain a subsistence” (Ficken 2002:45–46). Stevens’s heavy-handed dealing with both First Nations and the military took the form of having to “demonstrate strength in order to ‘discourage further violence”’ to the point that, in 1856, Stevens declared that “The [Yakama] war shall be prosecuted until the last hostile Indian is exterminated” (cited in Ficken 2002:49). The U.S. military disagreed with Stevens’s actions, and at the end of “Stevens’ War,” the Army refused to comply with Stevens’s demand that they turn the Indian fighters over for punishment by civil authorities. In a statement which echoed the discourse of the Old Northwest, Stevens declared that the “wanted Indians were lawbreakers, rather than prisoners of war, and must not be set free” (Ficken 2002:51).<sup>14</sup>

In both Oregon and Washington, the “Indian wars” were considered by many of the early (pre-gold rush) settlers to be a total disgrace. According to Jesse Applegate:

The Indian wars were the main historical incidents of the period—These in their bringing on, as well as management reflect no credit upon the Whites—since 1849 a new element, the gold hunters, was added to the population, having few if any of the virtues of the early pioneers. The prompt assumption of the Cayuse War debt by the Government being a precedent, suggested an easier mode of obtaining gold than digging it from the bowells [*sic*] of the earth—If new diggings were sometimes difficult to find, a new Indian war was easily provoked, which served their purpose equally well [*sic*]

When the supply of water began to fail in the summer an Indian war was almost sure to be inaugurated [*sic*] in Southern Oregon and Northern California.... (Applegate 1878:45).

Tolmie, who was translator for the Nisqually band's treaty negotiations with Stevens, made similar observations about Indian wars and their use in lining the coffers of the post-gold rush settlers:

In 1849 and on to 1854 Indians were comparatively quiet. Then Major Stevens U.S.A. gov of Washington Ter. appointed by the president, for that purpose set about making treaties with the Inds of OR & Washington for the transference of their lands to the U.S. gov.

The work was gone about rashly and hurriedly. The Ind[ian]s were not listened to, as they should have been upon so important a matter, and the reservations dictated to them by the U.S. authorities, were much smaller than they thought themselves entitled to....

An active and stirring proportion of the people of Washington and Oregon desired an Indian war hoping to make money out of it, by selling horses and supplies at three or four [times the] prices to the gov. and otherwise. The Ind[ians], & whites became very suspicious of each other, and busy bodies both Indian and white, by carrying tales intensified this feeling (Tolmie 1878:24).

North of the border on Vancouver Island, Douglas, as chief factor of the Hudson's Bay Company, attempted to purchase lands for reserves prior to white settlement. While these enclaves were not large, Douglas attempted to reserve villages, agricultural land and sacred areas (cf. McKee 2000:16–17). These reserves were often adjacent to what would become white towns. These treaty and

purchases, consistent with those in Upper Canada, were greatly hampered by the reluctance of the British government to assume financial obligations in its colonies. The colonial government did set aside money for some treaties, but according to C. McKee, “despite some rather strident public protests and newspaper editorial opinions, the latter of which referred to unextinguished Aboriginal title as a serious impediment to settlement, no treaties were concluded after 1854” (McKee 2000:15–16). Following Douglas's retirement in 1864, even those reserves that he had acknowledged were greatly reduced in size.

Trutch, who moved into Douglas' position, denied Aboriginal title altogether, as outlined in an address he made in 1870:

The title of the Indians in the fee of the public lands, or any portion thereof, is distinctly denied. In no case has any special agreement been made with any of the tribes of the Mainland for the extinction of their claims of possession; but these claims have been held to have been fully satisfied by securing to each tribe, as the progress of settlement of the country seemed to require, the use of sufficient tracts of land for their wants of agriculture and pastoral purposes (British Columbia, Appendix B, *Papers Connected with the Indian Land Question, 1858–1875*, Victoria: Queen's Printer, 1875, cited in McKee 2000:18).

Trutch was directly responsible for the reduction of the size of reserves of the Shuswap Nation and those of the Lower Fraser Indians. As Trutch wrote in his 1867 report: “The Indians really have no right to the lands they claim, nor are they of any actual value or utility to them; I cannot see why they should either retain these lands to the prejudice of the general interest of the Colony, or be allowed to make a market of them either to Government or to individuals” (ibid. cited in McKee 2000:19). That Trutch held similar interests to other white American and British settlers is clear; his interactions with First Nations years earlier around Puget Sound only strengthened his prejudices against them. Later, when he moved into the role of governor, rather than give up control of First Nations land, he gave the position of Indian reserve commissioner to his brother-in-law Peter O'Reilly.

## Conclusion

The imposition of the border across the original Oregon Territory created both geographic and ideological divisions between Americans and the “British.” When the

Hudson's Bay Company went west, it adhered to an earlier ideological position, inherited in some ways from the French trading practices of the old Northwest, of limiting settlement to ensure a viable fur trade. As Douglas and others adapted to the responsibilities of governing the British colonies, they retained the "top down" style of governing which fit comfortably with the creation of an elite or family compact and a stratified society. That was in keeping with the Upper Canada model where maintaining a strict social hierarchy, letting in the "right kind of person" and making good were uppermost values. Alternatively, the Americans honed their identities as rugged individualists, fighting the environment, Indians and the British—and making money—just as they had in the Old Northwest Territory. With respect to settler land claims, Americans portrayed the image of "doing it themselves," whereas the nascent Canadians received land based on rank and loyalty to the British Crown. When the second generation of British settlers, heavily mixed with American settlers, ultimately arrived in the British Columbia colonies, the Upper Canada model eclipsed the more socially inclusive one of the HBC.

When the Americans went west, they typically moved from places in the Old Northwest, carrying their ideological baggage and expectations with them. The Oregon emigrants were not sent by the government to colonize the land; the people colonized it (albeit with the help of John McLoughlin, James Douglas, and the Hudson's Bay Company) and brought their government in after the fact, just as they had in Ohio. Forced northward, Douglas made the transition of the region from a Hudson's Bay Company region to a British colony. The carefully designed, top-down view of settlement in the British colonies did not work as well as many wished, but the gold rush took care of (white) peopling the area, and Trutch moved in to make it into a proper British settlement, although he later claiming that British Columbia was "in all respects but climate, a good place to leave" (quoted in Fisher 2000:4). In many ways, Trutch and Stevens were counterparts; both were surveyors and engineers; both were instrumental in bringing the railway to their regions; both held little regard for First Nations and were committed to extinguishing or denying title in the interest of the "superior" white settlers. On both sides of the border, the position of the First Nations went from partner to, at best, an impediment to fully realizing agricultural and cultural goals and, at worst, to the object of a war of extermination.

The migration of discourses from the Old Northwest and Upper Canada to the Pacific Northwest was found most clearly in the statements about First Nations peoples

whose lands the settlers claimed. The treaty-making efforts in the four territories, Oregon, Washington and Vancouver Island and British Columbia under Douglas, directly reflected the treaty-making processes of the 1830s in both Upper Canada and the Old Northwest. Trutch's refusal to recognize Aboriginal land title displayed an attitude that was yet another generation removed from the early traders. Although their attitudes reflected those of President Jackson and Lt. Governor Bond Head in the 1830s, the American "pioneer settlers" of the generation prior to the gold rush still recognized that the land they had entered was not *terra nullius*. The stories of the Métis settlers in the Pacific (cf. Johnson 1995), which included the children of key figures such as John McLoughlin, show how these "middle ground" people were forced to make choices about their identities as First Nation or as white. In both regions and on both sides of the border, people were forced to choose increasingly narrow definitions of self to conform to the perceptions of the dominant settler community in their region and on their side of the border.

## Notes

- 1 We wish to thank the Social Science and Humanities Research Council of Canada for support of our grant entitled "Imposed Sovereignty: Comparing the Impact of the USA/Canadian Border on First Nations and Middle Ground People in the Great Lakes region (1750–1846) and the Old Oregon Territory (1810–1872)." We also wish to acknowledge the logistical support offered by the Center for Canadian and American Studies at Western Washington University and the Center for Canadian Studies at the University of Washington, where both authors were visiting scholars in 2004.
- 2 John Jacob Astor's Pacific Fur Company trading post on the mouth of the Columbia River, Fort Astoria, was established in 1811. It was taken over by the Northwest Company in 1814 and then by the Hudson's Bay Company when the Northwest Company and the HBC merged in 1821.
- 3 The term "Métis" is contentious; it is not recognized at all in the U.S.A. and, for many Canadians, it is used to refer exclusively to people of mixed French and Na-

- tive American (typically Algonquian) heritage. When capitalized in this paper, Métis refers to this specific group, but when not in capital letters, it refers more generally to people whose parentage was a combination of Native and non-Native. Such designations were central to the construction of “others” in the history of Canadian/British and U.S. border relations and must be addressed. The problems inherent in the naming of groups echoes problems that have remained typically invisible to the alternate group throughout the history of the emergence of the U.S./Canadian border.
- 4 In the H. H. Bancroft interviews of early Oregon Territory settlers conducted in 1878, the term Canadian was used to refer only to those born or raised in especially Lower Canada. Like the current use of *Canadien*, Canadian in this context implied North American French origins.
  - 5 Again the term is considered inaccurate, especially for those living directly north and south of the U.S. border. However, the early document commonly use the term “American” to designate people from the United States, and so we continue this practice throughout the paper.
  - 6 Similar to the difficulties with the use of the designation, Métis, the use of the term, ‘Indian’ is problematic for readers across the U.S.A./Canada border. ‘First Nation’ is the current term of choice used by First Nations in Canada where the term “Indian” is considered appropriate in the U.S.A. However, First Nation apparently has little or no meaning in the U.S.—or so it has been constructed—and the term “Indian” is considered derogatory when used as an out group designation north of the border. We recognize these difficulties but have decided to use the term that would be appropriate for the group in question, further entrenching the border(ed) distinctions that have emerged.
  - 7 This event was recounted by William Fraser Tolmie: “At Fort Vancouver the H.B. Co. had given employment to the better behaved of the American frontiersmen settled around, in shingle making for home use and export to the Sandwich Islds. In 1844, it encouraged some of these,—Messrs Kimball, Simmons, Crockett, Jones, Bush (colored), Gorden, others to settle on Puget Sound, and engage in the same business. This was the commencement of the American settlement of Puget Sound” (Tolmie 1878:13).
  - 8 Keep in mind that, throughout these early documents, the use of the term Canadian refers specifically to the French, Native, and Métis population that originated in Lower Canada and the Red River Valley.
  - 9 This statement glossed over the on-going tribulations faced by McLoughlin in his endeavor to have his claims and purchase recognized. For a detailed description of the efforts by a group of American missionaries, settlers and lawyers to dispossess McLoughlin and his heirs of his lands at Oregon City, see Morrison 1999.
  - 10 As outlined by Van Kirk (1983), Grover’s perception of policy was quite mistaken. By 1806, the North West Company had a policy against marrying pure-blood Native women and, in its first years, the HBC was severely constrained in its trading efforts by its policy against fraternizing with Native women. George Simpson was one of the first men to bring his British wife to the Pacific Northwest, but those women who had been raised in privileged circumstance in the British Isles were unable to adjust to life in the Pacific Northwest until the region was more heavily settled.
  - 11 The rhetoric of “civilization” was central to President Jackson’s speeches concerning Indian removals in the 1820s and 1830s and was echoed in the Bond Head removal treaties of Upper Canada in the mid 1830s. See: Valentine and McDougall (2003) and McDougall and Valentine (in press) for more extended analyses of converging and diverging rhetoric that arose in the Old Northwest and Upper Canada between the 1790s and 1830s. Many of these themes were carried to the Oregon Territory by both American and British settlers.
  - 12 The HBC in the Pacific Northwest were self-sufficient posts and had extensive acreage under cultivation. When the Provisional Government was set up in 1842, wheat became the official monetary standard—prior to that there was a barter system—so that the loan of seed allowed settlers access to a monetary base.
  - 13 Deans made similar statements about the relative cost of land north and south of the border: “Population was retarded a good deal on account of the high price of lands. Farms in those days were charged for at the rate of one Pound Sterling an acre. A good many people would have settled here, but as the land on the other side—Washington Territory—was only a dollar an acre, they preferred casting their lot with ‘Uncle Sam.’ The land here was reduced subsequently to a dollar per acre and the results were most beneficial as large areas of the public domain were purchased and settled. Saanich was settled under the \$5 an acre system. The land too was of superior quality” (Deans 1878:14).
  - 14 An example of Steven’s obvious disregard for Indians and their rights to land are evident in Ficken’s (2002) account of the opposition by the Puget Sound, Nisqually leader, Leschi. Stevens formally pursued Leschi in the

courts and “fortified a politically important argument blaming the Indians, not his treaties for the war.” In the midst of this (court) battle, Leschi’s brother was “murdered while under guard in the governor’s Olympia office. Although their identities were widely known, the killers escaped prosecution. Stevens expressed more outrage over the killing taking place ‘in the Executive office’ than with the crime itself. Later Leschi was taken to trial for murder but that ended in a hung jury. A second trial came up with a guilty verdict, but people learned who the real killers were and clemency was supposed to be extended, but mob rule insisted that Leschi be hung, which he was as Stevens was not willing to ‘face down a mob’” (Ficken 2002:51–52).

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# *Sovereign Incantation: the Division of the old Oregon Territory<sup>1</sup>*

Allan K. McDougall and Lisa Philips Valentine

The practice of sovereign states negotiating their entitlement to pieces of the world was in full voice by the eighteenth century. The *Treaty of Paris* of 1763, which played such an important role in Canadian history when it shifted Canada from France to Britain, in fact, shifted French and British sovereign entitlements to land around the world. Canada was only a small piece of the geopolitical shuffle. The agreement was predicated on the belief that the state was the unit of power and that the state had the ultimate power to regulate affairs within its territory and to maintain order for its society.<sup>2</sup> Indeed, this linkage of state with society preceded the rise of the state on the international stage and, given its west European source, was closely linked to two exclusionary terms – Christian and civilized.<sup>3</sup> Treaties between states were binding on the signatories unless they had a subsequent war, then entitlement was renegotiated.

Given the turbulence of international affairs, treaties rapidly became precedent when justifying entitlement in negotiations. States were accepted as rational actors and commitments in one treaty were extended to others in a linear fashion. International law became a body of enshrined and multi-faceted commitments by sovereign actors as compiled in past treaties, or sovereign statements such as acts of Parliament or Congress which ratified those treaties or asserted national/international claims. Negotiation became based not only on the agenda of a state but also on the way in which past commitments could be harnessed to current claims or strategies by plenipotentiaries.

The United States became a player in this game through the *Treaty of Paris* 1783, which established its membership in the sovereign, civilized and Christian club. That treaty defined borders for its sovereign domain and a set of commitments which would confirm its entitlement to the rights described in the treaty. It also gave the U.S. a place in the international lattice work of agreements enshrined in the history of international treaties. The cost of admission to the club included a successful military campaign and then, to tidy up affairs, provisions for the compensation of the losses of persons who sided with Britain in the revolutionary war. The subsequent history of the U.S.-British border is framed in sovereign discourse and invokes precedents agreed to by members of the statist club.

An incantation is defined by the American Heritage Dictionary as “a ritual recitation of verbal charms or spells to produce a magic effect, or a formula used in ritual recitation; a verbal charm or spell.” If one examines the western coast of North America between 1810 and 1875, the capacity of the sovereign chorus to determine the future of the region invokes a significant magic at play. The link between law and society which was fundamental to the emergence of sovereignty in Europe, was absent. On the Pacific slope imperial powers were not “grounded” so their sovereign chant which set a border across the landscape emanated from heaven or hell depending on the predisposition of the local audience. In 1810, when the chant started, the regulation of ongoing life was rooted in local customs and corporate practices. Within three generations, newcomers had arrived, traded, fought, and set up

an international commercial network. Some relocated, while others gutted the core of the trading enterprise. The new settler community which emerged, in turn, was challenged to fit in the statist mold and, in conforming, again divided, all to the cadence of an alien chant of sovereign entitlements distant from that place.

The sovereign cant adhered to the practices of international law as defined by the sovereigntist club. Assertions of entitlement were couched in precedent and terms of significant claims to their discourse. In this paper, these assertions are isolated as cants since they are repeated with little or no change over more than quarter century of negotiations. The cants are countered by a gradually evolving set of explicit sovereign claims and assertions which reflect the changing perception held by the negotiators of the region.<sup>4</sup> The resulting evolving incantation created a border across the region which had a profound impact on social and economic affairs of those living in the region. This paper will study that incantation.

### The Exposition

On the Pacific Coast of North America, a border was drawn through what had become known as the (old) Oregon Territory by two contesting states, the United States of America and Britain. Both claimed right to the land as states under international law. For a while they agreed to share the land since they could not agree on who should have the title. After almost ten years of occupancy, they met again to resolve their differences but failed. Parting, they agreed to continue as they had until one side petitioned to end the arrangement. Finally, when the *Ashburton-Webster Treaty* resolved issues between the states in the east, the way was opened for the determination of the border in the west. By Convention signed on 15 June 1846, a border was set dividing the western territory by cutting it almost in half. An encore punctuated by a punctured pig led to the completion of the division through the Gulf of Georgia and Straits of Juan de Fuca with the Emperor of Germany entering for a brief appearance.

### Cantus Firmus

The cantus firmus was comprised of three cycles, the Nootka Cycle, the Entitlement Cycle with variations, and the Discovery Cycle. All were repeated persistently. A sovereign chorus appeared from time to time to comment on each cycle, with a final crescendo followed by the exit of the major players and the appearance of the back-room staff singing in harmony.

There were four major voices in the discourse of sovereignty: first was France, whose voice diminished over time; then Spain who had a slightly longer part. The United States appeared late but had a major role, at times overwhelming the final part, which fell to Britain. The construction of sovereign entitlement to the western slope of the Rockies was the subject of the piece. Differences between voices set the melody and, at times, the rhythm. A crescendo in the form of a political petition for land in the west marked the half time intermission and a political outburst entitled “54 40° or Fight” involving most of the percussion section marked the climax, which was followed by a brief return to routine negotiations and the conclusion of a treaty.

### The Nootka Cycle

On 20 October 1790, Britain and Spain signed a convention which acknowledged the right of both to fish, trade and settle on the Pacific Coast north of already established Spanish settlements.<sup>5</sup> This treaty meant that, even though the United States signed the *Treaty of Florida* with Spain in 1819 acquiring Spain's rights north of the forty-second parallel, Britain retained equal rights through its earlier treaty with Spain. The Nootka Cycle also espoused equality in rights between the two nations. That equality subsequently became enshrined in the 1818 Convention between Britain and the United States which opened the territory equally to both.

The Nootka Cycle was repeated throughout but, starting in November 1826, the “sovereign chorus” chimed in response:

Those stipulations permitted promiscuous and inter-mixed settlements every where, and over the whole face of the country to the subjects of both parties; and even declared every settlement made by either party, in a degree common to the other. Such a state of things is clearly incompatible with distinct jurisdiction and sovereignty. The Convention therefore could have had no such object in view as to fix the relations of contracting Powers in that respect. On that subject it established or changed nothing, but left the parties where it found them, and in possession of all such rights, whether derived from discovery or from any other consideration as belonged to each, to be urged by each, whenever the question of permanent and separate possession and sovereignty came to be discussed between them.<sup>6</sup>

### The Entitlement Cycle

The entitlement cycle was more complex, focusing on the body of precedent in international agreements which supported the sovereign claims of the two parties. First, the United States argued that, by the *Treaty of Florida* 1819 and the Convention with Russia in 1824, it had acquired their rights to the Pacific Coast north of the forty-second parallel and south of 54 40°. It then continued to invoke the purchase of Louisiana Territory from France. This theme contained a counterpoint that France had ceded the territory, which was limited to the watershed of the Mississippi by a treaty with Spain in 1763.<sup>7</sup> Next, the United States invoked the British practice in their colonial Charters between 1580 and 1732 of setting the boundaries for the original colonies from the Atlantic to the Pacific Ocean with the added refrain that, since the United States purchased Louisiana, its borders should be extended west following British practice to the Pacific coast. This was then amplified by invoking a convention under the *Treaty of Utrecht*, which set the boundary between the Louisiana Territory and the Hudson Bay Company land as the forty-ninth parallel.<sup>8</sup>

### The Discovery/Occupancy Cycle

This cycle contained two voices in counterpoint. The United States presented a litany of claims starting with Grey and his discovery of the mouth of the Columbia River, then invoked Lewis and Clark and their travels down the river in 1805, and finally reminded the listener that the United States had also inherited all the rights of discovery of the Spanish explorers through the Florida Treaty. The British voice repeated the Nootka convention and its claim of equality with Spanish rights and thus the rights claimed by the United States. The British counterpoint then recounted the discoveries and claims of Drake, Cook, Vancouver and especially Lt Meares of the Royal Navy.<sup>9</sup>

A second theme in the cycle related to occupancy and here the argument became more complex. The British through the Hudson's Bay Company were the effective occupants of the territory. However, American settlements had grown rapidly in the 1830s, and the discourse changed markedly to reflect their growing size in later negotiations. By 1828, bolstered by Thomas Benton and a section from Missouri, the occupancy theme was linked to the sovereign chorus which interjected: "the British only claim joint jurisdiction over the whole territory while the United States claims exclusive or sovereign jurisdiction

over the southern half. Over time the United States will win; it is its destiny."<sup>10</sup>

At a more detailed level the United States argued:

If the present state of occupancy is urged [sic], on the part of Great Britain the probability of the manner in which the territory west of the Rocky Mountains must be settled belongs also essentially to the subject. Under whatever nominal sovereignty that country may be placed, and whatever its ultimate destinies may be, it is nearly reduced to a certainty, that it will be almost exclusively peopled by the surplus population of the United States. The distance from Great Britain, and the expenses incident to emigration, forbode the expectatively small scale. Allowing the rate of increase to be the same in the United States and in North American British possessions, the difference in the actual population of both is such that the progressive rate which would, within forty years, add three millions to these would within the same time give a positive increase of more than twenty millions to the United States.<sup>11</sup>

### The Sovereign Chant

During the sovereign negotiations, the details of the occupation were open to dispute on a number of grounds. All were repeated in response to the British claims of occupation. The first was the distinction between a state and a commercial treaty or organization. At times, the *Nootka Treaty* was cast as a trading agreement and the Hudson's Bay Company was seen as a trading company, which differs from a sovereign entity. The second dispute was over the status of Fort George at the mouth of the Columbia River. The United States claimed it was theirs (commercial character aside) but the British countered that it had been sold to the Northwest Company prior to their intervention. In a claim to return the Fort based on the *Treaty of Ghent* 1814 Article 1, the British agreed, since they had dispatched a ship to attack the Fort. British acquiescence was later invoked by the Americans as proof of their occupation of the river.

The record of the incident recurred throughout the negotiations. The following is but one rendition:

Some stress having been laid by the United States on the restitution to them of Fort George by the British, after the termination of the last war, which restitution they represent as conveying a virtual acknowledgment by Great Britain of the title of the United States

to the country in which the post was situated: it is desirable to state, somewhat in detail the circumstances attending the restitution.

In the year 1815, a demand for the restoration of Fort George was first made to Great Britain by the American government, on the plea that the first article of the *Treaty of Ghent* stipulated the restitution to the United States of all posts and places whatsoever, taken from them by the British during the war, in which description Fort George (Astoria) was included.

For some time the British Government demurred to comply with the demand of the United States, because they entertained doubts how far it could be sustained by the construction of the treaty.

In the first place, the trading post called Fort Astoria, (or Fort George) was not a national possession; in the second place it was not a military post; and thirdly, it was never captured from the Americans by the British. It was in fact, conveyed in regular commercial transfer, and accompanied by a bill of sale for a sum of money, to the British company who purchased it, by the American company who sold it of their own free will.

It is true, that a British sloop of war had, about that time, been sent to take possession of that post, but she arrived subsequently to the transaction above-mentioned, between the two companies and found the British company already in legal occupation of the self-acquired property....<sup>12</sup>

Finally, sovereign contiguity was invoked to support the United States' claim in various forms but, by 1828 with the rise of manifest destiny, that construction was linked to the region's location in North America.

After 1824, British occupation was exercised through the Hudson's Bay Company. Under John McLaughlin, the company developed an international trading enterprise which, by 1839, extended from the Russian colonies on the north to California, Mexico and the Sandwich Islands on the south.<sup>13</sup> Trade was in goods, food and supplies. Furs were the staple that went back to Britain. In 1821, after the amalgamation of the Northwest Company and the Hudson's Bay Company, the British government passed an act giving the company the capacity to enforce the laws of the colony of Upper Canada throughout its domain. The law, in part, resulted from violence at the Selkirk settlement on the Red River.<sup>14</sup> In the negotiations over the border the existence of this statute was brought into play. The United States argued that it was a sovereign assertion in an area of

joint occupancy and countered that it wanted the right to establish military posts in the region since that was their way of protecting their settlers. Britain countered that the act was designed to apply to British subjects and not to citizens of the United States.<sup>15</sup> It then continued that the main thrust of Britain's proposals was to prevent both parties from assuming an exclusive jurisdiction.<sup>16</sup> Drawing a distinction between the Hudson's Bay Company as a private company and sovereign jurisdiction, Britain continued: "There was a great difference between the national flag and that of a private company: and they apprehend that the erection of the first, by either party, would render the final adjustment of the boundary line more difficult, and the preservation of the peace more precarious."<sup>17</sup>

It then demanded a rider from the United States that it would not assert exclusive sovereignty. The United States counter proposal offered an interesting insight into the contrasting views of the two voices on the form of public order that they assumed.

The establishment of a distinct Territorial Government on the west of the Stony Mountains, would be objected to, as an attempt to exercise exclusive sovereignty. I observed that, although the Northwest Company might, from its being incorporated, from the habits of the men they employed, and from having a monopoly with respect to trade, as far as British subjects were concerned, carry on a species of government, without the assistance of that of Great Britain. It was otherwise with us. Our population there would consist of several independent companies and individuals. We had always been in the habit, in our most remote settlements, of carrying laws, courts, and justices of the peace with us. There was an absolute necessity, on our part to have some species of government. Without it, the kind of sovereignty, or rather jurisdiction, which it was intended to admit, could not be exercised on our part.<sup>18</sup>

The sovereign tangle ended with a protest by the British that they were reluctant to establish military bases in the territory but would, if the United States did. Couched in reference to national symbols, it claimed, "[Britain] could not acquiesce in acts on the part of the United States, which would give sanction to their claim of absolute and exclusive sovereignty, and calculated also to produce collisions having a national character. Occasional disturbances between the traders of the two countries might be overlooked; but any question connected with the flag of either power would be of a serious nature, and might commit them in a most inconvenient and dangerous manner."<sup>19</sup>

The United States countered, shifting the ground to the Hudson's Bay Company presence, invoking its capacity to keep the peace by controlling its employees and marshaling its resources to restrain outrages by or against the Indians.<sup>20</sup> Since the British had the Hudson's Bay Company, the United States should have the right to establish courts and to "preserve the peace through a military force."<sup>21</sup> The cant of exclusive sovereignty followed along with its rejection by the British. A final component in the chorus was a transformation in the status of the Hudson's Bay Company itself. The United States contended "that the British Charters, extending in most cases, from the Atlantic to the South Seas, must be considered as cessions of the sovereign to certain degrees, to the exclusion only of his other subjects, and as of no validity against the subjects of other States."<sup>22</sup>

The sovereign chorus asserted and amplified the mantra of an exclusive and single sovereign entity over a given territory. The United States position linked that entitlement to citizenship, excluding others, especially employees of the Hudson's Bay Company, its traders and natives who were cast as part of the corporation or employees and thus not settlers in their own right. Grants of land to settlers were used to encourage American immigration and settlers required state protection, including the military. The British countered that equal access and joint control were adequate. Their position deviated from the form of sovereign incantations and, as noted in the cant, would not withstand the test of time.

In 1840, an article in the St. John's *Courier*,<sup>23</sup> a colonial newspaper on the East coast, reported that the Houses of Congress were discussing a resolution asserting American claims to the Oregon territory and authorizing the President to construct a line of forts to protect the Indian trade, "to preserve the peace between the Indians and whites," and to offer 640 acres to each male inhabitant, once the borders of the territory were set. The governors of the Hudson's Bay Company in London reacted. On 26 February 1840, Governor J.H. Pelly wrote to Lord Palmerston, the British Foreign Secretary, on behalf of the Hudson's Bay Company and the Puget Sound Agricultural Company informing him of the resolution and that it called for an end of the agreement for joint occupation of the territory by 1841. Pelly wrote in more detail about the resolution referred to in the newspaper. He stated in part: "They then proceed to resolve on the expediency of extending portions of the laws of the U. States over the Oregon Territory, of raising an additional regiment of Infantry for the purpose of overawing and keeping in check, various Indian Tribes or any foreign forces who may be in said

Territory or its borders' and of granting portions of 640 acres of land to each white male inhabitant (Citizen of the U. States no doubt) of said territory...."<sup>24</sup> He continued, invoking the sovereign theme: "The country in question termed by the U States Gov't the 'Oregon Country' we believe to be that valuable and extensive district watered by the Columbia River and its tributaries, which has been occupied by British Subjects in the pursuit of Trade and agriculture for many years, that occupation being founded on the faith of the claims of Gt Britain to its sovereignty, on its discovery by expeditions fitted out specially for that object by the Nation and by enterprising British Subjects at a heavy outlay of capital in commercial pursuits."<sup>25</sup>

Pelly then elaborated, not only on his efforts to keep the foreign office informed of the Hudson's Bay Company's activities, but also on the size of their enterprise.

The Hudson's Bay Company have greatly extended their trade and settlements on the Columbia River and its tributaries, likewise on the Northwest coast, and interior country employing upwards of one thousand British subjects in this service, and under their auspices has lately been formed an agricultural settlement upon an extensive scale, styled the Puget's Sound Agricultural Company with a capital of 200,000 ... situated between the north bank of the Columbia River and Puget's Sound with a view of forming a large export trade to England in the articles of wool, hides, and tallow, and to the Sandwich Islands, other parts of the Pacific and to the Californian settlements in grain and other agricultural produce....<sup>26</sup>

Pelly then informed the Foreign Secretary that the action proposed under the resolution would prove disastrous to the Hudson's Bay Company enterprise and would give the United States the only arable land suitable for settlement and the only harbor in the region. He concluded by asking the government to watch over its interests.

On 7 March 1840, Lord Palmerston directed his undersecretary to look into the matter raised by Pelly. That June, A. Stevenson, the American ambassador, wrote Lord Palmerston stating that: "The President of the U States has recently received information that a grant has been made to the Hudson's Bay Company, by Her Majesty's Government of a large and valuable tract of land situate between the Chehalis River and the Pacific Ocean...."<sup>27</sup> Stevenson then informed Palmerston that he had been ordered to conduct an inquiry into the nature and extent of the grant, since the Convention of 1818 provided for open access to both countries of all the land on the Northwest Coast.<sup>28</sup>

The inquiry was referred to the foreign office, where a senior clerk and the undersecretary designed the following response, which shows the strength of the sovereign cant and its disjuncture from events on the northwest coast.

Should however, the formation by either party of fresh settlements there be considered as an infringement of the Conventions, it might become necessary to take steps for arresting if possible, the operations of the Puget's Company but if not, and that I am correct in thinking that the government can not interfere with the Hudsons Bay Company, and if I am also right on the point of view of the locality it would then be necessary to apprise the Foreign Office, with reference to Mr. Stevenson's communication, that Her Majesty's Government have not sanctioned any other grant than that to the Hudson's Bay Company, which is only a renewal of a former grant, the existence of which must have been long known to the government of the United States, and that any fresh betterment made under the auspices of the Hudson's Bay Company must of course have been made with a full knowledge of the unadjusted claims of both countries to the territory in question.<sup>29</sup>

A note from the senior clerk of 26 June 1840 concluded the analysis and sidestepped the inquiry raised by the United States.

Mr. Stevenson's ongoing relates not to the acts of the Hudson's Bay Company. But merely to the acts of the British Government, and it seems to me, that the answer should be confined within the limits of the inquiry. Now I do not understand that the new settlement of the Company to which you refer has been undertaken by them in pursuance of any new grant or new authority from the Crown, or that the Govt have done anything more on the subject than simply to renew the grant to the Hudson's Bay Company of their former exclusive privileges of trading. Also I think that the answer to the Foreign Office should be to that effect.<sup>30</sup>

The advice separated the actions of the sovereign state from the actions of the chartered company, limiting the authority of the Hudson's Bay Company to those subject to British sovereignty. This gave an opening which was exploited later by the United States and its settlers, as the Hudson's Bay Company became an occupant whose possessions and employees, could be compensated for or re-

moved from the territory within a time frame negotiated through sovereign incantations. In the interim, the land was open to those who could acquire a deed, which was a manifestation of sovereign jurisdiction.

### Final Crescendo

By 1844, after the cantus firmus had droned on for over a quarter century, the 'Oregon Question' emerged at the center of American politics. Bolstered by the Monroe Doctrine and its slide to manifest destiny, the Democrats made the claim to the entire Oregon Territory a part of their platform. In his first inaugural address, Polk acknowledged the plank in his party's platform when he claimed the territory for America. In Britain, the Whig government and Palmerston were out of office. The new government reacted and the potential of war over the northwest seemed immanent.<sup>31</sup> A resolution to end joint occupancy was debated in Congress and finally passed both Houses on 23 April 1846. The debate showed the Democratic Party divided and Thomas Benton, a long time advocate of westward expansion, made a pivotal address differing with Clay and advocating the forty-ninth parallel as the border. Polk remained committed to the Monroe Doctrine and controlling the west coast, although he was especially concerned with California. In May, Lord Aberdeen, the new foreign secretary, submitted a British offer to accept the forty-ninth parallel and a line south of Vancouver's Island as the border. When Polk received the British offer in June, he discussed it with his cabinet and they agreed to consult the Senate. The Senate recommended the acceptance of the British proposal on 12 June, bypassing the negotiating process. Polk accepted the Senate's advice and the boundary was set at forty-nine degrees and the middle of the main channel through the Gulf of Georgia and the Strait of Juan de Fuca. The exact location of the west end of the border was to wait until 1871, when the emperor of Germany was recruited as an arbitrator to decide between two channels through the San Juan Islands. The border became the boundary dividing two sovereign domains. Its final definition fell to bureaucrats in the Foreign Office and to the Senate. Polk had silenced the usual cantors and their alternates had slipped into harmony.

As an encore, the cantus firmus was sung to an incident on the San Juan Islands. The description of the border across the Gulf of Georgia was capable of at least two interpretations. Sovereign control of a set of islands was disputed, including San Juan Island where the Hudson's Bay Company had a sheep farm. A neighboring American farmer owned a pig, which was in the habit of making a

nuisance of itself on the farm. After warnings, a Company employee shot the pig. The farmer used the incident to invoke sovereign questions. The local militia mustered to support the American settler. At the same time, Governor Douglas in Victoria reacted to the threats made against his Hudson's Bay Company holdings on the island. He ordered an attack on the Americans but the admiral of the Royal Navy visiting Victoria at the time countermanded the order and nothing happened. But the cant of sovereign entitlement traveled to the statist halls where the main voices added the refrain: "Where is Vancouver's chart; it should tell us what is right."<sup>32</sup> The ownership of the Islands was eventually submitted to arbitration and, in a solo performance, the Emperor of Germany decided upon the channel which gave San Juan Island to the United States.

### Conclusion

Throughout the period of joint entitlement, the power of sovereign incantations easily submerged claims of equal access to land. Cloaked in terms of the need to maintain order and stability, sovereign claims were extended to Oregon in the image of statist experiences. The British trading monopoly, the Hudson's Bay Company, provided an order which was cast as un-American and inappropriate for a settler community. A charter did not make it a member of the sovereign club and thus limited its jurisdiction to that of Britain. At the same time, strategic concerns for American expansion, such as the need for a good port on the Pacific, blended nicely into the major theme of the sovereign incantation. Moreover, the trading practices of the Hudson's Bay Company were not primarily focused on building a settler population; instead they focused on trade. Despite present day rhetoric centered on political economy, that focus was relegated to a supporting theme in the variations of the sovereign incantation and was lost.

With the influx of settlers to Oregon during the 1830s, ownership of land became pivotal. That required a central sovereign authority and fit neatly with American claims of exclusive sovereignty. Influenced by calls to Oregon in town meetings throughout the old Northwest and offers of free land, many new settlers were influenced by the magic of constructions in the long lasting cantus firmus; once established in Oregon, they held the Hudson's Bay Company to be a manifestation of British colonialism and hostile to American claims. HBC lands were squatted upon and their sheep and cattle stolen. Attempts by Hudson's Bay Company employees to acquire land grants were vetted critically by the American authorities. Entitlement by act of Congress fell more easily to Americans. Land title was

a local manifestation of sovereign authority.<sup>33</sup> In the final case, the sovereign incantation was a jealous tune. Sovereignty in governance had to be supreme and uncontested. It could not tolerate a rival and its challenger had to be vanquished for peace to be established.

### Notes

- 1 The authors wish to thank SSHRC for a research grant which made this paper possible.
- 2 For one illustration of this relationship see Stone, Julius. 1959. *Legal System and Lawyers' Reasoning*. London: Stevens and Sons. P. 72-3.
- 3 For a review of the impact of this exclusion on indigenous peoples of North America see Green, L.C. and Olive P. Dickason. 1989. *The Law of Nations and the New World*. Edmonton: University of Alberta Press, especially p. 78-85.
- 4 For example, near the end of the negotiations the British and Americans both sent military officers to the region to ascertain the potential cost of a war for the territory. The results encouraged the British to offer a less aggressive claim than earlier since the costs estimated were more than the treasury was willing to commit.
- 5 *Nootka Treaty* 1790, Article 3.
- 6 Colonial Office Records B3000 CO 616. National Archives of Canada. P. 16, 62. Also in 1826 in H. Clay's correspondence, see p. 20, "Message from the President of the United States re Territory West of the Rockies, March 15, 1828."
- 7 *Ibid* p.53
- 8 *Treaty of Utrecht* 1713.
- 9 Colonial Office Records B3004 CO6/14. National Archives of Canada. P. 214-16.
- 10 This is found in a memorial to the House of Representatives and Senate (#17, 1828).
- 11 Colonial Office Records B3000 CO 6/14. National Archives of Canada. P.70.
- 12 Colonial Office Records B3000 CO616. National Archives of Canada. P. 56-7.
- 13 See letter by James Douglas to the Gov and Committee of the Hudson Bay Company dated 14 October 1839, Hudson Bay Archives B223/b/23.
- 14 This refers to the massacre at Seven Oaks.
- 15 Colonial Office Records B 3000 CO 6/14. National Archives of Canada. P. 41.
- 16 *Ibid*.
- 17 *Ibid*.

- 18 Ibid. p. 30.  
 19 Ibid. p. 35.  
 20 Ibid. p. 39.  
 21 Ibid. p. 36.  
 22 Ibid. p. 63-4.  
 23 *St. John's Courier* 4 January 1840.  
 24 Colonial Office B3004 CO 6/14. National Archives of Canada. P. 157-63.  
 25 Ibid. p. 159.  
 26 Ibid. p. 161-2.  
 27 Ibid. p. 255-7.  
 28 Colonial Office B3004 C.O. 6/14. National Archives of Canada. P. 255-7.  
 29 Colonial Office B 3004 CO 6/14, p 245-51.  
 30 Colonial Office B3004 CO6/14, p.251  
 31 See Benton, T.H. 1856. *Thirty Years View*, volume 2. P. 650.  
 32 The search is all the more interesting since the charts were appended to the protocol of the sixth conference on 16 December 1826. By the 1840s neither side seemed able to find them. This is reminiscent of Franklin's famous red line in earlier negotiations in the east!  
 33 The shift is reflected in the different composition of the provisional government and the territorial government. In the provisional government membership, was inclusive whereas Americans dominated the later assembly.

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# *Diverging Identities: An Ethnohistory of the Straits Salish Borderland Experience*

Christopher Flack

*The boundaries of culture and rainfall  
never follow survey lines.* – Frank Dobie

The academic discourse on boundaries and borderlands is predominated by investigations of the contact and conflict between majority national identities across international boundaries (e.g. Alvarez 1995; Bornstein 2002; Donnan and Wilson 1998, 1999; Helliwel 1998; Konrad, H 1992; Konrad, V 1992; New 1998). Few researchers have disengaged their focus from the national to the local and attempted to elucidate the experiences of minority national and ethnic identities living along and across geopolitical borders (Anzaldúa 1987; del Castillo 2001; Estrada 1995; Hall 1990; Kearney 1991, 1995; Lutz 2002; Miller 1996; Price 1982). Research on Native American populations in the proximity of the U.S.-Canada border is even more limited (Lutz 2002; Miller 1996). Most of the discourse on the U.S.-Canada border portrays the boundary as a negligible line between two highly similar and related Euro-American/Canadian populations that share historical and cultural ties as well as vast trade and exchange networks. Price even boldly asserts that, although Native populations were “totally disregarded while the border was established and were divided by” the U.S.-Canada border, “it has not made much difference” (Price 1983:22). Lutz adds to this theme, suggesting that the “permeability of the national boundary between Canada and the United States” has had a “lack of impact on Aboriginal people” (Lutz 2002:81).

Is the intention of such claims to suggest that only Euro-Americans and Euro-Canadians and their governments were, and are, actively involved in the creation of meaning and influence along and across this border? The implication or consequence of such an argument, intended or not, is to remove the Native populations living along and across this international border from the dialogue about geo-political borders and the boundaries of meaning and identity, effectively disenfranchising them of agency. To negate this agency is to remove them from the active process of colonization and relegate them solely to the role of the conquered. This act of academic posturing perpetuates and substantiates the colonial agenda, rewriting the Indigenous narrative as though they were a people without history. Perhaps better stated, “groups living along administrative, state, provincial, and federal borders... tend to disappear from the landscape, the official record, and the academic imagination” (Miller 1996:64). While not given much choice in whether or not to be colonized, Native populations have had, and continue to have, an active choice, role, and voice in their responses to and struggles against, an acculturative onslaught.

The 1846 *Treaty of Oregon* established the forty-ninth parallel as the boundary between British North America and the United States in the disputed Oregon territory. San Juan Island challenged the clarity of this distinction and resulted in a period of joint U.S. and British military occupation between 1853 and 1872. The policies and practices enacted and executed by both the British and the Americans during this period illuminate the differential

assimilative processes utilized to deal with “the Indian problem” in this region. This area of the northern Puget Sound and southern Georgia Strait is the traditional territory of the Straits Salish people, and the bifurcation of these lands by the contested international boundary challenged the elastic nature of their identity as it complicated access to resources and forever changed village association and interaction.

This paper initiates an investigation of the processual histories of the agents involved with and influenced by the creation of the U.S.-Canada border in the Cascade corridor and aims to contribute to the dialogue on the boundaries and borderlands of identity, ethnicity and nationality. This research briefly explores the history of divergence in Native identity in this region through three main variables: demographic changes, shifts in modes of production and means of subsistence as new economic strategies were introduced, and the ideological and policy differences evidenced by Great Britain and the United States as they sought to deal with the “Indian problem.” These factors provide ample evidence of the importance and impact of the forty-ninth parallel between 1860 and 1890 on “Boundary Salish” cultural, political and economic traditions and on the restructuring and divergence of the meaning of “authentic” and “traditional.” An analysis of the Straits Salish borderland experience provides an important departure point from which to study the history, function, and influence of international boundaries as they affect Native lifeways, subsistence patterns, migratory patterns, and ultimately identities.

### **Ethnography and Ethnohistory**

It is necessary to discuss briefly the historical lifeways of these populations better to understand what influence the creation of the U.S.-Canada border had, and is still having, on proximally situated Native communities. As this paper is only a brief introduction to the “Boundary Salish” experience, a succinct analysis of the prominent ethnographic and ethno-historical texts discussing the Straits Salish peoples who utilized San Juan Island follows. This endeavor will result in a basic conceptualization of the traditional systems of influence, thereby providing a comparative framework from which to assess the changes in evidence in the post-contact period of Western expansionism and settlement. Three main subtopics within this literature are resource use and modes of production surrounding resource use, village association and construction, and familial structuring.

Suttles (1951, 1974, 1987) and Boxberger (1989, 1994) discuss at great length the composition of the particular groups who lived on and utilized San Juan Island and the surrounding region. Boxberger (1989) describes the Straits Salish culture area as comprised of seven closely related groups, the Lummi, Semiahmoo, Saanich, Songhees, Sookes, Klallam, and the Samish, some of whom are recognized as tribes, and various other non-recognized populations who also utilized San Juan Island, such as the San Juan band and the Mitchell Bay band. These groups, before being relegated to reservations and reserves, were differentiated by only slight variations in the Straits Salish language. All of these populations were closely related through vast networks of intermarriage and trade which established and solidified bonds between the different groups helping to secure mutual access to resources.

### **Modes of Subsistence and Resource Use**

The majority of the textual information on the Straits Salish peoples suggests that fishing, specifically salmon fishing, was the most important means of subsistence just prior to and at contact with Europeans (Boxberger 1989; Eels 1985; Gunther 1927; Hill-Tout 1978; Suttles 1951, 1974, 1987). Village males participated in reef netting and weir fishing, which are the two main strategies utilized in the traditional fishing of salmon (Boxberger 1989). These methods were highly productive but also quite labor intensive, necessitating a good deal of organization and cooperation.

The extraction of additional marine resources, such as shellfish and other species of fish, also played a major subsistence role in this region. Hunting of waterfowl, sea mammals and land mammals, according to Boxberger (1989), constituted a much less important component of the Straits Salish diet at the time of contact. Lummi Elders describe berries (such as blueberries, huckleberries and salmonberries) as well as other plant and vegetable materials as also comprising a large portion of the diet (Nugent 1999). Gunther provides a detailed list of the kinds of vegetative materials utilized by one particular Straits Salish group, the Klallam, or S’Klallam, some of which were acorns, blackberries, camas, elderberries, gooseberries, horsetail, huckleberry, mustard, currants, sallal, salmonberries, and wild carrots, onions and other tubers (Gunther 1927:197). Women, children, and female slaves, when utilized, were primarily associated with the collection of these types of vegetative resources.

All of these resource procurement tactics were utilized through seasonal rounds in the greater San Juan Island

region, which incorporates the northern Puget Sound area, and the Strait of Juan de Fuca and the Georgia Strait, as well as much of the coastal region that is now part of Whatcom and Clallam Counties in Washington and of southern Vancouver Island. These seasonal migrations brought many of the Straits Salish communities into contact with one another, facilitating intermarriage and development of strong trading ties. That also led to the overlapping of “owned” resource areas, a subject discussed below. Seasonal migration throughout this region was necessary for acquiring the plentiful resources available and for maintenance of community and inter-community identity and relationships.

Understanding the traditional modes of production and means of subsistence of these communities permits the construction of a comparative model with which to assess the changes to subsistence activities in evidence during the post contact, reservation/reserve phase. It is crucial to explicate the changes and shifts of traditional modes of production, especially as these shifts differ across the U.S.-Canada border.

### **Village Association**

The Straits Salish historically were a semi-sedentary people, seasonally migrating better to exploit various resource areas. This kind of seasonal movement resulted in semi-permanent dwellings and villages. Some of these constituted “permanent” houses or communities (areas of cultural or societal centrality) and others functioned as seasonal bases of operation for resource procurement. Boxberger describes Lummi villages as being “composed of politically and economically independent houses united by bonds of kinship to other, similar houses” (Boxberger 1989:11). This type of village construction or composition was practiced throughout the Straits Salish culture-area (Eels 1985; Gunther 1927; Hill-Tout 1978; Nugent 1999; Sampson 1972; Stein 2000).

The function and composition of Straits Salish houses results from the cooperative nature of certain resource procurement activities. Houses usually contained a small number of individual nuclear families that were generally related to each other (Boxberger 1989). These family units co-occupied cedar-plank dwellings but kept separate stores of goods and, as Boxberger discusses, generally maintained economic independence. Though maintaining a certain autonomy, households would cooperate among themselves and with other households in large-scale subsistence activities (males cooperating with weir and drift net fishing) and, when necessary, to maintain and ensure

community defense. How did these village ties and structures change as a result of contact with Europeans and white settlers and how specifically has the border affected the integrity of these institutions?

### **Kinship**

Straits Salish kin affiliation and identification was, according to all reviewed resources, highly elastic and dynamic (Boxberger 1989; Eels 1985; Gunther 1927; Hill-Tout 1978; Nugent 1999; Sampson 1972; Stein 2000). Miller presents Salish “social organization” as “made up of fluid local groups composed of one or more households that interacted to form a regional structure” (Miller 1996:65). Boxberger (1989) and Suttles (1987) describe the traditional economies of the Straits Salish as involving a mix of resources open for all to utilize and resource areas generally “owned” or managed by particular kin-groups. Open resource areas were available to those individuals of the same village or tribal association, but this distinction was not necessarily concrete. Boxberger proposes that many of the Straits Salish were able to recognize kin relations “laterally extending twelve generational steps,” suggesting a vast relational association (Boxberger 1989:12). In practice though, the majority of the people are thought to have been able to recognize relationships back only to a common great-grandparent. The Straits Salish system of familial recognition was extensive, and anyone from any local tribal group would, in effect, be able to demonstrate kin affinity, thereby solidifying resource access.

The complex and elastic nature of Straits Salish kinship and village affiliation as it relates to modes of production and means of subsistence demonstrates the dynamic processes by which the identities of this population were understood and constructed. During the years following contact these fundamental systems and mechanisms profoundly changed as British and American settlers and traders began effecting their influence. It will be necessary to determine whether these three central facets of Straits Salish identity were uniquely affected by the forty-ninth parallel, thus substantiating a claim that this boundary serves as a historical point of divergence for this region.

The use of an ethno-historical methodology provides ample evidence of significant change to Straits Salish life-ways through three fundamental means: demographic shifts; changes to labor and economic activity, and differences in British and American policies as they related to Straits Salish populations. Demographic changes were due to the decimation of native populations by disease, migration resulting from colonial pressure and bound-

ary demarcation, and intermarriage and intermixture of Euro-American settlers and Native populations. Traditional subsistence patterns, access to resource lands, and modes of production confronted an encroaching Western capitalist economy which profoundly influenced identity and connection to place. The treaty process and the ideological or perceptual changes promoted through education programs, political and diplomatic actions, and religious indoctrination were aimed at assimilating the Straits Salish, ridding them of traditional beliefs and social infrastructures.

The United States and Great Britain were after similar fundamental gains in their relationships and dealings with Native communities (resources, land, and trade) but each practiced unique means of executing and actualizing their goals. Differences in the drafting and implementation of these policies is perhaps one of the most obvious loci of divergence for the Straits Salish as their lands and people were divided by similar but distinct acts of colonization.

### Changes in Demography

The demographic changes evidenced in the mid- to late 1800s are of great importance in demonstrating the influence of the U.S.-Canada border for the Straits Salish. After significant reductions in population size as a result of disease outbreaks in the late 1700s and early 1800s, Native communities were again disrupted, this time directly by encroaching settlers, and the assimilationist policies of Great Britain and the U.S. Census data help partially to explain the resultant shifts in population size and construction.

U.S. census records between 1870 and 1920 of the San Juan area show significant changes to the population. The importance of these shifts is understood both in the increase of intermarriage between the Salish women and the British and American men and in the impact of population displacement due to white land acquisition and the relegating of Indians to reservations. The 1870 U.S. Census places the total population in the San Juan Islands at 448 people, including American and British forces stationed on San Juan Island. Of these 448 individuals, 163 were classified as being Native American, 159 of whom were the wives and children of British and American citizens. The census identified three women as being the wives of Hawaiian workers brought to the islands by the Hudson's Bay Company (HBC). The only two Indian males recorded were shepherds working for the HBC, both of whom were born in the Washington Territory. The tribal affiliations and places of birth for the wives and children were not noted in the records.

The 1880 census provides information for San Juan Island specifically, and indicates that 197 Native Americans were residing on the island. Of these, there were fourteen adult males, all labeled as "full blooded," thirty wives of both "full or mixed blood," and 151 children of full and mixed Indian blood. This census also provides information about place of birth. Eight of the adult males were born in the Washington Territory, and six were born in British Territory. Four of the wives of Euro-American husbands were from the Washington Territory and thirteen from north of the border, largely from southern Vancouver Island.

By 1900 only fifty-five individuals are represented in the U.S. census as being Indian: twelve wives of white husbands, forty-two children of those relationships, one female head of household, and one adult male homesteader. Initially it appears that two major trends are represented by this data: the vast majority of the categorized Indian population are either married to, or children of, white Americans, and that Indian men and their families are non-existent, having either moved to reservations, such as the Lummi reservation, or, as often was the case, migrated north to Vancouver Island and the British Columbia lower mainland seeking better conditions.

A 1919 enumeration of unenrolled Indians of San Juan Island, though, suggests a different story. Commonly referred to as Roblin's Schedule of Unenrolled Indians, or the Roblin Census, this collection shows that 160 people claiming Indian heritage, but not federally recognized or enrolled, were residing on San Juan Island. Forty-seven of those were affiliated with the Clallam, five with the Lummi, two with the Swinomish, one hundred calling themselves the Mitchell Bay, and six self-recognized as the San Juan Tribe. The San Juan Tribe and the Mitchell Bay are considered an amalgamation of various Native American populations from around Washington, Oregon, and British Columbia, and of Hawaiian and the children of mixed European and Indian heritage.

I would argue that this census, perhaps, is the most accurate of the four mentioned in terms of reflecting what was actually happening in the Straits Salish populations. In part, the traditional elasticity of Straits Salish identity was still understood and maintained, as represented by the mixture of cultural and ethnic traditions. The implications for "traditional" identity construction are obvious, but herein lies a major epistemological problem: given that culture is a non-static phenomenon, largely amorphous and continually changing, how can any point in a peoples' history be understood as concretely traditional? This usage of the term traditional implies a point at which a pure or distilled version of a culture existed from which compari-

sons with current understandings and perceptions of that culture are made, inevitably for the purpose of asserting the incongruence of a claim of an Indian group to a particular site of historic economic or religious significance. Harmon (1998) eloquently expounds on these issues of ethnic identity and the creation of the “Indian,” both by Native American populations attempting to hold onto, or reclaim this identity, and by the non-Native community tending to associate being Indian with certain anachronistic activities and cultural customs.

The demographic changes illuminate the divergence of the Straits Salish identities in terms of how the various groups interacted with one another and the encroaching settlers. These demographic shifts are also representative of the changing labor markets and the reorientation of Native modes of production and means of subsistence as they were practiced at the time of contact, to a new, globally influenced economic system.

### **Changes to Economic Strategies**

The mid- to late 1800s saw significant changes to Native economic strategies as the British and American settlers and governments effected their own economic desires, fueled by the expansionist directive of Manifest Destiny. Although the growth of Western business ventures challenged and ultimately changed much of the Straits Salish subsistence strategies, many of the actual activities (e.g. fishing, seasonal rounds for vegetative production, etc.) were maintained, at least in part, despite being subsumed by the capitalist economic model. Traditional subsistence ventures were supplemented with wage labor activities.

Initially all Western ventures into fishing and fish production utilized the Straits Salish and their deep knowledge of the local fishing grounds. When the first canneries were established in the 1870s, Native labor was the foundation of acquisition and production. Felix Solomon, recounting the history of canneries in Whatcom County, explains:

The Lummis used to fish at Point Roberts. A white man named Frank Wright worked with the Indians. Then he asked if he could build a cannery. The fish came from the Indians. The Indians waited for their money until the canned fish were sold. The Indians respected him for he was an honest man. Later he built a big cannery, put in his own traps and got his own fish from his traps. He got rich. He owned a lot of land on Lummi Island. He had a cannery first, then Allsop had one. The canneries at first bought fish from the Indians, then they soon put up their own traps.

The Indians no longer could sell fish to the canneries. The Indian boats would come to the canneries and they wouldn't buy their fish. We used to see them at Frank Wright's cannery. An Indian boat would come there with a load of fish and would anchor there for many days. The canneries wouldn't buy his fish. They had plenty of fish of their own. So the Indians quit reef netting. Later when the traps became illegal, the whites began reef netting and shut out the Indians (Nugent 1999:19-20).

What Solomon recounts was also true north of the border as well, but the importance of Native labor to the fishing industry extended well into the early part of the 1900s. Ernie Crey, discussing the history of the Sto:lo association with the canneries in British Columbia asserts that “The canneries needed us. We knew how to fish, where to fish, and what to fish with. But we were still pretty independent. We could sell to whoever we wanted to. When it was time to go home and fish for the winter, and for the smokehouse, we'd get up and go. If one cannery wasn't paying us what we wanted, we'd sell to another cannery” (Cameron 1995:11). Native labor and trade defined the backbone of the fisheries in this region. This changed significantly when producers began relying on new Chinese, Korean, and Japanese immigrant workers to do the actual canning and production for lower wages than the Indian laborers. White commercial fishermen in the 1880s and 1890s, both in the U.S. and Canada, also started forcibly pushing the Native fishermen out of business. That is a complex issue, owing greatly to the treaty arrangements made on both sides of the border as to the maintenance and security of Native fishing rights. It is my intention only to discuss briefly these matters for the purpose of developing a borderland labor significance.

As Western expansion muscled the Straits Salish out of traditional lands, disrupted subsistence patterns and sought to assimilate the “savages,” new labor demands were placed on the people of this region. Agriculture was the gospel of the Euro-American newcomers to the region, and Indian salvation lay in the tilling of soil and maintenance of crops and livestock. These activities were coupled with some seasonal resource procurement, but the upkeep of livestock and crops limited many from proceeding with seasonal rounds.

Interestingly, many of the traditional structures of subsistence, such as seasonal migrations for differential resource access and production, were maintained and even further codified by the imposition of the border. Logging, mining, commercial fishing, trading and trapping, hops

procurement and production, prostitution and smuggling all became seasonally trafficked activities as demands for labor fluctuated on either side of the border, depending on the season. Many people found it necessary to take part in a number of these activities: working their fields and fishing during the spring and summer, harvesting crops and hops in the early fall, and logging or mining through the winter. The disruption of the preexisting social and economic infrastructure was nearly total. The Straits Salish subsistence economy was drowned and established in its place was the labor market and the Western economic model.

My intention is not to challenge the totality of acculturative change experienced by the Straits Salish, or even to paint it as somehow less invasive. It is vitally important to assert, though, that the Native American and First Nations peoples of the greater Puget Sound/Georgia Strait area were accustomed to complex subsistence strategies, highly advanced in terms of the methods and techniques implemented and of the tools and technologies utilized.

### **British and American Policy/Ideology: A Comparison**

The policies and ideologies (especially the treaty processes) of the United States and Great Britain established fundamental challenges to Native identity, and, in part, created, in their divergence and convergence, the importance of the border to people of this region, Native and non-Native alike. A brief comparison of the U.S. and British Indian policies demonstrates the differential assimilative processes that influenced divergence of Native identities in the San Juan region.

The policy of the U.S. in the mid- and late 1800s was primarily to assimilate Native Americans into the American process or otherwise remove them from the equation. During mid-century, the British were of the opinion that assimilation should not be coerced and that Indians should embark in this process of their own free will. That is not to say that the British and the Americans had dissimilar ideologies and goals, but simply different methods developed from divergent historical antecedents. The American policy was one of direct and active assimilation, the British policy of indirect and non-confrontational means.

The two key figures embodying this difference of national policy are James Douglas, the long-time Chief Factor of the Hudson's Bay Company, and eventual first governor of the fledgling British colony, and Isaac Stevens, the first governor of the Washington Territory. Douglas, in the interest of the HBC, had developed long lasting

relationships with Native groups on and around Vancouver Island and the San Juan Islands. The HBC was interested in creating and maintaining trade relationships with the Indians of this area, who were able to provide them, through trade, with furs and fish. The HBC employed large numbers of Straits Salish as shepherds and agricultural workers throughout this region. It was in the HBC's best interest to negotiate carefully land acquisition deals and all other affairs of business in order to keep friendly trade relations.

In a correspondence to U.S. Secretary of State Cass in 1860, Henry Crosbie describes the success of the HBC in living and doing business with the Indians of Northern Puget Sound:

From the admirable manner in which the Hudson's Bay Company have managed the Indians, treating them with kindness, and at the same time with great firmness; just so sure as they committed an outrage on persons or property, just so sure were they certain to be promptly punished, never allowing that terrible [...] of which our frontier settlers have so bitterly experienced its evils, to rob the example of its proper effect, but doing whatever they deemed justice required at once, and thoroughly, thus insuring to their agents and employees, even in the most distant and isolated regions, entire security—one of their number could go anywhere through the most warlike of the tribes or remain in their neighborhood unmolested, whilst an American dared not trust himself in their vicinity, except by deceiving them as to his nationality. The Hudson's Bay Company servants could remain in safety on San Juan: the Americans could not. The question resolved itself into whether the island was to be abandoned or the settlers protected (Centre for Pacific Northwest Studies).

Douglas expressed his concern over the American system of "dealing" with native populations, saying that they were "kept in a state of pupillage, and not allowed to acquire property of their own, nor taught to think and act for themselves, the feeling of pride and independence were effectively destroyed" (British Columbia 1851:69).

Stevens sought to consolidate the vast majority of western Washington Indians onto one or two reservations, creating "free" land for the ever-increasing flow of settlers. Though this goal did not come to fruition, Stevens negotiated a series of eleven treaties between 1854 and 1856 with Native populations in the Washington Territory, effectively dissolving Native land title to all but disassociated

tracts of lands. The Stevens treaties, although guaranteeing Native fishing rights “in common with citizens of the United States,” or “in common with citizens of the Territory” (Boxberger 1979:26), subjected the bands signing the agreements to rapid further disruption of traditional social and economic infrastructure. The superintendents in charge of the newly created reservations conducted the process of establishing farms, churches, schools and various other American style institutions designed for quick and full assimilation.

Douglas took great care to compensate, though modestly, the groups on Vancouver Island, ensuring their access to traditional resource grounds. Even after Douglas assumed the governorship and the mainland became part of the colony, he continued to offer non-coerced opportunities for assimilation. Though Douglas’s intentions were well placed, the central tenets of the colonial directive were still asserted. The 1991 Report of the British Columbia Task Force discusses Douglas’ role and intentions:

Douglas offered to Aboriginal people an opportunity to participate in the affairs of the colony similar to that offered to new settlers. Provided they took up the offer, which included the right to acquire Crown land and become farmers, individual Aboriginal people were to be treated as equal to settlers. While Douglas’ policy of equality had commendable features, it ignored the cultural reality and wishes of the Aboriginal peoples, who were neither consulted nor involved in its creation. Aboriginal land title and the inherent rights of Aboriginal people were disregarded. Small reserves were created as protection from aggressive land acquisition by settlers. The colonists assumed that Aboriginal people would leave their communities to acquire land elsewhere, abandon their traditional lifestyle, adopt farming as a way of life, and merge with the new society. This policy of assimilation guided the new colony (British Columbia 1991:7).

Douglas and Stevens were fundamentally motivated by the same assimilationist directive, but the differences in the execution and implementation of policies aimed at attaining this goal created a substantial divergence for Native people residing betwixt and between the U.S.-Canada border. These policies influenced all aspects of life for the Native peoples of the Pacific Northwest. People who recognized tribal affiliation on both sides of the border moved back and forth across the forty-ninth parallel, depending on the perceived benefits of these policies, at times, choosing the lesser of two evils. As policies and labor markets fluctuated, this movement continued. Subsistence opportunities for the Straits Salish were largely influenced by the language of these treaties and the political and economic

policies that the U.S. and Great Britain developed to take advantage of these decisions.

## **Conclusion**

Despite the claims of Lutz and Price, the U.S.-Canada border is “an arbitrary but potent fact of life that divides the peoples and communities” of Salish affiliation in the Pacific Northwest (Miller 1996:66). This paper provides an initial ethno-historical illustration of a sampling of the myriad issues facing the “Boundary Salish.” Through these three variables, changing populations, shifting modes of production, and differential acculturative stress vis-à-vis British/Canadian and American treaty systems, I have briefly shown the relevance of the border to the divergence and convergence of indigenous identity construction and maintenance in this region.

The creation of the U.S.-Canada border initiated a number of historical processes that continue to influence the lifeways and political economies of Native communities in the borderlands. In addition to fundamental changes in traditional Straits Salish cultural practices, the confluence of new national identities and the state imposition of regulatory criteria for determining one’s “Indian-ness” further complicated matters. Construction and assignment of new national and tribal identities often made life in the borderlands markedly more problematic.

Fully understanding the current issues and problems faced by Northwest Native borderland communities demands careful investigation of the processual history of Straits Salish identity formation and divergence in relation to, and because of, the U.S.-Canada border. That is by no means a comprehensive analysis of the historical processes influencing acculturative change and trans-boundary identity formation. This research is meant only as an introduction, a call for further, more nuanced investigations of indigenous borderland experiences, firmly rooted in the discourses of borderlands and nation-state boundaries. The focus must be shifted from the dominant national hegemony to the local populations who confront and define their reactions to, and resistance against, the border on a daily basis.

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# *Citizens of the Territory and Citizens of the United States: The Trade and Subsistence Clauses in the Stevens Treaties of Washington Territory*

Daniel L. Boxberger

Most analyses of Native/non-Native relations in the Northwest tend to present the cultural interaction as an “Indian/White” dichotomy. Recent work on identity in the Northwest has questioned the historical interpretation of ethnic unity of Native peoples and the concept of “Indian” as an all-inclusive category. Rather, as Harmon<sup>1</sup> has pointed out, Indian identity is a changing, flexible indicator of broader political concerns. The concept of “Indianness” emerged and has changed in response to changing political climates. In an analysis of the commercial salmon fishery of the late 1800s and early 1900s I used an “ethnic theory of labor” to show how a flexible ethnic identity can be used advantageously to include and exclude certain groups, including Indians, from access to the economic sector and to assign ethnic groups to certain tasks.<sup>2</sup> The political and economic realities of identity must be considered together as a relationship embedded in power and struggle. This hegemonic relationship has both political and economic influences historically as the balance of power swings from indigenous populations to frontier trade and commerce to nation-states intent on settlement.

The Native peoples of the Old Oregon Territory<sup>3</sup> most certainly did not see themselves as one people. Through the combined effects of population decline, amalgamation onto reservations, and government needs, a general ethnic

classification emerged. Likewise, in the years before mass American migration into the Northwest, the non-Indians in the area, mostly associated with the Hudson’s Bay Company, did not see themselves as one people, nor did the Native peoples categorize them as such. How ethnic groups came to be classified into fewer inclusive categories as population increased is an interesting historical question concerning settlement and the imposition of state control.

With the establishment of the boundary between the United States and British North America at the forty-ninth parallel in 1846, the movement of American settlers into the future states of Washington, Oregon, and Idaho increased dramatically. While the “official” immigration began with the opening of the Oregon Trail in 1843, subsequent events, in particular the *Oregon Land Donation Act* of 1850<sup>4</sup> which allowed settlers who arrived prior to 1 December 1850 to claim up to 320 acres, brought about the largest American migration.<sup>5</sup>

In little more than a year, between 24 December 1854 and 26 January 1856, territorial Governor Isaac I. Stevens negotiated 11 treaties with the Native peoples of Washington Territory. The treaties were crucial because lands were being claimed under the *Oregon Land Donation Act* prior to the extinguishment of Indian title. Stevens was in a hurry to complete the treaty process in order to avoid

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conflict between Native people and the settlers. All but one of the eleven treaties were eventually ratified by the United States Senate. These treaties contain two important clauses that pertain to the relationship between Native peoples, American immigrants, and the Hudson's Bay Company.<sup>6</sup> In all of the western Washington treaties, the clause "The said Tribes and Bands ... agree not to trade at Vancouver's Island, or elsewhere out of the dominions of the United States"<sup>7</sup> was clearly directed at the Hudson's Bay Company trade with the Native tribes. Stevens had been directed by the United States Secretary of State to restrict Hudson's Bay Company trade in Washington Territory in order to favor American commercial interests, and the treaty restricted Native peoples from crossing the border to trade in British territory. The subsistence clause secured the right of treaty Indians to fish, hunt, and gather "in common with citizens of the *Territory*" in seven treaties and "in common with citizens of the *United States*" in four treaties.<sup>8</sup> The reasons for this distinction have never been clear and have been the subject of litigation in at least two fishing rights cases.<sup>9</sup> While appearing unimportant on the surface, the distinction between citizens of the Territory and citizens of the United States has broader implications in relationship to the establishment of the border in 1846, the creation of national identity of the immigrants, the rights of non-Indian citizens to land and resources, and the response of Native peoples to these emerging relationships.

The Hudson's Bay Company was active in the Pacific Northwest from the 1820s,<sup>10</sup> establishing posts throughout what was to become Oregon Territory. From the center of trade at Fort Vancouver, connections with trading posts extended along the Columbia and Snake River systems and through Puget Sound to the Fraser River and up the coast to Alaska. Trade and commerce were facilitated by communication in the Chinook Jargon, a trade language which incorporated words from Native and non-Native languages. Composed of about 400 words, depending upon the time and the interpreter, the Chinook Jargon was capable of communicating concepts and ideas dealing with trade, travel, and personal interaction. Indicative of the multi-ethnic composition of trading companies, Chinook Jargon reflects the Indian understanding of these differences. In the 1850s Chinook Jargon commonly used different terms for the British, Americans, French-Canadians, Russians, Hawaiians, and Iroquois.<sup>11</sup> Chinook Jargon was also the medium of communication in the negotiation of the Stevens treaties, although the Americans had less experience with the language.<sup>12</sup> The Native people of the Pacific Northwest did not collapse all Europeans or other non-Natives into one designation. They understood there

were differences and interacted with them appropriately.<sup>13</sup> Furthermore, the Native people understood that the territory was divided between the British and the Americans by the *Oregon Treaty* of 1846.<sup>14</sup>

Additionally the missionaries active in the Pacific Northwest came from varying backgrounds. Roman Catholic missionaries were usually French or French-Canadian, and the Presbyterians were usually Euroamericans. Treaty Secretary George Gibbs noted that the "distinction is already drawn among the Indians between the 'American' and 'French' religions" often creating some hostility between the competing denominations.<sup>15</sup>

By the mid 1850s most Indians of the Pacific Northwest had some familiarity with a variety of non-Natives through one or more of these types of interactions.<sup>16</sup> By the time of the *Treaty of Oregon* there were nearly two dozen non-Indian communities, including trading posts, missions and agricultural settlements. Whereas Indians composed the majority population, it was apparent just a few years later that the non-Indians were increasing in numbers and would soon vastly outnumber the Indians. That is evident in the treaty proceedings, where the American negotiators use "white" interchangeably with "Americans," and the Indians distinguish between Americans and other non-Indians.

Father, yours, and the father of the whites. That great father has many white children and they are coming here: the great Father wishes that his white and red children be friends, and you are friends now, what is your state though?... His white children are coming here in great numbers. He cannot stop them and they will crowd upon you.<sup>17</sup>

If there were no other whites coming into the country we might get along in peace: You may ask, why do they come? Can you stop the waters of the Columbia river from flowing on its course? Can you prevent the wind from blowing? Can you prevent the rain from falling? Can you prevent the whites from coming? You answered No! Like the grasshoppers on the plains; some years there will be more come than others, you cannot stop them; they say this land was not made for you alone, the air that we breathe, the water that we drink, was made for all. The fish that come up the rivers and the beasts that roam the forests and plains, and the fowls of the air, were alike for the white man and the red man.<sup>18</sup>

From what you have said I think you intend to win our country, or how is it to be? In one day the Amer-

icans become as numerous as the grass; this I have learned in California; I know that is not right.<sup>19</sup>

On the other side of the big water there is a large country. We also know that towards the east there are a great many different kinds of people: there are red people and yellow people, and black people, and a long time ago the people that traveled this country passed on the waters.<sup>20</sup>

Prior to 1846, the Hudson's Bay Company was the dominant non-Indian presence in the Old Oregon Territory. Composed of an interesting admixture of ethnicity the "Company of Adventurers" fostered a relationship with Native peoples that enabled a relatively small number of non-Indians to exercise economic hegemony over vast territories in North America. A hierarchical structure emerged over the century and a half that the Hudson's Bay Company existed prior to establishing its dominance in the Old Oregon Territory. That structure consisted of a number of ethnic groups that related closely to occupation and included relationships with local Native groups. It was this "Fur Trade Society" that was put into place in the Old Oregon Territory and that structured the nature of inter-group relations. The clerks and factors were predominantly Scottish, the most famous in the Old Oregon Territory being Dr. John McLoughlin and Sir James Douglas, both of whom served as Chief Factor of the Columbia Department and both of whom played important roles in the political history of the area. For example, Douglas, was the first colonial governor of British Columbia, and McLaughlin is referred to as the "Father of Oregon." Many of the traders were French Canadian, but also Métis and a few Iroquois and Cree. A number of local Natives participated in the trade as trading chiefs, and local villages near the trading posts became the home guard. Trading vessels signed on Hawaiians as crew and many settled in the Northwest. The Hudson's Bay Company understood the distinction between the various Native groups and encouraged their employees to learn the languages. Of particular importance were the policies the Hudson's Bay Company employed in their relations with Native groups. First, there was not a concerted effort to assimilate the Native people; in fact, missionization and independent settlement was discouraged. The Hudson's Bay Company took a pragmatic approach, knowing that Native people not only were the primary suppliers of raw materials but also were the primary market for manufactured goods, so that to assimilate them would be detrimental. Second, Native settlements in proximity to the fur trade posts provided labor and served as cultural liaisons. In fur trade society

these settlements were known as the "home guard," often supplying "country foods" and protection in addition to trade and commerce. Third, intermarriage between post employees and Native women was common. While not openly encouraged by company policy, it was recognized that these marriages served an important role.<sup>21</sup> Native women supplied domestic labor, were cultural intermediaries, provided goods, such as baskets, mats, and clothing, processed food stuffs for post consumption and export, and tied company men to Native kinship networks.

These relationships were to change dramatically with the movement of Americans into the Oregon Territory. Native people were either seen as part of the natural environment, another impediment to civilization, or they were seen as the uncivilized who need to be brought into the American way of life. The latter was certainly the approach of the United States government and structured the way that the territorial governors, who were also the Indian agents, shaped official policy by treaty. If Native people were to achieve the ideals of American citizenship, it had to be by becoming settled Christian farmers. Not only did the Hudson's Bay Company have a different perspective, they were seen by the Americans as a dangerous obstruction to bringing civilization to the Oregon Territory.

Because of their dominant presence in that part of the Oregon Territory north and west of the Columbia River, the Hudson's Bay Company had every reason to believe that the international boundary would follow the forty-ninth parallel from the Rocky Mountains to the Columbia River and then follow the Columbia to the ocean. That was not to be the case. The *Treaty of Oregon* continued the boundary along the forty-ninth parallel to the Straits of Georgia, then down to the Strait of Juan de Fuca and then to the Pacific Ocean, putting that part of Vancouver Island south of forty-nine degrees latitude in British North America. A number of concessions were made; however, in fact the relatively brief treaty, consisting of only five articles, is principally concerned with the interests of the Hudson's Bay Company. Most importantly, for understanding the citizenship clause in the Stevens treaties, Articles I and II of the *Treaty of Oregon* insured the right of British subjects to navigate the Straits of Georgia and Juan de Fuca and the Columbia River "on the same footing as *citizens* of the United States."<sup>22</sup> Articles III and IV were concerned with possessory rights of the Hudson's Bay Company and its subsidiary the Puget's Sound Agricultural Company. The two companies were to retain their land and other property until such time as the United States might acquire them through mutual agreement. In 1863 Great Britain

CITIZENS OF THE TERRITORY AND CITIZENS OF THE UNITED STATES:  
THE TRADE AND SUBSISTENCE CLAUSES IN THE STEVENS TREATIES OF WASHINGTON TERRITORY

and the United States agreed to establish a commission to dispose of the property. That was accomplished in 1869 with a settlement of \$650,000.

Shortly after assuming the role of governor of Washington Territory, Isaac I. Stevens received a directive from Secretary of State William L. Marcy concerned with the *Treaty of Oregon* and how Stevens was to interpret the treaty articles in his relationships with the Hudson's Bay Company.<sup>23</sup> Secretary Marcy ordered Stevens to interpret the treaty in the strictest sense. Since the treaty referred to "possessory rights" which the Hudson's Bay Company retained over its land and property, Marcy argued that the privilege to trade with Indians was not included. With the combined restriction of Hudson's Bay Company trade within Washington Territory and the prohibition in the Stevens treaties against Indians trading outside the United States, Secretary Marcy was effectively cutting off Hudson's Bay Company trade in Washington Territory. Similarly the right to travel on the Columbia River was merely a right to travel and did not imply the right to carry out trade with Indians or settlers. Marcy also requested that Stevens evaluate the holdings of the Puget's Sound Agricultural Company because some in Washington, D.C. "have questioned its very existence."<sup>24</sup>

Upon arriving in Olympia in November 1853, one of the first actions Governor Stevens undertook was to direct the Territorial legislature to enact rules for the first territorial election. The criteria for voting gives us some insight into what Stevens must have intended the difference between citizens of the Territory and citizens of the United States to mean. The right to vote was extended to white males over the age of twenty-one who had resided in the Territory for three months prior to the election and were citizens of the United States and those who had sworn an oath to become citizens.<sup>25</sup> He therefore created three categories of white males over the age of twenty-one: citizens of the United States, citizens of the Territory who intended to become citizens of the United States, and residents of the Territory who were British subjects. All other ethnicities were excluded with the exception of "American half-breed Indians" who could vote if the judges of the elections determined they had "adopted the habits and customs of civilization."<sup>26</sup> The latter is a notable inclusion, considering the large number of Métis and children of fur trade society in the territory. Although the designation "American" must have been meant to be exclusionary because most of the "half-breeds" who would have formed the bulk of this category were Hudson's Bay Company employees and their descendents.

That brings us to the point where I will attempt to answer a question of historical trivia, which, nevertheless, has important implications today. Isaac I. Stevens most certainly knew what he was doing when he distinguished between citizens of the United States and citizens of the Territory in the Indian treaties. *Citizens of the United States* appears in the subsistence clause in four treaties, two negotiated by Governor Stevens, one negotiated by Stevens together with Superintendent Joel Palmer, and one negotiated by Palmer, but most certainly with Stevens's influence.<sup>27</sup> The two Stevens treaties cover lands along the Straits of Juan de Fuca. The other two treaties cover lands along the Columbia River. All of the treaties which refer to *citizens of the Territory* cover the areas of non-Indian settlement and Hudson's Bay Company influence. When we consider this distribution in conjunction with the trade prohibition and territorial election criteria, it leads us to an obvious (I hope) conclusion.

Governor Stevens was intent on breaking the Hudson's Bay Company domination of trade. Ironically there were few American interests to pick up the slack and the Hudson's Bay Company continued to supply American settlers. Stevens also realized that a significant portion of the non-Indian population were not United States citizens but also did not intend to leave the Territory. Most certainly Stevens intended to give citizens of the Territory the same rights to land and resources as citizens of the United States as shared "in common" with treaty Indians.

Stevens did not intend any additional rights to extend to British subjects exercising their rights under the *Treaty of Oregon* to navigate the Straits of Juan de Fuca or the Columbia River. The rights were merely rights of transit to access the Hudson's Bay Company possessions and were not to include any other activity such as trade or subsistence.

What did all of this political maneuvering mean to the Native people? Essentially life went on much as before. The territorial government was unwilling or unable to enforce the restrictions on trade imposed by the treaties. Native people continued to travel to Hudson's Bay Company posts in the Territory, as well as at Victoria and on the Fraser River in British Columbia, to carry out trade. Eventually, by 1871, the Hudson's Bay Company had totally withdrawn from American possessions, and as British Columbia entered Confederation their influence waned.

Stevens was to leave Washington in 1857 as Territorial Representative to Congress from 1857 to 1861 when he left to return to the military. He was killed in the Battle of Chantilly during the American Civil War on 1 September 1862.

The multi-ethnic distinctions that characterized Native and non-Native relations during the Hudson's Bay Company era began to collapse into fewer categories. "Indian" and "white" became the dominant ethnic groups, although small pockets of other ethnicities persisted. Indians were confined to reservations, and the European American population continued to increase, outnumbering the Native American population by 1860.

As Native peoples were increasingly restricted to reservations, the subsistence clause became the central focus of Native American rights to resources. Every word and every punctuation mark of that clause have been the subject of litigation at one time or another. The attempt by the state of Washington to use the distinction between citizens of the United States and citizens of the Territory in some sort of limiting way has not met with success.

Stevens could not have envisaged his attempt to "break the ascendancy" of the Hudson's Bay Company to continue to play a role in twenty-first century politics. But neither could Stevens, or any of his political contemporaries, envisage Native people persisting in exercising their Aboriginal rights for so long. This analysis speaks to the remarkable tenacity of Native peoples, as well as the importance of understanding contemporary issues surrounding Aboriginal rights within the historical context in which they were created.

## Notes

- 1 Harmon, Alexandra. 1998. *Indians in the Making: Ethnic Relations and Indian Identities around Puget Sound*. Berkeley: University of California Press.
- 2 Boxberger, Daniel L. 1994. "Ethnicity and labor in the Puget Sound Fishing Industry, 1880–1935." *Ethnology* 33(21):179–191.
- 3 I am using the term "Old Oregon Territory" to refer to the pre-1846 Pacific Northwest, which includes the modern states of Washington, Oregon, and Idaho and the province of British Columbia. The Hudson's Bay Company referred to roughly the same area as the "Columbia Department."
- 4 *Oregon Land Donation Act*, 9 Stat. 496, 1850; as amended by 10 Stat. 158, 1853.
- 5 The 1850 non-Indian population of Oregon Territory was 13,274. Washington Territory was separated in 1853, Oregon state was created in 1859. The combined non-Indian population of Washington Territory and Oregon State in 1860 was 64,059, an increase of nearly five-fold. In 1850 Oregon Territory included the present states of Washington, Oregon, Idaho, and parts of Montana and Wyoming. In 1860 Washington Territory included the present states of Washington and Idaho, and parts of Montana and Wyoming.
- 6 The treaties considered here include seven treaties negotiated by Stevens, two treaties negotiated by Stevens together with Oregon Superintendent of Indian Affairs Joel Palmer, and one treaty negotiated by Palmer. Stevens's other treaty was with the Blackfoot Nation and was different enough and distant enough from the others to warrant excluding it here. The treaties considered here include: *Treaty of Medicine Creek*, 26 December 1854 [10 Stat. 11322]; *Treaty of Point Elliott*, 22 January 1855 [12 Stat. 927]; *Treaty of Point No Point*, 26 January 1855 [12 Stat. 933]; *Treaty of Neah Bay*, 31 January 1855 [12 Stat. 939]; Chehalis Treaty (non-ratified); *Treaty With the Yakamas*, 9 June 1855 [12 Stat. 951]; *Treaty With the Walla Walla, Cayuse and Umatilla*, 9 June 1855 [12 Stat. 945]; *Treaty With the Nez Percé*, 11 June 1855 [12 Stat. 957]; *Treaty With the Tribes of Middle Oregon*, 25 June 1855 [12 Stat. 963]; *Treaty of Olympia*, 1 July 1855 [12 Stat. 971]; and the *Hells Gate Treaty* (Flathead, Kootenay and Pend d'Oreilles), 16 July 1855 [12 Stat. 975].
- 7 Article 12 in the *Treaty of Medicine Creek*, the *Treaty of Point Elliott*, the *Chehalis Treaty* and the *Treaty of Olympia*; Article 13 in the *Treaty of Point No Point* and the *Treaty of Neah Bay*.
- 8 Article 1 in the *Treaty With the Walla Walla, Cayuse and Umatilla*, and the *Treaty With the Tribes of Middle Oregon*; Article 3 in the *Treaty of Medicine Creek*, the *Chehalis Treaty*, the *Treaty of Olympia*, the *Treaty With the Yakamas*, *Treaty With the Nez Percé*, and the *Hells Gate Treaty*; Article 4 in the *Treaty of Point No Point*, and the *Treaty of Neah Bay*; and Article 5 in the *Treaty of Point Elliott*.
- 9 *United States v. State of Washington*, U.S.D.C. (W.D. Wash.) No. 9213, Phase I, Subproceedings 83–86 and 90–91.
- 10 The earliest trading post in the Pacific Northwest was the 1810 Northwest Fur Company post at Spokane House. It was followed by the American Fur Company post at Fort Astoria in 1811 which passed to the Northwest Fur Company in 1813. In 1821 the Northwest Fur Company was merged with the Hudson's Bay Company which took over operations in the Pacific Northwest.
- 11 For a list of Chinook Jargon words at treaty time see the Olympia newspaper *The Columbian*, 5 March 1853, and Gibbs, George. 1863. *A Dictionary of the Chinook Jargon*.

- Washington, D.C.: Smithsonian Institution. Gibbs was Secretary to the Stevens Treaty Commission and apparently conversant in Chinook Jargon. Later Chinook Jargon word lists contain additional ethnic identities, including Spanish, German (generally northern European), Chinese, and African Americans.
- 12 Although at the Nez Percé Treaty Council the records indicate that the treaty was translated into French, which many of the Nez Percé understood. According to the recording Secretary, one of the Nez Percé present took notes in French on the treaty proceedings. 7 June 1855, in *Records of the Proceedings of the Commission to Hold Treaties with the Indian Tribes in Washington Territory and Blackfoot Country*, 1854–1856. File Microcopies of Records in the National Archives: No. 5, Roll 26. Records in Relation to Treaties. National Archives and Records Administration, Washington, D.C. Hereafter referred to as *Records*.
  - 13 For example, the term for French or French-Canadians, many of whom were probably Métis, was *Paseeooks*, literally “blanket man” suggesting that they dressed like and interacted with the Native peoples on a more personal level, whereas the term for American was *Boston* or *Pastid* which refers to the port of call of most American traders before the Oregon Trail immigration. The term for the British was *King George* or *King Chautsh*, indicating their political allegiance.
  - 14 Gibbs, George. 1855. “Indian Tribes of Washington Territory.” In *Report of Explorations and Surveys to Ascertain the Most Practicable Route for a Railroad from the Mississippi River to the Pacific Ocean*. Edited by Thomas H. Ford. Washington, D.C.
  - 15 Gibbs 1855:27.
  - 16 A number of Native people in proximity to the Hudson’s Bay Company posts had signed on board trading vessels and traveled to Spanish California and probably beyond. The cemetery at the San Francisco Mission Santa Delores, e.g., contains the remains of over two dozen “Puget Sound Indians.”
  - 17 Isaac I. Stevens, at the Chehalis Treaty Council, 27 February 1855. In *Records*.
  - 18 Joel Palmer, at the Walla Walla Treaty Council, 2 June 1855. In *Records*.
  - 19 Peo Peo Mox Mox, at the Walla Walla Treaty Council, 2 June 1855. In *Records*.
  - 20 Lawyer, at the Nez Percé Treaty Council, 7 June 1855. In *Records*.
  - 21 See: Suttles, Wayne. 1998. “The Ethnographic Significance of the Fort Langley Journals.” In *The Fort Langley Journals, 1827–30*. Edited by Morag MacLachlin, 189–190. Vancouver: University of British Columbia Press.
  - 22 Articles I and II, *Treaty with Great Britain, in Regard to Limits Westward of the Rocky Mountains. Statues at Large and Treaties of the United States of America, Vol. IX*, page 869. Little, Brown, and Company, Boston. 1862.
  - 23 Secretary of State William L. Marcy to Territorial Governor Isaac I. Stevens, 3 June 1853. Territorial Governors Records, Isaac I. Stevens Administration. Washington State Archives, Olympia.
  - 24 While the Puget’s Sound Agricultural Company was virtually unknown to bureaucrats in Washington, D.C., its existence was a dominant presence in western Washington. Not even considering the extensive records of the company itself, American Charles Wilkes notes in 1840 the extent to which the company had “brought civilization” to the area. Wilkes, Charles. 1845. *Narrative of the United States Exploring Expedition During the Years 1838–1842*. Philadelphia: Lea and Blanchard. The British and American Joint Commission established to settle Hudson’s Bay and Puget’s Sound Agricultural Companies claims determined that in 1846 the company had eight thousand sheep, three thousand cattle, three hundred horses, several small farms, several hundred acres enclosed, and three thousand acres of cleared land. The company claimed an area of 261 square miles between the Puyallup and Nisqually Rivers. *Proceedings of the British and American Joint Commission for the Final Settlement of the Claims of the Hudson’s Bay and Puget’s Sound Agricultural Companies*. 1868. Montréal: J. Lovell.
  - 25 This option was in place before the creation of Washington Territory. The most famous example is Dr. John McLoughlin, who declared his intent to become a citizen of the United States in 1849 and did so in 1851.
  - 26 Stevens, Isaac I. 1853. *Extracts from An Act to Establish the Territorial Government of Washington, Furnished to the Judges of the Elections*, November 28. Olympia: Territorial Records, House of Representatives, Washington State Archives.
  - 27 Of the nine treaties negotiated during Joel Palmer’s tenure as Oregon Superintendent of Indian Affairs, the *Treaty With the Tribes of Middle Oregon* is the only one to contain the subsistence clause with similar wording as the Stevens treaties. The *Treaty With the Tribes of Middle Oregon* was conducted just a few days after the joint negotiations with Stevens and Palmer.

# *Bi-National Niagara Falls — 1887–1929*

## *Divergent Development of Hydro on the Canadian Side of the Falls<sup>1</sup>*

Karl Froschauer

### **Abstract**

From 1887 to 1929, the bi-national Niagara Falls have served tourism and power generation in Ontario. Something went wrong with the private hydro development on the Canadian side of the Falls, however. This article shows that when private hydro utilities (who had been allocated public water rights to the falls) created conditions of regional industrial backwardness in Ontario because they found exports to U.S. industry more profitable, the state, pressured by municipal movements, intervened to reverse privatization of hydroelectric development and to strengthen export regulation. This archival study demonstrates that asymmetrical political and trade relations between Canada and the U.S. can be overcome.

### **Introduction**

What went wrong with the private hydro development at Niagara Falls from 1887 to 1929? At Niagara Falls, developers of a transnational hydroelectric infrastructure stifled industrial growth in Ontario and, instead, strengthened it in New York State. The industrial growth that did occur in Ontario was not of the type and quality anticipated by theorists, engineers, utility executives, and politicians. Ontario's dependence on technology transfers, importa-

tion of entrepreneurs, and reliance on U.S. capital showed less industrial autonomy than had been assumed (Keefer 1899, Dales 1957).

The early Niagara experience also casts doubt on another assumption currently strong among Canadians and their provincial governments: that water power rights and electricity generation should be left to the private sector. In 1899, in order to start repatriating and later nationalizing the Niagara power necessary for the progress of Ontario manufacturers, local governments at Niagara were soon forced to reverse their 1887 allocation of water power from the falls to private, U.S.-owned, profit-seeking utilities. The Niagara case constitutes the first major re-appropriation of formerly privatized water powers, for in the 1960s British Columbia, Newfoundland, Québec, and Manitoba followed Ontario by nationalizing their hydro utilities.

Part of the reason of this shift from private to public power was the private power companies' failure to transmit power to the small manufacturers in southwestern Ontario towns. The formation of the publicly-owned Ontario Power Commission (Ontario Hydro) allowed small manufacturers to convert their factories from American coal-fueled steam engines to industrial electric motors. By 1910, the provincial government belatedly began bridging

the transmission gap. The federal government, which controls export policy, reversed its original view that power could be treated as other exports and began to advocate that electricity exports be stopped. That threat of having Ontario water powers absorbed by U.S. industry resulted in the 1907 Exportation Act. However, the act was insufficient to repatriate power needed for Canadian war industries between 1917–18. As a result of the repatriation crisis, a temporary consensus underpinned power policy: electricity, Mackenzie King emphasized in 1929, “shall be utilized within the Dominion to stimulate Canadian industry and develop natural resources” (Grauer 1961, 261–2).

The previous theoretical notions guiding the analysis of similar historical hydro cases by John Dales and Henry V. Nelles require a fuller specification (as will be discussed in the conclusion of this article) of how we should conceptualize hydro-related industrial development and the state interventionist role in privatization, its reversal, and planning. Therefore, I present the findings of this bi-national Niagara case to support the argument that, when private hydro owners (who have been allocated public water rights) created conditions of regional industrial backwardness because they found exports more profitable, the state as holder of public rights (and pressured by social movements) had a mandate to intervene to establish some control over exports in order to create (local) conditions for industrial development and to provide electricity inputs to enhance profitable manufacturing (Offe 1975). Once the state had become an electricity producer, however, its planning ability was limited by industrialists in the emergent industrial market.

By answering three questions, this article shows what went wrong in the early history of Canadian hydro development (Bradford 1989). Under what conditions did private enterprises that use Niagara electricity projects to serve industry and exports engender a public response that led to state intervention and the reversal of privatization of such resource developments? What tends to go wrong when the state as a producer of electricity is limited by owners in the industrial market itself in its ability to plan and builds up surplus capacity? What went wrong when electricity surpluses used for exports to the United States were continued?

To demonstrate, first, how, through an export-orientation at the bi-national Niagara Falls, the industrialization process in southern Ontario fell behind, it is important to focus on the companies – Canadian Niagara Power Company, Ontario Power Company, and the Electrical Development Company – involved in developing elec-

tricity at the Falls for export. Then, I will probe whether speculators that left hydro resources undeveloped delayed Ontario’s industrial development. Because it owns the water-power rights and public hydro, the state’s role in bi-national resource development calls for archival research at the provincial level, the federal level (because it has jurisdiction over exports), and the municipal level (because Ontario towns became owners of the transmission network). Even though, transmission technology changed in 1896 to allow electricity transport to southern Ontario, owners preferred the more lucrative U.S. industrial market; however, the public power movement by small manufacturers wanted a cooperatively-owned transmission system and “power at cost.” I briefly review the historical pattern of initially releasing public water power for private development and then reclaiming for public ownership these privatized hydro-power resources, often with completed power facilities (see table 1).

I present most archival findings from manuscripts, correspondence, statistics, industrial surveys and contracts, as well as secondary sources relevant for this hydro case study, to demonstrate the politics of developing a private power system (grid, generating stations, and distribution) and the development patterns that emerge: (1) the historic privatization reversal: electricity projects that serve U.S. industry and U.S. exports and create local industrial backwardness can engender a public response that will lead to state intervention and the reversal of privatization of such resource developments; (2) the planning limitations for the state as producer of electricity: the timing and size of more public hydroelectric projects, which may not coincide with industrial need, (3) exports to the U.S. are not always in the best interest of the country as a whole: repatriation started with demands that Niagara Falls provide “Public Power at Cost,” and continued with the repatriation crisis during the First World War and the claim that “Power Exported is Power Lost.”

### Reversing the Privatization of Niagara Falls

Although the water-power rights to Niagara Falls are apportioned between Canada and the U.S. according to the international boundary, Ontario initially allowed U.S. investors to monopolize power franchises at the falls. In 1887, the Queen Victoria Niagara Falls Park Commission was established with a mandate to buy the land in the vicinity of the falls and, shortly afterward, it entered the hydroelectric business (Nelles 1974, 33). Ontario governed the hydroelectric industry by “retaining title to waterpower in the hands of the crown and by leasing

waterpower privileges instead of selling them outright” (38). Nelles specifies such water power rights in Ontario by defining that “the water, simply by virtue of passing over private property, was not itself private property; it could be used only in passage” when licensed to extract power from its flow (7). This retention of title, while leasing water-power rights for a limited period, allowed the state to “demand both a revenue from the industry and prompt performance of construction agreements” (38). To help launch the first hydroelectric enterprise, the commission granted the exclusive power rights, not to a developer, but to a speculator. As H.V. Nelles records, in 1887 the commissioners sold, for an advance of \$10,000, exclusive water power rights to the Canadian falls to Colonel A.D. Shaw of Watertown, New York (33-34). The Parks Commission needed such revenue to buy the property next to the Falls and convert it from a gaudy tourist area into a riverfront park that would also accommodate a few stately powerhouses. Without having built such facilities, Shaw sold his monopoly franchise to the U.S.-owned Niagara Falls Power Company. Then, in 1892, that firm incorporated its Canadian water power rights as the Canadian Niagara Power Company.<sup>2</sup> Shaw, in turn, became its nominal president (34). From then on, this firm “had the first choice of location for power development works within the Park” on the Ontario bank and was expected to be “the first power company to produce power on the Canadian side of the Falls” (Davenport 1904, 163). It had not only received the right to draw water from Niagara Falls for generating power and but also to transmit and distribute electricity for sale outside the riverfront park for 100 years (163).

Although the Ontario government had privatized the water rights in 1887 subject to timely power development, Shaw and Canadian Niagara held up the building of the needed power plants from 1887 to 1901 in anticipation of higher profits from future electricity exports to New York State. The stalling tactics of the American speculators contributed to southern Ontario’s falling behind in capturing early industrial benefits. For instance until 1886, in the absence of long-distance transmission technology, industries, especially energy-intensive industries and electro-process industries (such as producing abrasives, plating silver, or processing chemicals) found it necessary to locate their operations close to power plants. The Niagara Falls Power Company, well aware of this need, had attracted more than 20 “industrial tenants” who bought short-distance power in the town of Niagara Falls, NY (Davenport 1904, 81-86), while stalling electricity generation and industrial development on the Canadian side of the falls.<sup>3</sup>

**Table 1. Chronology of the Privatization and its Reversal at the Canadian Niagara Falls**

1887	Ontario sells A.D. Shaw the monopoly rights. He sells them to the U.S.-owned Niagara Falls Power Co.
1896	Niagara Falls Power Co. transmits industrial power to Buffalo from its U.S. plants at the Falls
1897	Supreme Court of Ontario reviews Niagara Falls Power Co.’s failure to construct a Canadian plant
1899 to 1903	Niagara Falls Power Co. retains only one-third share of Falls. Remaining two-thirds are sold to U.S.-owned Ontario Power Co. and Toronto-owned Electrical Power Co.
1901	Niagara Falls Power Co. starts construction of its Canadian plant
1903	The formation of the Hydro-Electric Power Commission of Ontario (The Ontario Power Commission) which advocates public power development
1906	Niagara Falls Power Co. exports power to Buffalo industries from its Canadian plant
1907	Ontario Power Co. exports power to its U.S. industrial customers from its Canadian plant
1908	Toronto’s Electrical Power Co. transports power to Toronto and sells to the U.S. market
1910	Two-thirds of the electricity generated at the Canadian Falls is exported to the U.S.
1910	Ontario Power Commission delivers first Niagara Falls power over the public transmission line to Berlin, Ontario

With the invention and installation of transmission lines by 1896, electricity now could be brought to industry rather than industry having to locate near generating plants (Davenport 1904, 76-77). New transmission technology, however, allowed American owners of the Niagara Falls power monopoly either to supply industrialists further afield in Buffalo and Syracuse or to initiate delivery to Ontario manufacturers in London, Guelph, and Berlin (later Kitchener). Their choice became evident on 10 November 1896 when the Niagara Falls Power company’s 20 mile-long transmission line reached its Buffalo industrial market (Denison n.d., 28). Meanwhile, on the Niagara peninsula, skepticism about the U.S. power company grew: “The spectacular growth sparked by hydro-electric development on the American side of the Falls exasperated the residents of the Niagara peninsula who had long since grown suspicious of the endless excuses advanced by the Canadian Niagara Power Co. for the total lack of

progress on its monopoly concession within the park” (Nelles 1974, 223).

It was then that Ontario’s Liberal premier, A.S. Hardy, “asked the Supreme Court of Ontario to rule whether the total absence of construction prescribed by the agreement at the 1897 deadline constituted a breach of contract” (Nelles 1974, 225). The court found the terms of the original agreement could not be cancelled until 1899 (225). Before the final showdown, the government and the U.S. utility company found a compromise when “in July of 1899 the company relinquished its monopoly on the Canadian side of the Falls” (225); yet, despite its dismal record, Canadian Niagara retained power rights to one-third of the Canadian Falls (100,000 hp, or 75 MW), the other two-thirds being available to other private utilities (Grauer 1961, 250, n3).

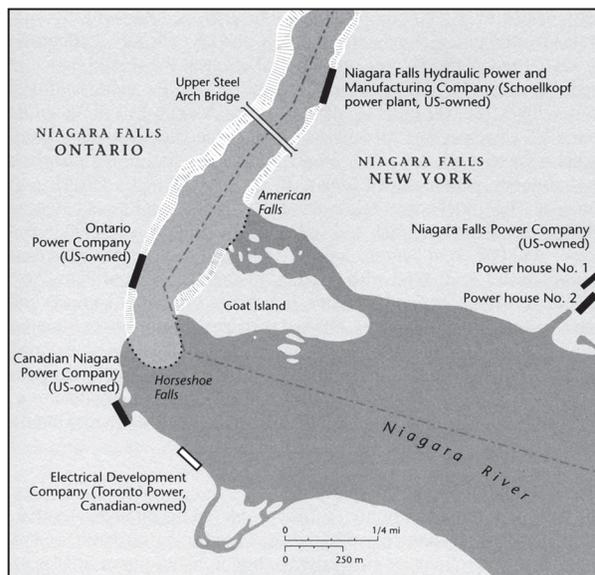
By 1903, the Queen Victoria Niagara Falls Commission had granted all available power franchises. Foreign ownership of such power rights was well hidden behind corporate names. While the Canadian-owned Electrical Development Co. (EDC or Toronto Power) referred in its name neither to nation nor province, the two U.S.-owned subsidiaries, the Canadian Niagara Power Co. and the Ontario Power Company, had added “Canadian” and “Ontario” to their names (see Figure 1), adjectives which in fact disguised their U.S. ownership.

### *Canadian Niagara Power Company*

After having its monopoly reduced to one-third of the water power at the Canadian Falls, the Canadian Niagara Power Company became the first utility to build a power plant on the Ontario side. Harold Buck, electrical director of its American parent firm (the Niagara Falls Power Company), simply conceived the Ontario plant as an extension of the two New York State plants (Belfield 1981, 88). Construction began in 1901, and the first power was transferred from branch to parent by 1905 (Grauer 1961, 250). That is, the parent utility directed its Canadian subsidiary to export nearly all the power from its new Canadian plant back to the U.S. parent utility’s market (Belfield 1981, 94).<sup>4</sup>

By 1906, some of this exported energy supplied the short-distance industrial market in Niagara Falls, NY, but the bulk of it went to its long-distance industrial market in Buffalo.<sup>5</sup> The Niagara Company dominated both these industrial markets. One was located less than two miles from the company’s plant in Niagara Falls, New York,

**Figure 1. Power Plants on the Niagara River, 1900–1910**



Sources: George W. Davenport, *The Niagara Falls Electrical Handbook* (Syracuse: Mason Press, 1904); adapted from “Powerplants on the Niagara River” (by Geoffrey Matthews) in Pierre Berton, *Niagara: History of the Falls* (Toronto: McClelland & Stewart, 1992), p. 281, (used by permission).

and consisted of 22 industries; the other was between 15 and 35 miles from the same Niagara plant in Tonawanda, Lockport, Olcott, and Buffalo, and included more than sixty industrial customers (Davenport 1904, 81-86). With a lucrative U.S. industrial market, this American utility shunned the riskier and less profitable Canadian manufacturing market.

### *Ontario Power Company*

In a similar way, the Ontario Power Company, the other U.S. power company owned by a syndicate of Buffalo industrialists, also vertically integrated its structure of generation, international transmission, and U.S. customer distribution. In 1900, this Company had received the second franchise from the Queen Victoria Falls Park Commission to develop eventually a 180,000 hp (134 MW) facility at Niagara Falls (Grauer 1961, 250 n3; Nelles 1974, 227). Again, its major U.S. customer was its corporate parent, the Niagara Lockport and Ontario Power Company. To assure continued internal power transfers, the parent company signed long-term contracts with its subsidiary in Canada: “the initial contract between the subsidiary and parent companies was dated 16 July 1904, and called for the delivery of 60,000 horsepower [45 MW] on or before 1 January 1907. This contract was to remain in force until 1 April 1950, with certain provisions for renewal”

(Grauer 1961, 250). As Belfield found, “Niagara Lockport’s strategy was to build first a trunk line between Lockport and Syracuse, NY, and then install branch lines from the trunk to smaller urban centers in the region – rather like a general railroad track strategy” (1981, 110). Both U.S. utilities connected their Canadian power plants to their U.S. transmission systems, treated their Canadian subsidiaries as electricity suppliers, and showed little interest in small southern Ontario manufacturers.

### ***Electrical Development Company***

Canadian utility executives showed no more loyalty than their American counterparts to Canada’s nascent industrialist’s energy needs. The only Canadian company developing hydro power at Niagara Falls similarly failed to supply industrial electricity to southwestern Ontario towns. On 29 January 1903, the Queen Victoria Niagara Falls Park Commissioners had granted the Electrical Development Co. the right to generate up to 125,000 hp (93 MW) of electricity (Davenport 1904, 169-70). Its owners, formerly obsessed with railway projects, had formed the MacKenzie syndicate, made up of William MacKenzie, a railroad man, Frederic Nicholls, an electrical engineer and head of Canadian General Electric, and Henry Mill Pellatt, a general financier-entrepreneur (Nelles 1974, 227-8; Grauer 1961, 250). They “represented what was in fact the foundation of a private utility monopoly in Toronto: the head of the traction [electric street car] business, the head of the electric light business [the Toronto Electric Light Company], and the head of the major Canadian electrical manufacturer.”<sup>6</sup> Because it had become less costly to transport electricity to factories than to move factories and supplies close to generating sites, they built their plant at Niagara too late to replicate the industrial growth of their U.S. competitors.

Copying U.S. efforts in creating local industrial parks and promoting its own market, “the Mackenzie Syndicate purchased a huge plot of land (530 acres) in the vicinity of its generating plant at Niagara Falls. It [was] expected that this land would be taken up by manufacturers using electro-chemical processes, or [by] other large power-using businesses.” (Belfield 1981, 118-9).<sup>7</sup> That strategy failed because, years before, the U.S.-owned Niagara Co. had “established a grip” upon the industrial market in Niagara, Ontario (Belfield 1981, 119) To strengthen their corporate integration, the owners of the Electrical Development Co. established two transmission subsidiaries: the Toronto & Niagara Power Co. to serve “Toronto and the intermediate territories” and, in 1906, the Niagara Falls Electrical

Transmission Co. to compete with Niagara Lockport in the safe, established markets of upstate New York (Belfield 1981, 115, 121). By 1908, they transmitted electricity from their Niagara plant to their Toronto Power Co. (in turn controlled by the Toronto Railway Co.) and thereby vertically integrated supply, transmission, and distribution (Nelles 1974, 285-6, 288).

That turn of events was not what Ontario government officials had hoped for; they had expected private owners to use Niagara electricity to help implant new industries and modernize the emergent small manufacturers in southern Ontario. Privatizing water power licences had failed as an indigenous industrial development strategy: private owners were simply uninterested in, even opposed to, the wishes of smaller Ontario manufacturers. Private utility owners were preoccupied with the more lucrative industrial markets in Toronto, Buffalo, and Syracuse.

### ***Reversal of Privatization***

Ontario’s small manufacturers wanted no additional Niagara power exported to Buffalo; they wanted it transmitted to Berlin (now Kitchener). During the first years of the twentieth century, electricity generated on the Canadian side of the Falls was Canadian only by virtue of geography; as Nelles points out, commercially and practically it belonged to American manufacturers (1974, 324). By 1910, 64% of the power generation was committed for export.<sup>8</sup> Ontario’s small business people became aware of that after the fact; as Nelles writes: “It was not until Ontario businessmen took envious notice of the industrial revolution brought by cheap electricity across the Niagara River in the state of New York that they discovered that their Niagara waterpower had been gobbled up by Americans” (35).

Earlier, in 1903, the threat of industrial stagnation had become very real for southwestern Ontario. Small manufacturers started a public power movement whose aims were clear: they did not want regulated power for profit, they wanted power at cost; and they did not want a private urban power monopoly running the hinterland; they wanted their own co-operative utility supplying their communities and industries. To realize their goals, they called for a public power company to co-ordinate both community and corporate goals. Members of the public power movement envisaged the following steps: negotiating contracts with the private power suppliers, raising capital for public transmission lines and plants, and reversing the privatization of Niagara Falls.

Small-town manufacturers met not only among themselves but also with key politicians and the public as early as 1902 with the aim of forming the Ontario Power Commission as their progressive utility. For them, bringing progress to towns and factories meant receiving electrical power from municipal circuit plants rather than from coal-fired steam plants and running electrically-powered equipment rather than steam-powered machinery. At the Waterloo Board of Trade meeting on 11 February 1902, E.W.B Snider suggested that if the members of the board of trade banded together to create an attractive, co-operative market for Niagara power, the community of Waterloo “could offer cheap power to manufacturers that would greatly assist [the community’s] further progress.” The co-operative utility would help bring a power line from the plants at Niagara Falls to prevent the scattered towns of southwestern Ontario from being left behind (Nelles 1974, 237). One year later, on 17 February 1903, at a meeting in the Berlin YMCA, Snider recommended to 67 delegates from the main towns and cities in the region “that the municipalities should build a transmission system only, purchasing their power from one of the existing generating plants at Niagara,” which at \$8 plus transmission, would cost \$15 per hp per year at municipal boundaries (242). During the same month, he led a group of twelve men to meet Ontario Premier G.W. Ross and “begged the province either to distribute hydro-electricity itself or permit the municipalities to do it themselves” (244). He objected to the formation of a monopoly of Niagara water power and warned that a lack of cheap power would de-industrialize southwestern Ontario. Ross found their arguments persuasive, and the subsequent provincial Act to Provide for the Construction of Municipal Power Works and the Transmission, Distribution and Supply of Electrical and Other Power and Energy permitted the creation of the Ontario Power Commission (245). On 12 August 1903, at a general meeting of the interested municipalities and manufacturers in the Toronto City Hall, Snider, P.W. Ellis, a Toronto wholesale jeweler, W.F. Cockshutt, a farm implement manufacturer from Brantford, and Adam Beck, factory owner, mayor of London and Conservative MPP, were selected commissioners (245-6). Beck took over the leadership of the Ontario Power Commission in 1904.

Faced with continuing opposition from the Toronto Syndicate and its Electrical Development Company, Snider headed a commission of inquiry and filed his report in March 1906. The Snider Commission recommended that, since small southwestern Ontario towns could not afford to build a generating station of their own at Niagara, they should propose (because the Power Act allowed the Com-

mission to proceed with its own transmission network) to buy and distribute electricity “at cost” by means of a municipal co-operative that would build and operate the transmission system linking the major towns with Niagara (Nelles 1974, 263). The Commission signed, first, a supply contract with the American-owned Ontario Power Company on 21 March 1908, and then a transmission contract on 13 August 1908 with municipalities in the southwest (237-8).<sup>9</sup> On 11 October 1910, with great fanfare in Berlin, the first “switching on” ceremony took place (231). In this way, Ontario Power commissioners helped bridge the infrastructural gap and thereby belatedly remedied the failure of private enterprise to supply industrial energy to southern Ontario’s producers. This new supply of hydro-electric power allowed manufacturers with an interest in developing Ontario to use more sophisticated machinery in their small factories.

Until that point, private power companies built their Canadian plants for electricity export to U.S. industries. With the public power movement gaining strength, such continentalism in energy integration was temporarily stymied. Southern Ontario manufacturers resisted electricity exports because they needed electricity to replace their steam-powered technology with electrical machinery. In this way, they initiated the reversal of U.S. ownership of power utilities in Ontario. Resistance to U.S. ownership in the hydro sector, however, did not extend to other industrial sectors, and public power continued to serve branch plant expansions and foreign-directed resource processing; however, the uncertainties of foreign-directed economic development caused major co-ordination problems for the Ontario Power Commission. It became evident that the changing electricity needs of foreign industry were difficult to anticipate.

### Predicting Power Use for Unpredictable Firms

What tends to go wrong when owners in the industrial market limit the state’s ability as a producer of electricity to plan for the future? The Ontario Power Commission expanded its infrastructure to serve small manufacturers, U.S. branch plants, and the export-oriented natural resource-based industries in Ontario, and its attempt to serve a varied customer base contributed to severe planning difficulties, including the over-construction of the hydroelectric infrastructure.<sup>10</sup> The publicly-owned Power Commission was faced with demands from manufacturers that electricity be turned on for branch plants and turned off for consumption in small towns.

In order to supply municipalities and industries, which increasingly demanded benefits from the cheaper public “power at cost,” rather than the more expensive private “power at profit,” the Power Commission initially signed private supply contracts and subsequently bought power plants and power companies. The commission’s first purchase in 1914 was the Big Chute plant (4 MW), built in 1909, on the Severn River (Fram 1980, 31). By 1917, it had integrated into its system the Ontario Power Company’s plant at Niagara Falls, Ontario, built in 1905 to supply industries in Buffalo, NY (32). By 1920, in the Thunder Bay service area, the Commission had added the Cameron Falls development on the Nipigon River to serve pulp and paper companies and to supply the twin cities of Port Arthur and Fort William (now Thunder Bay). In 1921, the public utility officially inaugurated its Queenston-Chippawa plant, at the time hailed as the largest in the world (Denison 1960, 131). And by 1922, the Commission had negotiated to purchase the Toronto syndicate’s Toronto Power Co. which included the Electrical Power Company’s plant at Niagara Falls. It had taken thirty-five years to reverse the privatization of hydro development at the falls.

Before long, the Power Commission faced accusations of having built surplus capacity and of having overestimated industrial demand. The 1925 report of a hydroelectric inquiry commission, known as the Gregory Commission, revealed that by October 1921, Chief Engineer Gaby’s “estimates of a demand for from 25,000 [19 MW] to 30,000 h.p. [22 MW] were far from reached” (Gregory 1925, 31). On the one hand, the Ontario Power commissioners tried to meet resource company requests; on the other hand, their industrial power consumption estimates were unreliable and made planning power plant capacity problematic. In one instance, when the Commission’s chair was accused of overbuilding the system, he deflected blame to the Ontario government’s failure to make a “binding contract with the Carrick interest,” also known as the “the old Tory Timber Ring,” which included the former mayor of Port Arthur.<sup>11</sup> The Power Commission generated a surplus capacity of “10,000 to 15,000 horsepower [8 to 11 MW],” whereas the Carrick interests had not honoured their request for electricity (Gregory 1925, 31).

Large transnational corporations requested similarly inflated energy demands from the Commission, as in the case of the Goodyear Tire & Rubber Company of Canada. Goodyear’s manager, C.H. Carlisle, was one of 10 representatives of the Canadian Manufacturers’ Association who, together with four representatives of the Hydro-Electric Commission, attended a meeting in Toronto on Tuesday, 4 May 1920. The key advocates for the interests

of large industrial power consumers were Carlisle and J.G. Perrin, manager of the Willys-Oberland Company. Sir Adam Beck, chair of the Hydro-Electric Power Commission of Ontario, defended the commission’s approach to hydro planning and to the distribution of electricity.

Supporting Perrin’s contention that industry should get priority access to “power at cost” instead of wasting it by supplying small Ontario towns, Carlisle demanded a larger allocation of power for Goodyear (Beck 1920, 4-6):

Our present plant is one twelfth of the plant we planned for in New Toronto, our Company is employing about three thousand people, and this new development will call for about six thousand five hundred people. I have been informed that we can get no increase of power. When I located in New Toronto, I took it up with some of your representatives and was assured of continuous power and plenty of power. We have made an investment at the present time of \$6,842,000. The additions mean two and a half million dollars more, so we have quite an investment. In planning this plant we made no provision for space for [sic] steam plant... *We will need by January 1st, [1921], 6500 H.P. and we get a promise of 2300. That is one reason that I think we should first see that the manufacturing interests that employ the people of this Province and the concerns that are practically the backbone of commerce should be first considered, and their future extensions be provided for* (my emphasis) (Beck 1920, 5).

Perrin thought it a waste that small communities (he did not even mention the small manufacturers in them) should have electric lighting and that, instead, more reliable power should be supplied to his factory and to Goodyear. Perrin observed that “a short time ago I had occasion to pass through a number of hamlets and small villages in the Province. Now it is very nice to see them all lighted up and all that but it seems a waste and this power should be devoted to industrial [transmission] lines” (Hydro-Electric Power Commission 1920, 7-8).

Responding to his fellow manufacturers, Beck explained the difference in the obligations of a co-operative public utility and a private utility in supplying electricity: “You [large-scale manufacturers] are getting power at cost, and I think we have [a]lways made an equitable adjustment as between the manufacturer, street lighting service, and the individual householder. You say the manufacturer should have some preference, but as I have already explained, this is not possible. It is a municipal affair, and we cannot say

as a private company might say that we will not take on this town or that village, because the manufacturers pay us a better price and it is cheaper and more convenient to render one bill instead of 10,000 bills” (Hydro-Electric Power Commission 1920, 21).

Since the power commission could not supply the requested power, and the Goodyear management did not want to wait for the industrial supply that would come on line from the Queenston plant, Goodyear signed a contract with the Toronto Power Company (also called the Electrical Development Company) which sold power for profit rather than at cost (Carlisle 1922b, 4). As indicated in Goodyear memoranda, the cost of power under the Hydro Commission contract was \$22.75 per HP per year and that of the Toronto Power Co. was more than triple the rate at \$72.51 (4). Goodyear signed a contract in 1920, and “under its terms, the Toronto Power Co. agreed to supply and hold in reserve for the Goodyear Company, 3000 HP (“Firm Power”) during 24 hours of every day for a period of five years from 1st January, 1921, to 31st December, 1925” (4). Just two months later, Goodyear no longer needed the power. In the company’s defence, Carlisle explained to the commission, “As you know, the American Goodyear became involved with losses of upwards of \$70,000,000.00 [70 million], causing us a loss through the contracts we had with them for foreign business of somewhat over \$5,000,000.00 [5 million]; this loss made our company insolvent, and it was necessary to re-finance and reorganize” (Carlisle 1922a, 1).

Carlisle argued that for these reasons, “the Goodyear Company was in no position to take the additional power specified in the contract with the Toronto Power Company” (Carlisle 1922b, 2). The value of the legal and collectible contract, a sum of \$360,000 was scheduled as one of the assets of the Toronto Power Company, which the Hydro-Electric Power Commission was negotiating to purchase (Carlisle 1922a, 2). The compromise acceptable to the Goodyear Co. was to suspend its contract with the Toronto Power Co. and obtain a power rate of \$29.27 per hp per year from 1921 to 1926 (reduced from \$72.51 per hp per year) from the commission (Carlisle 1922b, 4). Such events demonstrate the serious problems that emerge when a public power company tries to meet the electricity needs of manufacturing in small towns, foreign-directed branch plants, and natural resource processing. Attempts to supply public energy for such varied paths of industrial growth often result in power surplus capacities. Schemes to export such surplus electricity became a contentious issue during the second decade of the twentieth century when shortages developed.

### Repatriation Crisis: Power Exported is Power Lost

What went wrong with electricity exports to the United States? Although the federal government has jurisdiction over exports, its regulation of electricity exports varied. The government had instituted controls in 1907 but allowed them to slacken prior to the First World War. That led to what is known as the repatriation crisis of 1917 when Canada was unable to reclaim electricity exports from the U.S. to supply electricity for her own production (Grauer 1961).

The federal government’s earliest position appeared to have been that electricity should be treated as any other good; in other words, it could be exported at the discretion of the electric utility that owned the power. Then unexpectedly, Canadian subsidiaries signed long-term export contracts – of up to a century – with their U.S. parent utilities. Dal Grauer, a political economist and former professor of Social Science in Toronto, reviewed Ontario’s export history in “Export of Electricity from Canada,” an essay he published while he was chair of the B.C. Electric Company (table 2). In that essay, he indicates that “the Ontario Power Co. in 1904 envisaged the export of 45,000 horsepower of electrical energy to the U.S. for a period of 99 years.” The threat of Canadian water power being absorbed by the U.S. led to the federal government in 1907 to pass An Act to Regulate the Exportation of Electric Power and Certain Liquids and Gases. Grauer reasons that this Act essentially restricted exports out of concern that Niagara Falls power and other sites would not be available for future Canadian needs. Now, exports of electricity, as well as international power lines, came under federal jurisdiction. Every export licence needed a government permit; electricity diversion through export was not permanent; and licences were revocable when required by purchasers in Canada after approval by the governor-in-council (the cabinet) (Grauer 1961, 251).<sup>12</sup>

U.S. attempts to divert more Niagara electricity from the Canadian side of the international boundary led the federal government of Sir Wilfrid Laurier to establish the National Commission of Conservation under the Minister of the Interior, Sir Clifford Sifton, in 1909. His commission reported that should water power be exported to the U.S., the vested interests that it would create there would prevent its subsequent withdrawal to meet future needs of Canadian industries (Grauer 1961, 251 n4). U.S. companies in Canada now had to obtain an export licence to send electricity back to their home markets. The New York State Public Service Commission, however, showed little respect

Table 2. Annual Quantity of Electricity Exported to the United States, 1908-20 (GW.h)

Year	From Ontario	From Quebec	From other Provinces	Total Exports
1908	113			113
1909	358		1	359
1910	474		1	475
1911	536		2	538
1912	536		2	538
1913	656		6	662
1914	746		27	773
1915	605	29	22	656
1916	647	359	16	1,022
1917	779	429	17	1,225
1918	730	381	16	1,127
1919	731	396	16	1,143
1920	643	283	24	950

Sources: 1908-10, Canada, Department of Inland Revenue, Publications in Dominion Bureau of Statistics Library; 1911-20, Canada Year Book (cited by Dal Grauer, 1961:257).

for Canadian restrictions on export. The commission wrote in 1914 that when “affecting so important a subject as the means of continuing great industries [the] time has long since passed when governments proceed ruthlessly from pure national rashness or anger to destroy the settled accepted commercial relations” (Grauer 1961, 255). This U.S. position raised a storm in Ottawa, and the Canadian Privy Council sent His Majesty’s Ambassador in Washington to the U.S. government with a carefully worded minute outlining Canada’s energy export laws and regulations, including that export licences are revocable, valid for only one year at a time, and not permanently binding in case of exports to U.S. industry (255). Nevertheless, as shown in table 2, exports had risen steadily until 1914, when they levelled off in 1915-16 (the two years after the protest), but returned to higher levels again in 1917-19. “Having allowed export agreements to be made...they were unable to repatriate firm power [once] exported” (251). Canadian administration, both at the provincial and federal levels, was found to be wanting (251).

The repatriation crisis intensified when Canada needed electricity for war production in 1917-18. During the war, the federal government’s inability to enforce repatriation of Canadian electricity through legislation became clear. The Power Comptroller, Henry Dayton, found that export commitments and industrial demands had absorbed existing capacity. Grauer maintains that “the real explosion [of anti-export sentiment], if it can be described as such, was heard in 1917” (256). It occurred at a time when Canadians most needed electricity, when so much of the

power in the Niagara area was used for war manufacturing that power needed to be rationed by the power comptroller. When the Imperial Munitions Board consulted the Niagara Falls hydroelectricity producers, it “found that export commitments, together with the already inflated demands of industrial and other consumers in Canada, had absorbed practically all of their existing capacity” (256). Adam Beck described the situation in the following way: “Industries [in Canada] either had their power cut off, or reduced to a point which entailed great financial losses; in many cases almost complete paralysis of business was experienced. At this period the Hydro Electric Power Commission was supplying power for the operation of over 360 plants manufacturing munitions and war supplies, and these plants were using over 80% of the entire power supply in the Niagara district” (Murray 1922, 34). In a letter to T.J. Hannigan and S.R. Clement he added, “One can hardly find fault with our neighbours to the south for desiring to have such a valuable commodity to aid in building up their industries and communities, but it is scarcely to be expected that Ontario citizens can be induced to part with a commodity so essential to their own necessities and welfare” (Beck 1925, 3).

The 1917-18 power shortage in Canada made clear to utility executives, industrialists, and residential customers the near impossibility of repatriating power. Leading politicians all “spoke to much the same effect, namely, *that Canada should never again export firm power*” (Grauer 1961, 260; my emphasis). In 1929, Prime Minister W.L. Mackenzie King summarized rethinking about the use of

hydroelectricity in Canada since the turn of the century: “Public opinion in Canada...is insistent that such power... shall be utilized within the Dominion to stimulate Canadian industry and develop the natural resources” (Grauer 1961, 261-2). The experience of the Niagara Falls power export trap strengthened the perception of electricity as Canadian industrial energy; however, because of inter-provincial and federal provincial conflicts, that experience did not lead to a comprehensive national energy or industrial policy.

### Conclusion

At the outset I proposed that, when private hydro owners who have been allocated public water rights create conditions of regional industrial backwardness because they find exports more profitable, then the state (at the provincial level) as holder of public rights (and pressured by social movements) has a mandate to intervene in order to create (local) conditions for industrial development by establishing some control over exports at the federal level and by providing electricity inputs at the provincial level to enhance profitable manufacturing. Once the state has become an electricity producer, however, it is limited in its planning ability by owners in the industrial market itself and by the fact that provinces tend to produce periodic surpluses. If the state at the federal level continues to treat such temporary surpluses of electricity primarily an export commodity, such export may pose a risk in times of shortages and prove not to be in the national interest.

The historical findings in this article demonstrated that after Ontario privatized the public (Crown) water power rights for developing hydroelectric power on the assumption that these initiatives would modernize Ontario industry on the Canadian side of the binational Niagara Falls, U.S. speculators on Canadian water power rights stalled power development on the Canadian side. Once power plants were installed, both U.S. and Canadian power companies favoured exporting Canadian electricity to the more profitable U.S. industrial markets, leaving Ontario industries behind. In order to allow small-town manufacturers in southern Ontario to modernize their plants by replacing their steam powered equipment with electrically powered machinery, the Ontario power movement, as well as the provincial and federal governments, analyzed and resolved this problem by reversing the earlier privatization by gradually repatriating the electricity generated at the Canadian Falls, first through contracts, later through utility acquisition, for transportation over the cooperatively established public Ontario electricity

transmission network. Providing public power for the industrial market does have its limits when decision makers try to plan and build for the electricity needs of manufacturing in small towns, less predictable foreign-directed branch plants (such as the Goodyear case), and natural resource processing (such as for the Garrick interests). As shown, attempts to supply public energy for such varied unpredictable paths of industrial growth often result in temporary power surplus capacities. Schemes to export such surplus electricity became a risky and contentious issue between Canada and the U.S. during the First World War when industrial shortages developed in Canada.

Although, the historical findings in this article provide support for these propositions as demonstrated, they also can be used to evaluate and develop further the conceptions by other authors who analyzed the beginnings of hydro development from the 1890s to 1940s. For instance, T.C. Keefer and John Dales examined hydro-related industrial development. In 1899, Keefer was optimistic about how the development of electricity at Niagara Falls would bring a new energy-invigorated and value-added industrialization to Ontario. Giving the value-added manufacture of spruce as an example, he argued that “in the future Canada’s own ‘white coal’ of falling water would deliver the Dominion from its “hewer of wood” servitude to American industry and its bondage to American coal” (Keefer 1899). John Dales, based on the history of power systems in Québec from 1898 to 1940, argues that hydroelectric development constitutes a major industrializing force. He claims that the “power station succeeded the railway as the main development agency” in Canada and that diversification had been most successful where power companies had to develop their own local industrial markets (Dales 1957, 182, 184). In such situations, Dales argues, hydroelectric development has been a powerful agent in the transition to a more self-reliant diversified manufacturing sector (182). The actual hydro-related industrial development in Ontario demonstrates that both analysts were far too optimistic; some power companies at Niagara Falls were not interested or willing to foster Ontario’s industrial market, nor would the introduction of Canadian hydro at the Falls bring a transition to secondary industry that is more self-reliant and autonomous from the United States. In fact, Dales and Keefer failed to anticipate that power companies at Niagara Falls could contribute to Ontario’s industrial backwardness by exporting Ontario’s electricity to the U.S. and thereby propel municipal, provincial, and federal governments (the state) to intervene.

I have argued above that the state as holder of public rights (and pressured by social movements) has a mandate

to intervene in order to create local conditions for industrial development, however, my analysis pays insufficient attention to public support through the urban reform movements. In other words, a future examination could benefit from Doug O'wram's observations that not only the small town manufacturers who started the Ontario Power Commission, but a publicly-minded growing middle class spirit rooted in the urban reform movement fostered "a growing willingness on the part of many otherwise-conservative citizens to abandon the doctrine of laissez-faire in such areas in favour of increased municipal regulation and perhaps even public ownership" (1986, ix, 53-7). From the 1890s to 1940s, this new political will was, therefore, compatible with the dramatic expansion in the responsibilities and size of Canadian government at all levels. The middle class argued that street railways, electric power, and other essentials were being run ineffectively in the corporate rather than public interest, and "were too important to allow control to be vested in selfish or corrupt individuals who put private gain ahead of public service" (53-7). Thus, the urban utilities, such as those in Toronto became part of Ontario's privatization reversal. As the Niagara case has shown, the more interventionist state also regulated railway and power companies through commissions, such as the Ontario Power Commission, to whom business leaders applied for favourable decisions (Cruikshank 1991, 5, 201).

James Mavor, one analyst of the state's role in the Niagara Falls development, believes that public ownership was a form of socialism and stifling of industrial development (Mavor 1925); another, H. V. Nelles, argues that the public interventionist philosophy and public power movement (led by small Ontario manufacturers) behind public power "made it easier for business to establish a firm grip upon the instruments of the state. In this Hydro was not an exception, for it was run by businessmen, for businessmen, in what was always referred to as a 'businesslike manner' and functioned to promote industry" (Nelles 1974, 490). As some of the findings in this article have shown, planning for industry was also problematic. At least one former Ontario Power Commissioner, Sir Adam Beck, favoured serving small-town Ontario over the big corporate interests of Goodyear Tire. Beyond the philosophy and instrumental use of public power, Nelles identifies as a key determinant behind reclaiming public ownership to Niagara power rights and establishment of transmission infrastructure "the energy requirements of the provincial manufacturers, their fear of economic stagnation, and the metropolitan tensions of the provincial economy" that favoured electricity supply to Toronto

rather than the smaller manufacturing towns of southern Ontario (491). I share this aspect of Nelles's interpretation.

To understand more specific patterns of privatization reversal, however, by first allocating development to private and then to state enterprise, I have argued that Claus Offe's emphasis on criteria of state intervention when the provision of a service or goods is "not profitable but necessary" can also guide the analysis of governments' reversals of privatization (Offe 1972, 54). Should, for instance, a regional hydroelectric system not be profitable to an entrepreneur, yet be necessary for enhancing a region's growth, social pressures can arise for nationalization so that the government may provide the needed infrastructure. Second, the findings show that Offe's differentiation between allocative and productive state intervention, permitting a distinction between merely allocating natural resources, including water-power rights, to private developers (privatization) and directly intervening in the market to reclaim such rights and produce hydroelectricity (reversal of privatization) in order to improve or create private accumulation conditions for a variety of industries is valid (Offe 1975). Third, the findings show that his insight that the interventionist state's limited ability to plan because it may not be allowed to do so by those to whom it is supplying goods or services is relevant; the state may overbuild infrastructure (the railways, public hydro) because state planning can become uncoordinated when it tries to match the size and timing of infrastructure with industrial growth (Offe 1972, 55).

In addition, as a bi-national hydro power project, Niagara Falls provides an insightful case study that differs from other sites. Because Niagara Falls had to serve historically the tourist sector, the falls could not be drained completely for power production as Churchill Falls was in 1972. The binational nature also meant that asymmetrical power politics developed between Canada and the United States, with Canada asserting its interests during the repatriation crisis in the First World War. Nearly one century later, in August 2003, when a private sector transmission system failed in the U.S., with "blackout" repercussions in Ontario, the power failure showed the new risks inherent in power networks that straddle the Canadian and U.S. border. Since then, the provincial and federal energy policy agenda has been preoccupied by initiatives towards a national Canadian power grid to bring reliability of supply and, (by replacing polluting thermal generation with "clean" domestic hydroelectricity), to meet emission requirement under the Kyoto accord and to improve southern Ontario's air quality.

## Notes

- 1 Subsequent to the conference this paper has been published as “Ontario’s Niagara Falls — 1887-1929: Reversing the Privatization of Hydro” in the *Journal of Canadian Studies*, Volume 39, No. 3.(2005 Fall). Part of this paper has been excerpted from *Green Gold: Hydroelectric Power in Canada* (Froschauer, 1999). I would like to thank the reviewers of this article for their recommendations to broaden the theoretical discussion and for their valuable comments. Further, I would like to express my gratitude to Jane Koustas for her editorial contributions that brought this article into print.
- 2 “The Canadian Niagara Power Company was incorporated by an Act of the Legislature of the Province of Ontario in the year 1892; this act confirmed the one hundred year agreement, dated 7 April 1892, between the Canadian Niagara Power Company and the Commissioners for the Queen Victoria Niagara Falls Park (Davenport 1904, 163).
- 3 Gordon Laxer, in *Open for Business*, employs Gerschenkron’s concept of ‘late industrialization’ to explain why industrialization in Canada was delayed. I argue here, by contrast, that U.S. speculators held up development of hydro-generated electricity, a process which delayed the progress of southern Ontario manufacturers who fell behind in installing electric motor drives for their factory machinery.
- 4 Wallace Clement argues that Canada’s ruling economic interests assumed the U.S. branch plants would Canadianize, just as many earlier entrepreneur immigrants had fully integrated their businesses within the Canadian economy. However, such branch plant firms were vertically and often horizontally linked to their U.S. parent companies (1975, 79).
- 5 Belfield found that Canadian Niagara had hopes to supply the Toronto market but faced competition from the Electric Development Co (1981, 91, 111).
- 6 Nelles gives an extensive account of the syndicate’s stockwatering habits [diluting assets] of floating South American and Caribbean utilities and of the public animosity toward its electrical operations (Nelles, 1974, 228-37).
- 7 For a map of the Electric Development Company’s manufacturing sites see Davenport (1904, 171).
- 8 At that time, “the Ontario Power Company had the right to develop 180,000 h.p. Of this, it had installed 52,000 h.p. and exported 35,000 h.p. to the United States. The Electrical Development Company had the right to develop 125,000 h.p. It was then producing 42,800 h.p. and exporting 10,000 h.p. The Canadian Niagara Power Company enjoyed the right to develop 100,000 h.p. on the Canadian side. Its plants were capable of producing 46,000 h.p., all of which was being exported” (Grauer 1961, 250 n3).
- 9 Grauer indicates that ‘on April 12, 1917, all the assets in Canada of the Ontario Power Company were purchased by the Hydro-Electric Power Commission of Ontario [Ontario Power Commission]’ (Grauer 1961, 250).
- 10 The Ontario Power Commission conducted two surveys of its potential industrial customers, one in 1911 in communities north of Berlin (including Palmerston and Harriston) that were characterized by settler craft-shops and small manufactures; another in 1919-20 in towns south of Kitchener (Berlin’s new post-war name) (including Brantford and London) that revealed a mix of domestic manufacturers and U.S. branch plant industries (Hydro-Electric Power Commission 1911; Beck 1919).
- 11 Nelles describes the members and influence of the Timber Ring thus: ‘Between 1911 and 1920 no one cut anything in the northwestern part of the province without first doing business with Col. J.A. Little or some member of what came to be known as “the old Tory Timber Ring.” The colonel’s associates were Gen. Don Hogarth, provincial organizer of the Conservative party, banker, mining promoter, and timber speculator; W.H. Russel, a young Detroit lawyer turned pulpwood exporter; and J.J. Carrick, a former mayor of Port Arthur, Conservative MP, MPP, real estate promoter, and mining speculator’ (Nelles 1974, 376-7).
- 12 An alternative source for the history of federal regulation by the National Energy Board can be found in “Regulations of Electricity Exports: Report of an Inquiry By a Panel of the Energy Board Following Hearing in November and December 1986” (Canada 1987, 5-6).

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# *Issues of Cross Border Management of the Fraser Lowlands Eco-Region*

Patrick Buckley and John Belec

## Introduction

In 1999, Sumas Energy 2, Inc. (SE2), a wholly owned subsidiary of National Energy Systems Co. (NESCO) of Kirkland Washington, proposed to build a 660 megawatt natural gas fired electric generator facility in Sumas, Washington. Sumas is a small economically depressed town (population 960) on the Canadian border located in Whatcom County. SE1, as described later, is a much smaller co-generation plant that was completed in 1990. SE2 was sited in an open area a few hundred yards west of the city hall, which itself was located on the city's declining retail thoroughfare. The plant's site was also nearly an equal distance south of the Canadian border, about a half mile. Hard pressed for employment and income, largely because of the collapse of cross-border shopping in the early 1990s, for years Sumas had been searching for a niche in the emerging continental NAFTA economy to rescue it from its boom-bust cycles and peripheral U.S. location. The proposal by an American power giant to use Albertan natural gas that flowed just across the border from Sumas to produce relatively clean electricity for shipment to growing southern markets (perhaps even as far south as Mexico) seemed like a poster child for how the new continental economy should work. The project would rely on linking to the Canadian grid, whose cables were a convenient six miles north, and initially had a tentative agreement to buy water for the plant from nitrogen contaminated wells in Abbotsford and to recycle the effluent through the Sumas sewer system that

travels back across the border into Abbotsford's treatment plant. Economic benefits looked promising on all sides. Despite the plants projection of a rather modest workforce (under 30 jobs), its tax base could go a long way to compensating for the decline in cross-border shopping.

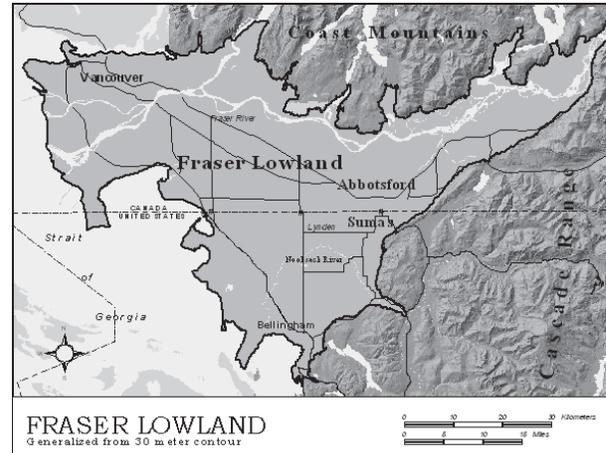
Today, five years after it was first proposed, after a cross-border grassroots environmental organization led the opposition, and the mayor of Abbotsford was turned out of office as the political structure turned from initial support to current opposition and after numerous hearings and public debate, the project is stalled at best and dead at worst. What went wrong? Or depending on your perspective, what went *right!* Was this another example of the American establishment treating Canada's front door like their back door? That is was it depositing its least desirable activities on this peripheral border, much as McGreevy (1988) suggests of the American chemical industry along the Niagara Frontier or a more recent attempt to establish a nuclear waste depository on the west Texas-Mexican border (Rodriguez and Hagan 2001)? Or is this merely a transborder example of NIMBYism—Let California build its own power plants? Or is this a signal of the stalling of economic integration between the small Washington border communities in Whatcom County and their much larger British Columbia counterparts? Or is this the start of a true local, perhaps even grassroots, input into cross border regional affairs, i.e. the beginning of a true micro-scale Cross Border Region (CBR)? In sum, is

this local border operating more as a barrier focused on national themes and control, or is it a contact point where the local choice will inform and influence the national? The public events of this situation are fairly clear to date; it is the private motivations and their long term impacts that have yet to be discovered. This paper seeks to layout a framework for investigating these themes by drawing on the new interdisciplinary work into the study of CBRs as they are emerging around the world. Therefore, it will do this by engaging the hypotheses underlying our growing understanding of CBRs, how they emerged, what they are, and how they operate, while relying on the public record of events surrounding SE2. Basically, we wish to ask: (1) how does the Abbotsford-Sumas (A-S) relationship fit into the emerging discussion on CBRs? and (2) what questions should be asked or areas studied in order to understand the trajectory of this possible CBR?

This paper is organized into four parts. The context of this study is presented in the first section, with an overview and timeline of the SE2 “saga.” We provide a geographic and historic background to the region and then an outline of events that have unfolded concerning SE2. This is followed with a review of the discussion of CBRs in the post cold war era with a specific focus on how it illuminates the events unfolding in the A-S region. Third, we explore the discourse that has developed around the concept of Cascadia at a meso scale and then relate A-S to this process at a micro scale. One key factor in this discussion concerning an emerging Cascadia is the role of the economy and the environment in defining the governance of this region: what it is, what it could or should be. In our concluding section we evaluate the usefulness of using the lens of a CBR to understand and investigate the A-S relationship and the controversy over SE2 and to set the stage to move from merely a reporting of the public record to a more in-depth study of the micro-level networks that will affect the future of this area, as a potentially emerging CBR.

### SE2 and Abbotsford-Sumas CBR?

This analysis is set in the Fraser Lowland borderland region and focuses on events that occurred in the border communities of Abbotsford and Sumas. The Fraser Lowland, a roughly triangular shaped wedge of land bordered on the North by the Coast Mountains, on the East and South by the Cascade mountains inland and the Chuckanut Plateau, and finally on the West by the Strait of Georgia. The Fraser River and to a lesser degree the Nooksack River have been instrumental in filling the geologic trough underlying this



lowland, leaving an area of moderate elevation walled in by mountains, plateau, and ocean.

The Lowland forms nearly an equilateral triangle with one side paralleling the coast with Vancouver, British Columbia at the upper northern corner and Bellingham, Washington State at the lower southern corner. As the triangle tapers inland, Abbotsford-Sumas is near but not quite at the third corner of the triangle. The international border runs from the coast inland past the Abbotsford-Sumas divide and further up the Fraser Valley, splitting the Lowland into nearly equal American (western Whatcom County) and Canadian (lower British Columbia mainland) parts. As an ecological region, the Lowland is unified and has been under separate political management only for the past century and a half. Travel across this border has varied from a frontier heritage, which lasted well into the twentieth century with inland Canadian students traveling daily across adjacent farm fields to nearby American schools, and then, over time crossing has become ever more controlled in recent years, first in the name of stemming drugs and illegal aliens and now, in the words of one border guard, to prevent terrorists from, “taking out Cincinnati.”

Historically, Sumas grew as a border settlement with an equally small Canadian twin, Huntingdon, British Columbia. In fact, despite the slow but steady annexation of surrounding places finally to create the City of Abbotsford, the border crossing is still identified as Huntingdon. As the twin towns initially were platted out, each blended into the other and helped create the economies of scale to help supply one another’s needs. However, the gradual tightening of the border and, even more so, the coming of the Canadian transcontinental railroad several miles north of the border established the town of Abbotsford as the local hub to Canadian activity, leading to the decline of Huntingdon and anemic growth of Sumas.

The post-war boom of the lower mainland of British Columbia (as the Canadian portion of the Fraser Lowland is commonly known), brought thousands of new inhabitants into the area that became the modern city of Abbotsford and swelled the population from approximately 40,000 in 1950 to 110,000 in 2000, with a wider metropolitan population of 150,000. Clearly, much more than a satellite to the much bigger Vancouver, 30 miles to the west, Abbotsford became a force to be reckoned with in its own right.

Sumas, however, served as little more than a combination isolated small town at the farthest reaches of the American economy and, depending on the exchange rate, a cross border retail center for gasoline, cheese, butter, and milk to the Canadians. When times were good, as in the early 1990s, residents complained about the inability even to cross their main street because of traffic backups of Canadians trying to get their American-bought goods back across the border. But, the decline of the Canadian dollar in the late 1990s has left Sumas with empty storefronts and closed gas stations.

In an attempt to overcome this boom-bust cycle, Sumas tried turning to industry and electrical energy production. However, given its location on the American periphery, 12 miles from the nearest major state highway (the Guide Meridian) and even further to Interstate 95, its most likely scenario for success in this location would be through some type of link with Canada, whose rail yards back-up practically into Sumas and whose Trans-Canada Highway was only a short two miles north. Enumerating its advantages, Sumas noted that Canadian natural gas from Alberta passed as near to the town as the highway. Second, a shared cross border aquifer (Sumas-Abbotsford Aquifer) provided ample water for industrial use, even if some of it suffered from nitrogen contamination, most likely a result of poor agricultural practices both north and south of the border. Third, the Canadian power grid, which thanks to NAFTA now serves as conduit not only for the U.S. and Canadian markets but also for Mexico, was just north of the border. Finally, ever rising demand for power in the U.S., especially in California, seemed to assure a market for whatever could be produced. After the successful implementation of a 120 megawatt co-generation plant that provided not only power for the American market but also a kiln operation to cure Canadian wood, a second much larger plant was proposed in 1999.

As Sumas searched desperately to find some long-term economic traction, Abbotsford began to feel the fallout of its own success. Located on the inland reaches of the Fraser Valley, the air shed around Abbotsford began to

feel the stress of ever growing numbers, especially in a region known for heavy automobile use, at least by Canadian standards. This is exacerbated by intensive agriculture which generates high amounts of ammonia. Asthma rates for children in the Upper Fraser Valley are among the highest in Canada. However, given Abbotsford's appetite for continued explosive growth into the future, it needs to defend its right to exploit whatever part of the air shed can be further used. That resulted in the situation as it now stands, an elephant and a mouse fighting over a very fragile and stressed air shed, where each feels the need and the right to add considerably more pollution in the name of progress.

Table 1 (below) provides a timeline of events involving SE2 and also indicates the scale at which the action occurred. Prior to the current SE2 controversy, NESCO had successfully built SE1, a small 120mw co-generation natural gas fired power plant. Permission for this plant because of its small size occurred at the local city level and has proven to be highly successful and profitable to NESCO, Sumas, and the Canadian firm using the surplus heat to kiln dry wood. However, it too faced some local opposition, but not enough to prevent its completion.

In 1999 initial local government reaction to NESCO's plan for the much larger SE2 660mw dual fired natural gas and diesel plant was highly favorable in both Sumas and Abbotsford. Both cities expected to reap financial rewards from the project; however, the majority of the benefits would go to Sumas. Thus, the proponents were caught a bit off-guard by the size and sudden strength of grassroots opposition. That opposition was based on the impact that emissions would have on the already stressed air-shed. Several of the most visible opponents were GASP (Generations Affected by Senseless Power), and the SE2 Action Group allied with ADBA (Abbotsford Downtown Business Association). Two measures are available to judge the level of this local opposition, the first is a newspaper article and letters to the editor study by a research team of Canadian and American students (Forward, et al. 2004).<sup>1</sup> They demonstrated that most interest and concern about the plant was highly local. Even the nearby cities of Bellingham and Vancouver showed considerably less coverage of, and concern about, the controversy than the Abbotsford Times and Lynden Tribune.<sup>2</sup> Second, opposition was proportionately and numerically much greater on the Canadian side than the American side of the border. Nevertheless, opponents outnumbered proponents on both sides of the border. Greater Canadian concern and opposition might well be expected given the fact they shared the environmental impacts but received very limited economic bene-

ISSUES OF CROSS BORDER MANAGEMENT OF THE FRASER LOWLANDS ECO-REGION

Table 1. SE2 Timeline

Scale	Year	Month	Event
Micro	1990		NESCO receives permits from City of Sumas and constructs SE1 a 120mw co-generation power plant
Meso	1999	January	NESCO files initial SE2 plans to Energy Facility Site Evaluation Council (EFSEC) requesting permits for a dual natural gas and diesel fueled 660mw power plant.
Micro	2000	n.d.	GASP (Generations Affected by Senseless Power) starts grassroots campaign in opposition to SE2 in U.S.
Micro		n.d.	SE2 Action Group & ADBA (Abbotsford Downtown Business Association) also begins grassroots effort opposing SE2 in Canada
Meso	2001	February	EFSEC unanimously rejects initial plan in 11-0 vote
Meso		June	NESCO submits a revised SE2 plan for a natural gas only power plant
Meso		August	British Columbia granted intervener status on SE2 hearings before EFSEC
Meso	2002	May	EPSEC approves SE2 permits by unanimous vote of 12-0
Meso		August	Governor Locke, after hearings and phone discussions with British Columbia, gives final approval to SE2 permits
Macro		October	British Columbia and Environment Canada challenge Environmental Protection Agency (EPA) permits for SE2
Macro		October	British Columbia request National Energy Board (NEB) to “go beyond its normal jurisdiction and consider environmental effects when reviewing the SE2 application.”
Micro		November	New mayor of Abbotsford elected, leader in opposition to SE2
Macro		December	NEB declares that the review for connection of SE2 to the power grid can also include the environmental effects of the plant itself
Macro	2003	March	EPA rejects British Columbia and Environment Canada’s challenge
		December	NEB rules that connection for SE2 to the power grid is not environmentally damaging
Macro	2004	March	NEB rejects request for SE2 permit to connect to Canadian power grid citing local environmental impacts of plant itself
Macro		July	NESCO appeals NEB decision in Canadian court NEB agrees to hear the appeal
Meso		July	Whatcom County re-writes transmission line regulations to prevent SE2 from using existing power line right-of-ways to connect to the grid via Whatcom County

fits. A second measure of support and opposition or both is recorded in local city elections which served as plebiscites on local political leadership. In the case of Sumas the local administration had no trouble winning re-election. However, in Abbotsford, not only did the mayor fail to remain in office, but his replacement Mary Reeves was a vocal opponent of SE2 and a member of ADBA. These results taken together show wide and deep opposition to SE2 in Abbotsford, but perhaps some support inside the city limits of Sumas, with opposition in the surrounding rural American region covered by the Lynden Tribune. One last point to stress here is that more than one opposition organization existed, GASP, which appears to be more American, and SE2 Action Group/ADBA which is clearly Canadian.

A brief summary of the primary events concerning SE2 as outlined in table 1 are provided here. Given the size of the new power plant, Washington State level approval was required, unlike for SE1. In fact, this is a two-step procedure. First Washington State's Energy Facility Site Evaluation Council (EFSEC) holds hearings and then recommends to the governor either to approve or not to approve all State level permits; then the governor makes the final decision. Therefore, NESCO applied to EFSEC for such permits in 1999. Part of this process also required the filing of an environmental impact statement (EIS) with region 10 of the federal Environmental Protection Agency (EPA). The initial SE2 proposal included a back-up diesel generator for times when natural gas might be in short supply (for example during cold snaps in winter). This proposal was soundly rejected (11-0) in February of 2001 and withdrawn shortly after by NESCO. A revised design was then submitted with only natural gas as the fuel, and this plan was eventually approved by EFSEC and subsequently by Governor Gary Locke in August of 2002. A key event during hearings on this second submittal was the granting of intervener status to the British Columbia Provincial government. That was an admission by Washington State that an international player from across the border should have a seat at the table along with State based entities, an important first. However, despite the fact that Governor Locke telephoned British Columbia political leaders for their views after EFSEC approved SE2, it appears that project approval was based primarily on internal Sumas and Washington State issues.

After Governor Locke's approval of the project, Canadians started casting about for any higher level federal body to stop SE2. First was an appeal made by British Columbia along with Environment Canada to the U.S. EPA appeals board, primarily on somewhat obscure tech-

nical grounds, to deny the EIS. This was rather quickly and soundly rejected. Second, British Columbia in a last ditch effort turned to the National Energy Board of Canada (NEB). The role of the NEB was to issue the permit for connection of SE2 onto the grid in Abbotsford. Without such a connection, it is questionable if the plant would ever be viable. Traditionally, NEB limits its review to the direct impacts of power lines themselves. However, in the case of SE2, at the urging of British Columbia, NEB agreed in late 2002 to look at both the impact of the power line and of the power plant to supply it, even though the power plant was in the U.S. To date that has proven to be critical. Suddenly the Canadians put themselves in the position to dictate environmental, if not economic, policy to their neighbor. After announcing in December of 2003 that the power line itself had an acceptable impact, in March 2004 NEB rejected NESCO's application on the grounds that the power plant itself would have adverse impacts on the local region in Canada.

Parallel to this move in Canada, legislation was moving through the Whatcom County Council to control the size and location of high voltage power lines. These regulations, approved in late July 2004, are seen as crucial to preventing a supplier from manipulating existing permits to ship large quantities of power in multiple, parallel lower voltage lines. Although these regulations were a result of long standing opposition to new high voltage lines in Whatcom County, including a successful 1990 referendum issue, for the moment they essentially force SE2 to link to the Canadian grid in Abbotsford, where similar restrictions are absent.

At the time of writing, the final outcome of the SE2 application has yet to be determined. The complex and lengthy time line, combined with a number of competing interests (national and economic security and national and local identity, to name only the more prominent), has made this an increasingly difficult story for residents to follow. In the crisis of governance that has ensued, many have been forced to consider their "region" anew. To what extent is a cross border region emerging in the Fraser Lowland? We approach this issue in the next section by first reviewing aspects of the CBR literature.

### **The Cross Border Region**

According to Perkmann and Sum, the era of the Cross Border Region (CBR) has arrived, where the CBR is defined to be "a territorial unit that comprises contiguous sub-national units ..." (Perkmann and Sum 2002:3). With the end of the cold war and the rise of globalized capital-

ism, the national scale as the “natural” unit for planning, policy and decision making has changed as the supra-national organization and the CBR at opposite ends of the spectrum have begun to supplement and also complement it (Leresche and Saez 2002). As a result, there has been a “relativization of scale” (Jessop 2002:25). Economic, political, social, and even environmental relations are no longer controlled solely at the national scale; instead a proliferation of scales has emerged ranging from the global to the local. Especially in the economic realm, the post-WWII era factors that led to the primacy of the national scale for economic governance have been replaced with what Jessop (2002) identifies as “the knowledge based economy,” which is causing governance to migrate to the scale most appropriate to the issues. Leresche and Saez (2002) describe a multiplicity of overlapping scales with variable geometry. Rather than decisions being made based on a “topocratic” logic (a logic based on an authority in a single defined stable territory, i.e. nation-state), a multiterritorial “adhocratic” logic has emerged, where “adhocratic logics are based on reference territories of variable geometry, with vague and multiple boundaries that change according to scale on which problems are treated” (Leresche and Saez 2002:95).

Operating in parallel with these geographic logics are institutional logics. On the one hand is the affiliation logic related to identity with the traditional political territory and, in the case of Western nations, based on a democratic logic. On the other hand, there is the more efficiency based network or functional logic which can emerge from and help create the CBR or both. What then results is “multilevel governance and problem solving.” Under this new rubric the old national scale is not simply replaced or usurped by a new scale but instead coexists with a variety of new scales that engulf, overlap, or are contained in all or part by the old. In a similar fashion, the new functional logic augments the affiliation logic in issues that can be “multiterritorial, multisectoral, and multi-institutional.” Also, under this new cognitive regime, it is the problem that helps define the scale(s) at which it will be dealt, not simply the scale that defines and dictates the solution to the problem as the old national topocratic method had done. However, as Leresche and Saez emphasize, because of the relative regulatory weakness of decisions applied to CBRs, it is their “complexity and opacity” which stand out. Thus, successful governance in these regions relies on recognition of interdependencies and cooperation between all parties. The emergence of “Greater China” (Sum 2002b) based on erstwhile rivals China and Taiwan along with Hong Kong is a good example of how this very complex

issue of carving out a thriving CBR while maintaining strong yet somewhat rival national territorial identities can be navigated.

In the post-war era, Leresche and Saez find that there appears to be three successive eras of ascendancy in what they typify as political frontier or governmentality regimes that relate to the type and locus of control exerted by the overlapping scales affecting CBRs. Although Leresche and Saez suggest that these three regimes, *government*, *governability*, and *governance*, have appeared chronologically over the last several decades, they may actually reflect a multi-scalar continuum which has coexisted with the emergence of nation-states, where scalar ascendancy is more a result of a sense of national security, as suggested by House (as cited in Minghi 1991), than temporal evolution.

The *government* regime reflects the top down, centralized national scale which typified control over CBR public activities until the waning of the cold war. Cross border issues are treated as international affairs, and the boundary is both a defense against outside intrusion and a definer of national identity. In such a core-periphery structure, the local border regions have little room for autonomous independent movement or even influence on national decisions. Examples of impacts on CBRs which occurred during this regime that recognized specialized local needs and opportunities were the North American Auto Pact, maquiladoras along the U.S.-Mexican border, and a variety of sponsored border activities between the then European Common Market countries. All of these required national scale approval, guidance and control, regardless of how localized they were.

The *governability* regime is defined more as an interlude than a stable end point, a period of crisis, conflict, and change where the national scale attempts to continue to control and dam-up the ever-growing demands of the CBR which are beginning the process of *overflow* across the border. Here, if we think of the three political boundary regimes as part of a continuum or balance beam with more stability when the ends dominate (border as primarily barrier or primarily contact point), that represents a period of transition (overflow) where the national scale still attempts to exert absolute control but is not equipped to address the burgeoning local needs. Meanwhile, the local region has only begun to exert itself and is neither independent enough nor focused enough to exert much control over its local destiny. The local scale has begun to discover that to plan for its future in a CBR it must be more independent of the national scale than the center is willing to permit and also more open to building long term transnational ties with neighboring regions than

it is often prepared to do, especially if cultural and economic differences are substantial. Current events along the Arizona-Mexico and California-Mexico border seem to mimic this regime. Although these areas have a growing need to create and manage CBRs with a strong local commitment and common vision, they are hampered, first, by the fact that most real control is still at national and state or provincial levels, and second, that local scale actors still seem to be addressing only one problem at a time and have yet to articulate a common sense of purpose, vision, or identity. Castillo (2001) finds that the result in places like the two Nogales (Arizona and Sonora) is that the federal government has made a once fairly open “white border” into a black, forbidding one cutting social ties that extend back generations; the state to state level organization also is seen as being unresponsive to truly local needs, and the local public officials only seem able to react after a crisis has appeared, not to pro-act. Scott, in viewing the same region, although a bit more hopeful about the success of very small scale projects, notes “that senior governments and nation-states—unilaterally, bilaterally, or within multilateral cooperation contexts—define the basic parameters of cross-border regionalism” (Scott 2002:205). As a result, he sees no CBR identity arising that challenges the existing nation-states, but he does see the beginnings of the creation of pragmatic local institutions to address cross border issues.

*Governance* emphasizes the emergence of governing cooperation and coordination networks across borders. A term used by Leresche and Saez to explain the underlying operational logic of this regime is *synapsis*, a borrowed biological term which is defined as “‘very fine communication between neighboring cells through small networks in a membrane’ or ‘a point of contact between two neurons’” (Dictionary Robert, reported in Leresche and Saez 2002:88). Basically, this stresses the functionality of public and private action relationships, or both, located on a network, in the case of a CBR, the networks related to the CBR at all scales. Although the focus here is on the governance regime affecting the CBR, it is applicable to regions at any location or scale. What is being stressed here is the mechanism, not the place, a mechanism that overcomes the problems of ineffective “government institutions and the somewhat unsystematic activism of the social actors....” (Leresche and Saez 2002:88), problems that are apparent from the conflict and problems of the above frontier regime. Another interesting aspect of the governance regime noted by Leresche and Saez is that it appears to be less passionate, depoliticizing, and deideologizing. The key ideas emphasized here are that a CBR becomes a

“working community” not a new mini-nation-state. Value in the relationship comes, not necessarily from a historical or regional identity, but from “proximity, authenticity, and conviviality.” Second, “governance, because of its neo-functional tone, tends to highlight the imperatives of rationality, over and above partisan divisions paralyzing collective action” (Leresche and Saez 2002:89). Its focus is on cooperation and coordination based on local interests and, thus, can ignore more partisan issues over which this scale has no control. Finally, “ideological motives (national ideologies, ideologies spawned by the center-periphery opposition) were considered obsolete from the point of view of rational and functional action” (Leresche and Saez 2002:89). Likewise, ideologies that subscribe specific and even adversarial roles to public and private interests no longer hold sway.

That does sound like a tall order, especially given the focus on territorial based nation-state building and ideological coalitions that dominated the events of much of the past two centuries. Japan from the Meiji restoration to the end of the twentieth century seems to typify this past focus on people, place, local partisanship, and development of an ideology best suited to the ruling elites in the core. Yet, as the twenty-first century dawns, a surprisingly different trend appears to be emerging along the Japan Sea side of the country, with the local municipalities and provinces experimenting with subnational means of instituting new CBR relationships with similar actors in the surrounding nations. Thus, while the fallout from Japan’s imperial adventurism until its wartime defeat and the rigidities of its later cold war alliance continue to hamper what Arase (2002) refers to as the state-centric level of regionalism in northeast Asia, the same is not true at the local level: “provincial-level and large municipal governments in the region have been quite active in reaching out ... in the Japan Sea region ... linking-up to form networks of bilateral and multilateral relationships of increasing scope and density....” (Arase 2002:176). A popular tool in developing these subnational linkages has been the establishment of sister city and sister province relationships, which by definition are devoid of political, ideological and territorial aspirations. A number of these even pre-date the collapse of the Soviet empire, dating back to the 1960s. Although the direct benefits of these relationships still tend to be more cultural and intellectual than trade or economic, there have been some notable exceptions. For example, “since 1991 Niigata (City, Japan) has initiated regular or charter air services with Pyongyang in North Korea” (Arase 2002:181). That represents quite an achievement,

given the continued intransigence at the national level between these nations.

Basically this process of subnational region building in northeast Asia demonstrates the recognition of *ura-nihon* (backside of Japan) cities and provinces that their future is tied less to Tokyo and more to the emerging northeast Asian CBR. Further, success in pursuing these opportunities is tied more to subnational linkages than national ones still encumbered by historical passions and political and ideological complications.

Another example of this process of “synapsis” is the emerging pattern of cooperation and coordination between twin cities of the two Laredo’s (Laredo/Nuevo Laredo) and El Paso/Ciudad Juarez on the Texas-Mexico border (Rodriguez and Hagan 2001). Clearly, issues such as sharing of fire fighting and medical equipment are best handled at the local level where the greatest impact and benefits exist and on a daily routine basis unencumbered by the baggage of national parties, politics, and agendas.

In summary, the discourse on the traits and organization of CBRs, both institutional and spatial, as a global phenomena provides us with important tools to investigate the Fraser Lowland, both as part of a larger CBR—Cascadia and at the very local level, the Abbotsford-Sumas cross border relationship in regard to SE2. The next section looks at the Fraser Lowland through the guise of the larger concept of Cascadia before turning directly to specifics of SE2 and the emerging Abbotsford-Sumas relationship.

### The Fraser Lowland and Cascadia

The Fraser Lowland lies at the geographic epicenter of the larger cross-border region known as “Cascadia.” Sparke (2002) describes Cascadia as a “concept” CBR with indistinct limits, more of a “state of mind” or commodity than fixed geography. Nevertheless, Cascadia is the most prominent CBR of any description along the western portion of the United States-Canada border. Depending on the eye, or intent, of the beholder, Cascadia might encompass the entire west coast of the U.S. and Canada, from California to Alaska and inland to encompass the states of Idaho and Montana and the province of Alberta. At the other end of the spectrum, the linear strip that connects Vancouver, British Columbia, to Seattle, Washington, and Portland, Oregon, has been dubbed the “Cascadia Corridor.”

In his review of the Cascadia concept, Alper notes that all applications share the same goal: “to diminish the barrier effect carved by the border in order to stimulate common action on behalf of regional goals” (Alper 1996:2). However, there are two fundamentally opposed visions

for Cascadia: economic versus ecological. The ecological vision can be traced back to the original writings of David McCloskey in Seattle in the late 1970s and to the development of the concept of bioregionalism. Much work has focused on the state of health in the Georgia Basin–Puget Sound ecosystem.

Cascadia’s ecological realm is largely the domain of non-governmental organizations (NGOs), although with some significant exceptions; the British Columbia/Washington Environmental Cooperative Council is perhaps the most notable. The Council brings legislators and agencies together, at least annually, to consider transboundary issues. The Council directs the work of task forces that study border issues at the micro level, including the Abbotsford-Sumas aquifer, Nooksack River flooding, habitat and marine issues in Georgia Basin-Puget Sound and air and water quality issues in the Columbia River Basin. An additional task force focuses on “air quality in (the) lower Fraser Valley/Pacific Northwest airshed.” An outcome of the studies by this group is an interagency agreement signed in the mid 1990s. Agencies in British Columbia and Washington have agreed to provide “timely prior consultation on air quality” in the areas governed by the Greater Vancouver Regional District and the State of Washington’s Northwest Air Pollution Authority (British Columbia/Washington Environmental Cooperative Council 2004), an area focusing on Vancouver rather than on the upper Fraser Valley near Abbotsford.

It is much more common to find at least quasi-public support and involvement or both in such economic entities as the Pacific Northwest Economic Region (PNWER) or the Pacific Corridor Enterprise Council. The economic vision received a major boost with the creation of the 1989 *U.S.-Canada Free Trade Agreement*, ultimately replaced with NAFTA in 1993. Undoubtedly, these competing visions have further stymied efforts to create the kind of institutional structures indicative of an advanced stage of “governmentality regime” (Leresche and Saez 2002) within Cascadia generally and the Fraser Lowland in particular. The ultimate loser in this void, according to Johnny Wilson (1990), is the environment. In a remarkably prescient paper vis-à-vis SE2, Wilson made a plea for the creation of a “Department of Transborder Ecosystem Management” with representatives from the governments of Washington and British Columbia. Such an entity would include a “conflict resolution framework” to deal with contentious issues. The general outline of the SE2 saga was predicted by Wilson over a decade ago: “Without the benefit of institutionalized cooperation, supplemented by a conflict resolution framework, a shared ecosystem will only be as

healthy as the most negligent management on either side of the border allows. In the long term, such a situation will, at best, strain the cross-border relationship and, at worst, encourage opportunism and reactionary retaliation” (Wilson 1990:2). As a micro CBR within the larger framework of Cascadia, the Fraser Lowland shares many of the limitations to effective cross-border governance, i.e., a poorly developed, or absent, institutional structure and a low level of regional consciousness. These are indicative of a CBR at an early stage of development or governmentality regime. At that stage, the CBR lacks local decision-making power. Instead, public affairs are largely governed by national and provincial or state level authorities in a top-down fashion. That can have the effect of reinforcing the impermeability of the border, rather than its penetration.

In a study of the adjoining Alberta-Montana border region, Morris sought to determine if “there exist ideas that unify border-region residents and set these areas apart, as international spaces and places, from the rest of the continent” (Morris 1999:470). His conclusion, following research of the vernacular landscape was that a *borderland* identity was absent. Instead, “[n]ationalism ... provides the frame and foundation for borderland regulation” (Morris 1999:476). Such a conclusion can also be tentatively applied to the case at hand. Although the grassroots protest against construction of the plant included participation from both sides of the border, in Canada at least, there was a tendency to frame the issue as one of undifferentiated rapacious American greed. In the absence of any cross-border dispute resolution mechanism, opponents had to direct their energies to encourage Ottawa’s National Energy Board to refuse SE2’s application to tie into the power grid. The effect was to reinforce the shielding effect of the border.

### Summary and Discussion

The following key points summarize the SE2 issue as it has thus far impacted on the Abbotsford-Sumas CBR:

1. At the micro level, the relationship between Abbotsford and Sumas is very much *ad hoc* and limited and the border remains a barrier and shield. Although the two places share a sewage treatment plant (really Sumas utilizes the Abbotsford plant), past official goodwill has been threatened by SE2. Abbotsford spent a great deal of effort to stymie SE2 by appealing to a variety of Canadian and U.S. meso- and macro-level actors but never appears to have

considered Sumas’s needs. Likewise, Sumas has done its best to ignore Abbotsford’s concerns.

2. Abbotsford is clearly opposed to SE2.
3. The town of Sumas appears to continue to favor the plant, but the surrounding county appears not to favor SE2.
4. After the break-down of the initial 1999 “deal” between leaders in Sumas, Abbotsford and NESCO, any decision making appears to be occurring at meso- and macro-scales clearly located on one or the other side of the border.
5. It is interesting to note that Washington State wished to include British Columbia in the discussion surrounding SE2, although it is not apparent how much weight was given to British Columbia’s desires.
6. Also, at the urging of British Columbia, it is interesting to note that Canada’s NEB was willing to consider cross border environmental impacts. It will be interesting to find out if Canadian courts will support this move.
7. Using SE2 as a case study, it is not clear that anything approaching a viable CBR is emerging. At the micro level, SE2 might actually be a set-back. At the meso level the signals are still limited and unclear. Whatcom County clearly is pursuing a path favorable to the Lower Mainland, but is that accidental or planned? Washington State is attempting to be more accommodating to British Columbia, but is that more form than substance? And will British Columbia reciprocate?

In placing these events in the context of border as potential barrier or contact, SE2 clearly involves opportunities for both. However, at the micro level it appears still to act as a “passage between two realities” rather than as the emergence of a CBR. It was the center vs. periphery relationships that have proven to be crucial in decision making regarding SE2. Nothing approaching a common local plan is apparent, certainly not in regard to managing the joint local air shed. Although past federal sponsorship of joint action for sewage treatment and flood control has encouraged Abbotsford and Sumas to act as a CBR, this past goodwill has been severely strained, if not lost. In fact Abbotsford has threatened to exclude effluence from SE2 (if it is built), if not the entire city of Sumas, from its treatment plant. Finally, globalization has yet to exert much impact on this micro scale relationship. There has been some movement of Canadian industry across the border

at the end of Abbotsford's rail yard in search of economic benefits such as the SE1 cogeneration plant and lower cost U.S. labor; however, nothing approaching a symbiotic relationship has developed between the two places. In fact, NAFTA disputes in softwoods might actually be harming rather than helping the creation of a CBR economy.

Despite all of these problems, are there any signs of growing coordination and cooperation deemed so critical by Leresche and Saez? In regard to identity, the situation is mixed. Abbotsford is clearly a multi-cultural city with a large and growing Asian population. Sumas remains small town, white America. Politically, ethnically and culturally the places seem as distinctly different now as at any time in their histories. Nevertheless, the environmental level, given the broad opposition to SE2 on both sides of the border, perhaps a common identity is emerging, at least at the meso level. However, until concrete cross border plans for common resource management emerge, that may be wishful thinking. In fact, such distrust continues on the Canadian side that some are calling for an international clean air treaty rather than greater cooperation directly with Sumas. As scale changes, one finds real signs of cooperation and coordination at the lowest grassroots level with groups like GASP and SE2 Action Group, but it is not clear how well the two cities actually communicate. It is interesting to note that at the meso level a bit more evidence does exist. However, as noted above, is this truly substance or merely form or fortuitous conditions? Finally, the question can be asked are new forms of public action and recomposition of territory underway? Certainly at the meso level Washington State and British Columbia are continuing to create a new relationship. However, will the appeals of British Columbia to the Canadian NEB make them look like an unfaithful partner when things don't go their way? Also, will British Columbia reciprocate? At the grassroots level common cause has been made to keep the air shed cleaner. However, is this a complete change in the way of doing business or are people just reserving the air shed for ever more automobiles? Is it time to consider the air shed itself as a region and privatize it and auction-off its capacity to the highest bidder? Imagine a "blue eyed Arab" scenario where Sumas suddenly found itself in possession of air rights that Abbotsford is willing to buy or lease at top dollar. In the short run, that certainly could provide an economic solution and a different way of understanding the region. Over the long run, in fact, it might then be Sumas calling for less pollution and Abbotsford taking a more *laissez-faire* approach. Thus, a key issue that remains is the international commons. As long as one side perceives that there is more to exploit at little personal

cost and much to benefit, it is difficult to expect a CBR. That does suggest that either a cross border grassroots level movement needs to change things from below or a new cross border meso level organization needs to effect change from above, or some combination of the two. In Leresche and Saez's frontier regimes, it appears that we are in the regime of crisis of governability.

Even though we have not yet entered the regime of governance, the issue of passion, politics and ideology should also be considered. Clearly passions have been inflamed: America as the aggressor, America as the careless littering neighbor, America as the unbridled representative of global capitalism. All these themes percolate through the dispute. In these instances the Canadian response has been hidden behind the shield of the border, not unlike the use of the border to shield fledgling Canadian culture (Widdis 1990), and appeal to higher scales of government to protect the air shed. Yet despite these passions and even threats to close Sumas's access to Abbotsford's sewage treatment plant, how true do they ring? Is this really a nation versus nation issue or culture versus culture? Or is this a dispute over dividing-up the commons or even determining its carrying capacity? Given the fact that SE2 does not appear to be well supported on either side of the border, outside of perhaps the city limits of Sumas, there still seems to be some confusion here. Are then truly passions inflamed by differences on two sides of the border, or passions inflamed by local economic interests both Canadian and American, desiring to exploit the air shed to the maximum from their respective sides? Clearly the grassroots organizations show how the "us" of the greens is the same on both sides; rather than who actually is the "them"? Perhaps in the immortal words of Walt Kelly, "We have met the enemy and it is *us*." This question of passions needs further investigation. It is not the ethnic, cultural rivalries scholars are more familiar with, nor is it neatly packaged into economic ideologies.

This then brings us to the issue of depoliticalizing and deideologizing. Clearly there is no single cross border political or ideological movement orchestrating the current situation. There is no cross border Green party or business party. Furthermore, the complexity of the coalition opposing SE2 suggests that there is no single ideology, be it ecologically or growth based, that holds sway. People on both sides of the border have yet to come to grips with what they truly want, let alone what is possible or desirable. So although the situation is clearly non-political and non-ideological, it appears that again both sides are still more comfortable with letting more distant meso- or macro- actors make the real decisions, rather than locally

wrestling with some very troubling issues. All of that confirms further that we are in the very early stages of the possible formation of a CBR, whatever the scale at which it might eventually occur.

As a summary of the above and reference to questions raised in our introduction, there is evidence that SE2 continues to represent U.S. disregard for Canada's front door, where the U.S. periphery is still seen as almost the edge of the earth. But there are also some hopeful signs that, at least between Washington State and British Columbia, that this situation might be slowly changing. As for NIMBY-ism, generally it appears that only small depressed towns are clamoring for any kind of "dirty" activity, be it a power plant or prison. But economically a natural gas fired power plant can occur anywhere along a gas line where sufficient water can be found. Placing SE2 in Sumas may have as much to do with NIMBYism in California (which is the most likely market for the power) than with locality or even hardnosed economic sense. As for local economic integration, ever since the border became more organized nearly a century and a half ago, natural economic border regions across the American and Canadian west have been carefully segregated by national policies. In the A-S region, whatever economic integration that has occurred in recent years seems more a result of reaction to national policies rather than any true local coordination. The unstable exchange rate has made it difficult to make any long term plans on retail investment, and whatever wood industry that has crossed the line south seems to be more a reaction to the ongoing NAFTA softwood disputes than careful economic planning. Hence, SE2 is perhaps more a result of the failure of a true CBR economy to emerge than any type of integration.

Despite all of that, there are signs of functional integration. For example, some of the new housing being constructed in Sumas appears to be destined for Canadian ownership (for example by families with dual citizens based on marriage, owners of companies relocated to the U.S., or vacation homes). Perhaps as growth continues north of the line, those able to travel easily and live south of the line will choose to do so. Given Sumas's relatively lax regulation on land control in comparison to Abbotsford's, a trickle might eventually become a flood and have immense consequences for a CBR. Despite the limited economic integration, and Sparke's (2002) conclusion that such integration is still an illusion, perhaps environmental integration will be spurred by the continued growth throughout the Fraser Lowland. (Bellingham, in particular, and Whatcom County, as a whole, has a growth rate nearly as high as Abbotsford's.) Steps have been taken

at the meso- and micro- levels with NGOs and governments of Washington State and British Columbia to create a shared vision of the environmental future (Hilderbrand, et al. 2002). Perhaps this vision of Cascadia as an *ecotopia* will have more resonance than Cascadia as an economic region on the global stage.

So where do we go from here? The CBR framework has served us well in reviewing the public record of events in regard to SE2, but the question of how to fill in the many and multiple gaps much remains. A prime task is to investigate the emerging government networks that could create the synopsis that Leresche and Saez are so expectant to emerge. At the meso scale, a better understanding of the existing links created by the British Columbia/Washington State Environmental Cooperative Council and how this might have related to British Columbia's inclusion as an intervener to the EFSEC is very important. At the Whatcom County-British Columbia lower mainland level, questions remain as to why Whatcom County was so interested in controlling high voltage power lines as long ago as 1990. Were these events fortuitous, or do they represent a budding relationship between the county and entities in British Columbia? At the micro scale, what was the relationship between Abbotsford and Sumas when SE2 was first proposed and what is it today, especially after the change in administration in Abbotsford? Is there any hope of a collaborative urban growth plan for this metropolitan area, much as has occurred between the two Laredo's on the U.S.-Mexico border (Rodriguez and Hagan 2001), or is the border too much of a barrier? One fascinating way to try to tease out the views of both sides could be a Delphi study looking towards the future. In this anonymous, controlled conversation approach to sounding out an expert panel from both sides of the border, it might be possible to learn where the majority and perhaps substantial minorities expect the region to head over the next decade or so. Is a common future in the cards or not?

Parallel to public networks are, of course, NGOs, such as the vocal grassroots environmental groups that may harbor social entrepreneurs capable of creating new visions and directions, as well as economic organizations (Bornstein 2004). A better understanding of how well these do or do not function together is critical. Specific to SE2 it will be interesting to find out how well GASP, the SE2 Action Group, and ADDBA coordinated activities. Second, these groups also should have a seat on the expert panel for our proposed Delphi study. It already is clear that a cross border issue can rather suddenly alter a political administration; so it is important to represent NGO views

as well since they can be the trigger for altered political situations.

Finally, turning back the clock as it may be, the macro scale needs to be investigated. Is an international air shed treaty a real possibility or merely a dream or perhaps even a local bargaining chip? Can the Canadian NEB continue to take into account environmental issues from across the border, even if it appears to dictate economic policy? Or, have security concerns set back the process of CBRs despite NAFTA and globalization?

In closing, it is apparent that SE2 seems to represent a crisis of governability on the border. It appears to illustrate a situation where people at the local scale felt the need to appeal to more remote, higher scales inside and outside their nation rather than talk directly to their neighbors. What does the future now hold? Have networks been harmed, altered or strengthened? More investigation and perhaps a Delphi study will help us better understand how the political regime is evolving at the border and if we are closer to the emergence of a CBR at the micro or meso scale.

## Notes

- 1 This team of undergraduate students was part of a unique Borderlands course that concentrates on the Fraser Lowland including both American and Canadian students that the authors have been involved with through their institutions over the last five years. See Nichol, Belec, and Buckley (2003) for details.
- 2 Since Sumas has no newspaper of its own, the closest is the Lynden Tribune, a weekly paper published a dozen miles away in the town of Lynden.

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# *Common Future, Different Policy Paths? Managing the Escape of Farmed Atlantic Salmon in British Columbia and Washington State\**

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## **Introduction**

The aquaculture industry in North America has been developing at such a rate that regulatory policy making has been hard put to keep up with need. As with many other new industries, expansion has gone hand in hand with an increasing awareness of possible environmental repercussions. Aquaculture can have diverse impacts, depending on the type, but none seems to so capture the issue of uncertain risk as the potential impacts of Atlantic salmon aquaculture on the Pacific coast. The detrimental effects on marine ecosystems of antibiotics, pesticides, and nutrients released from fish farms are not fully understood. Salmon farms may be sources of disease and parasites that are harmful to wild stocks (Gardner and Peterson 2003). And escaped farmed Atlantic salmon, once deemed incapable of surviving in the wild, are now being found as far north as Alaska (where finfish farming is banned); once deemed incapable of establishing in wild habitat, they are now being discovered in increasing numbers in the rivers along the Pacific coast.

It is well documented in the literature that the potential to constrain policy making for scientific knowledge about a risk is compromised by the degree of uncertainty associated with the risk (Hoberg 1997, 1990; Jasanoff 1997, 1986). Estimates of environmental risks, in particular, often involve such high uncertainty that governments

have considerable leeway in selecting policy responses, while still using science as a justification for their actions. Evidence that this may be occurring with salmon escape policy in the province of British Columbia can be found in the dramatic contrast between two examples of the science-based claims made by government policy makers and one example of the science-based counterclaims made by those who oppose their policies:

The available scientific evidence overwhelmingly indicates that Atlantic salmon escapees cannot successfully colonize in our waters. The numbers of Atlantics found have remained very small over several years, and there remains very little risk of a self-sustaining population of Atlantics becoming established here (BCMAFF 2004).

One of the arguments made by fish farming opponents is escaped Atlantic salmon can result in established Atlantic salmon populations competing with Pacific salmon for habitat. This is simply not true. . . . There is no evidence that escaped Atlantic salmon pose a threat to Pacific salmon (Fisheries and Oceans Canada 2003).

According to the Department of Fisheries and Oceans, Atlantic salmon have been found in over 81

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BC rivers and streams. It is worth noting that only a small portion of BC rivers have been surveyed so far - meaning non-native Atlantic salmon could be inhabiting many more. Atlantic salmon compete with wild salmon for habitat and have been known to eat wild salmon fry and eggs. Atlantic salmon have been found spawning, and juveniles surviving in the wild (Coastal Alliance for Aquaculture Reform n.d.).

Given the current level of scientific uncertainty about the possible impacts of escaped Atlantic salmon, how have policy makers in British Columbia and the state of Washington elected to manage the risk? This paper compares the evolution of salmon escape policies in these neighbouring jurisdictions. Although the British Columbia salmon net pen industry is about ten times the size of the industry in Washington State, in terms of production capacity (Amos and Appleby 1999), a comparison of their policies is of particular interest for two reasons. The most obvious is that they share the water and, therefore, the repercussions of each other's potential policy failures concerning these migratory fish. Second, and directly related to the foregoing, there have been various tentative gestures towards a coordination of policies between the two jurisdictions. In this case, to what extent, and in what manner, there is policy divergence becomes especially salient politically and environmentally.

How do the policies in British Columbia and Washington compare? Stated goals and promotional claims on the British Columbia side suggest that the divergence is definitive—British Columbia's "aquaculture regulations constitute the most comprehensive escape prevention standards in the world" (BCMAFF 2003). However, it appears that the smoke generated by such enthusiastic marketing covers a policy framework not significantly different from that in Washington State: escapes are prohibited by condition of license on either side of the border; reporting of escapes and escape related data is mandatory; both jurisdictions require that industry establish escape "prevention and response" plans; and both have policies in place to monitor the presence of escaped Atlantic salmon in the marine environment.

According to Banting, et al. (1997), policy convergence between two countries can come about as the result of four different types of forces: parallel domestic pressures, a process of cross-border learning or emulation, international legal constraints, and international economic integration. Although interest has certainly been expressed regarding international legal standards for aquaculture, as yet

there are no such standards binding on policy makers in British Columbia or Washington State, so this absence cross-border standards provides little explanatory potential for the convergence. Economic integration also does not seem to offer an explanation for the current state of affairs. In the future, the aquaculture industry may use the standards in one jurisdiction as a bargaining tool to obtain similar (relaxed) standards in the other by arguing that this is necessary to maintain economic competitiveness or by threatening to move operations to the other jurisdiction. To date, however, that has not been a significant force, possibly because the opportunities for expansion in Washington have been limited, and the demand for new sites still seems to be substantially greater than the available supply.

Proximity would certainly favour cross-border learning. That is not only relevant for the potential of governmental policy emulation but also facilitates a sharing of knowledge among non-governmental groups attempting to affect policies. As for domestic pressures, the problem of escaped salmon could not be more parallel between the two jurisdictions, and this has in fact generated similar pressures. But the fish escape into different institutional environments with different interest groups using different mechanisms to lobby over them, leading to some interesting variations in policy response.

In this paper we examine the extent to which parallel domestic pressures and cross-border learning have been instrumental in the apparent convergence between British Columbia and Washington State Atlantic salmon escape policy. In doing so, we show that there are actually some important differences in policy design and implementation between these jurisdictions, which become evident when the dependent variable of "salmon escape policy" is subdivided into two functional components: "compliance and enforcement" and "research and monitoring." Moreover, aquaculture policy on the Pacific Coast has entered what is likely to be a period of rapid change. Although there has historically been a marked tendency toward convergence between British Columbia and Washington, there are profound differences which may provide the basis for future divergence in the dynamics that have influenced policy development in the two jurisdictions.

We begin our discussion by identifying domestic factors in the two jurisdictions that might be expected to play significant roles in shaping policy responses to the risk of Atlantic salmon escapes. Then, we review the history of escape policies in British Columbia and Washington, focusing first on compliance and enforcement, then on research and monitoring. Finally, we return to the key

domestic factors identified in the first section of the paper and discuss the influences these factors have had on convergence or divergence. Throughout the discussion, we highlight examples of cross-border learning and consider how this mechanism has affected policy making.

**Domestic Policy Factors:  
Institutions, Interest Groups, Regulatory  
Authority, Developmental Potential  
and Background Conditions**

Frameworks for policy analysis commonly emphasize the roles of actors, ideas, and institutions in the formulation and implementation of policy (e.g., Howlett and Ramesh 2003; Hoberg 2001). Important actors in aquaculture policy include the industry itself, environmental organizations and government policy makers. The salmon aquaculture industries in Washington and British Columbia both got their start at about the same time in the 1970s, but development was slow until the mid 1980s when the industry in British Columbia began to expand at a rapid rate. By 1999, Washington State had a farmed salmon production capacity of approximately 10 million pounds per year, whereas British Columbia's capacity was approximately 100 million (Amos and Appleby 1999). British Columbia is planning for substantial additional growth, and in 2002 the province asserted that "aquaculture expansion could lead to more than \$1 billion a year in economic activity, and 9,000 to 12,000 new jobs over the next decade, most in coastal communities" (BCMAFF 2002a). It is reasonable to expect that the amount of capital in the industry, the anticipated growth and the associated power differentials of the actors involved would be instrumental in affecting the decisions of government policy makers. The relative power of environmental groups and the strategies through which they exercise that power (discussed below) are also likely to be important.

Interestingly, both British Columbia and Washington have intentionally attempted in the past to introduce Atlantic salmon into their waters, although British Columbia's most recent attempt occurred in 1935, whereas Washington's attempt occurred as late as 1981. These attempts apparently failed to result in any Atlantics establishing themselves in the wild, although the claim that this failure means that escaped Atlantics will continue to be unable to establish has been criticized for various reasons, most notably the different developmental stage of the salmon at the time of release and the declines in recent years of competing native salmon populations.<sup>1</sup> Nonetheless, these failed attempts are at times offered in justification

for the comparatively low concern given to escapes on the Washington side and indicate that there may be an element of historical bias at play. The recently reinforced idea that Atlantic salmon cannot become established in Pacific waters may be influencing expectations about the risks associated with new escapes.<sup>2</sup> However, whereas this piece of history probably influences the relative regulatory reluctance of current policy makers, there appear to be other factors which play an even greater role.

Along similar lines to this path dependency argument is the contrast between the institutional environments in the two jurisdictions. The differences between the institutional contexts in the United States and Canada have long been noted, as has the manner in which these affect the ability of environmental groups to utilize legal remedies to pursue their goals.<sup>3</sup> It would be reasonable to hypothesize, then, that this institutional factor would have a divergent effect on aquaculture policy. How regulatory authority is allocated among various government institutions in each jurisdiction should also be significant in the differential development of policy.

Finally, some scholars argue that substantial policy change rarely occurs unless triggered by changes in background conditions, or "external factors," such as elections, economic circumstances, and public opinion (Hoberg 2001, 1998; Sabatier 1993). Two key background conditions seem crucial to aquaculture policy: the political environment and the timing of focusing events. The former idea is fairly self evident—for example, during the period that the New Democratic Party government was in power in British Columbia, efforts to impose environmental controls on aquaculture were likely to be considered important to maintaining electoral support from the Party's environmental constituency. The replacement of this government by the more pro-business Liberal Party in 2001 no doubt affected the relative emphasis that provincial officials felt should be given to environmental concerns versus economic concerns. The "focusing event" factor is less obvious, but that reflects the complex dynamics involved in agenda setting and policy formulation. As will be discussed, the timing of significant events can bring issues to the attention of decision makers as problems, alter public opinion and the political environment sufficiently to shift the balance of power of interest groups, and open windows for policy change (Kingdon 1995). For aquaculture, the timing of major salmon escapes represents an important background condition.

### ***The Dependent Variable: Salmon Escape Policy***

In both British Columbia and Washington State, the stated policy on escaped Atlantic salmon is clear: escapes are not permitted. However, although both jurisdictions have formally adopted this policy, the reality of implementation is another matter and one that bears greater significance from an environmental perspective. In order better to understand the differences here, it is helpful to focus on two related but functionally distinct components of escape policy, which can roughly be designated “compliance and enforcement” and “research and monitoring.”

“Compliance and enforcement” considers how policy makers choose to implement their policies.<sup>4</sup> It encompasses the types of instruments selected, the sanctions available and imposed and the resources (financial and human) that are allocated to achieve policy objectives. In common terms, this captures the practical aspects that determine whether regulatory policies are purely symbolic or are actually and effectively carried through.

By “research and monitoring,” we mean all initiatives related to data collection and advancing scientific knowledge about escapes and their impacts, inspection of facilities and even the potential for public involvement in the research and monitoring process, such as in the Atlantic Salmon Watch Program.<sup>5</sup> The term also includes government initiatives and support of research and development directed towards new prevent technologies related to the risk of escaped Atlantic salmon.<sup>6</sup> Functional models of the policy process show that research and monitoring activities play a variety of different roles in policy making (Clark 2002; deLeon 1999; Lasswell 1971). First, research and monitoring are important for the identification and understanding of problems in the initiation (agenda setting) and estimation (policy formulation) functions. For example, research and monitoring are essential for assessing the risks associated with salmon escapes and increasing the scientific knowledge available for designing “best practices” escape policies. There is no disputing that studying problems can sometimes be an easy substitute for the pain of controversial action, but that does not necessarily override the potential benefits. Second, monitoring can be crucial to policy implementation, for example, to assess compliance with regulatory standards and support the imposition of sanctions. At the very least, monitoring can increase the motivation of industry to regulate itself in the name of presenting a clean public image and sometimes can open the doors wide for public outcry, or potential legal action, should the data prove unsavoury. Finally, research and monitoring are vital to the policy evaluation

function, contributing knowledge about the effectiveness and impacts of policies, and supporting decisions about policy modification or termination.

### ***Compliance and Enforcement***

#### *Washington*

Washington State’s salmon aquaculture industry began in the early 1970s. Since that time, successive legal battles over waste discharge permits for aquaculture facilities have resulted in ongoing refinement of net pen pollution regulations under the U.S. federal *Clean Water Act* and the Washington State *Water Pollution Control Act*. That is not to give the impression that the issues were limited to waste, but, instead, that license appeals were a highly effective method of legal protest against salmon farming. Goldberg and Triplett describe the struggle over the first permits: “In 1989 a coalition of environmental organizations threatened to sue the U.S. Environmental Protection Agency (EPA) for failing to regulate pollutants from salmon netpens under the *Clean Water Act*, and EPA compelled Washington State to issue discharge permits. The state issued three permits for netpens in 1990, which were then appealed by local environmental organizations” (Goldberg and Triplett 1997:106). This first issuance of discharge permits and the resulting legal domino effect appears to have set the path for regulation in Washington. Under the state *Environmental Policy Act* (Ch. 43.21C RCW) the public is entitled to have input into the permit approval process and can appeal a permit within a specified time period after it is issued. As a result, National Pollution Discharge Elimination System (NPDES) permits have been characterized by a history of issuance and appeal, with subsequent rulings by the Pollution Control Hearings Board (PCHB) resulting in imperatives for clarification of the basis for permits and the standards for pollution.

Environmental achievements under this process are still ongoing. For example, in 1998, NPDES permits required by the Washington Department of Fish and Wildlife (WDFW) for its own purposes were appealed, and the WDFW and Washington Department of Ecology (WDOE) were both named as respondents in a legal action. The WDFW was subsequently dropped from the suit in return for a legal agreement that the department kill and analyze any intercepted Atlantic salmon, as well as compile any data on Atlantics they collected (Amos and Appleby 1999). This legal agreement was a first step towards a monitoring program similar to that in British Columbia.

In 1997, permit appeals led to a PCHB ruling that, as point-source biological waste, escaped Atlantic salmon could be defined legally as a “pollutant” (Amos and Appleby 1999). That ruling was significant in providing the legal foothold for action against farms with escapes. Shortly after this ruling, WDOE issued an Administrative Order (No. DE 97WQ-N296) to Global Aqua/Cypress Island Inc., the main element of which was a mandatory requirement to develop a “Fish Release Prevention and Monitoring Plan.” The order dictated the plan only at the level of broadly stated end products, such as the necessity of “emergency procedures,” “identification of technology,” and “procedures to recapture.” Leaving the responsibility for the details of the plan to industry in this manner differs markedly from the explicit prescriptions developed by the British Columbia government two years later, as will be discussed.

For violations of the NPDES permits, there is a broad selection of enforcement mechanisms available that range from warnings to fines (Hunter and Waterman 1996). However, availability does not necessarily mean utilization, and despite the potential for action it seems that relatively little enforcement has occurred.<sup>7</sup> Additional appeals may force further clarification of what exactly constitutes a “violation” under the NPDES prohibition of escapes and releases, and that in turn may provide the basis for further action by environmental organizations against violating fish farms.

Although appeals of the NPDES permits have been the most prevalent means of forcing regulatory accountability, new regulations introduced in 2003 are likely to affect at least some aspects of this pattern. In 1985 the Washington legislature took away WDFW’s authority to regulate salmon farms. In 2001, Bill 1499 returned some of this authority, granting the WDFW the “authority to work with marine net pen operators to improve prevention of escapes from net pens” (WDFW 2001). In response to that Bill, WDFW worked with net pen operators towards the establishment of new rules for escapes. These new regulations were passed in 2003 (WAC 220-76). Although part of the new regulations is essentially a reiteration of the requirement for escape prevention and response plans, as already specified by NPDES permits, a significant new addition is the introduction of a system of marking fish to identify their source: “Each permit application must contain a means mutually agreed to by the department and the aquatic farmer to individually identify to the aquatic farmer all marine finfish in aquaculture hatched after December 31, 2003” (WAC 220-76-100 ).

Interestingly, according to Andy Appleby of the WDFW, that agency was fully aware of British Columbia’s prescriptive approach to regulating escapes but negotiated with net pen operators towards an outcome-based approach (personal communication, July 2004). The state did not want escapes, but they were willing to leave it to fish farmers to work out how to prevent them. Also, establishing a means of identifying growers responsible for escaped fish could be a significant step for recovering costs. However, the costs imposed on growers are limited to recovery efforts (such as through recapture fisheries) and eradication of any resulting Atlantics discovered spawning and do not include regulatory expenses or penalties for environmental damage. Furthermore, as only one grower (Cypress Island Inc.) owns all of Washington’s net pens, this marking procedure actually serves only to distinguish Washington’s escaped Atlantics from British Columbia’s escaped Atlantics. That could be advantageous to the Washington industry given that escapes are more likely to result from the much larger industry neighbour to the north. The 2003 regulations also provide the WDFW with control over which species can be used in aquaculture, and prohibit the use of transgenic fish (WAC 220-76-100 ).

### *British Columbia*

From the start, escape policy for British Columbia’s salmon farming industry has been inclined more toward consultation, monitoring and assessment than command and control regulation and enforcement. British Columbia’s industry started at about the same time as Washington State’s in the early 1970s. In the 1980s, the industry began a period of rapid expansion, and in 1986 public concern about this expansion and the potential impacts of salmon farms prompted a 30 day moratorium on license issuance while the Provincial government conducted public consultations and assessed concerns. Aquaculture regulations adopted in 1989 stipulated that industry must take “reasonable precautions” to prevent escape (BC Reg. 364/89). Yet still the industry expanded and public concerns grew. In 1991, public apprehension about escaped salmon led to the initiation of a salmon monitoring program. By 1995, the process had come full circle with a new moratorium on licenses and an environmental review, complete with interest group submissions and public consultation. In the same way that the development of the industry in Washington State can be characterized as a process of licensing and legal appeals, the development of the industry in British Columbia can be characterized as a process of public

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protest, consultation, and policy revision. The last decade in British Columbia has seen this process accelerate.

What were the results of the environmental review commenced in 1995? In 1997, the British Columbia Environmental Assessment Office (BCEAO) released the Salmon Aquaculture Review. It concluded that “current measures for the prevention, monitoring and reporting of escapes are ineffective and must be improved” (BCEAO 1997:A-1). Aquaculture facilities in British Columbia require licenses under section 13 of the provincial *Fisheries Act* (RSBC 1996:Ch. 149). Under sections 18 and 19, the responsible minister has the ability to suspend, revoke, or refuse re-issuance of a license if there has been violation of the Act, the regulations, or the conditions of license. In addition, section 25 provides for financial penalties for any such violation. The “Aquaculture Regulations” (BC Reg. 78/02) not only prohibit the release of fish (s. 3(1)) but state that the license holder “shall take reasonable precautions” to prevent their escape (s. 3(2)). Reasonable precaution, however, as noted in the Salmon Aquaculture Review, is difficult to define and enforce (BCEAO 1997).

In October 1999, the British Columbia government announced a five point salmon aquaculture policy initiative designed to be implemented over the course of two years. The initiative included monitoring requirements, research commitments and a requirement for industry to develop escape prevention and response plans. In August 2000, after a serious escape of Atlantic salmon from Stolt Seafarm Inc., the industry was given 60 days to submit its escape response and prevention plans. In October, 2000, new amendments to the Aquaculture Regulations (BC Reg. 335/00) outlined detailed equipment and practice requirements that would be necessary to meet the standards for adequate escape prevention precautions. Further amendments to the regulations to target prevention efforts and resources at higher risk activities were made in April, 2002 (BCMAFF 2003). Interestingly, while obviously similar in objective to Washington’s response plans, the requirement for escape prevention plans in British Columbia did not leave the specifics up to industry but included such details as required net pen mesh size, breaking strength and anchoring.

Significantly, these equipment requirements were set to “meet generally accepted standards prevalent in the aquaculture industry.” A regulatory impact statement prepared for the launch of the amendments in 2000 stated that “with the exception of the new escape recapture plans, the proposed changes are already currently required as a condition of license; all farms would have eventually submitted these plans” (BCMAFF 2000a). Indeed, indus-

try representatives indicated at the time that they were already in compliance with the majority of these regulations,<sup>8</sup> which suggests that it was unlikely there would be significant reductions in risk.

What the equipment and practice requirements did clarify, however, is the meaning of “reasonable precaution.” Therefore, similar to Washington State’s NPDES permit and appeal process, British Columbia has gone through a process of clarification and refinement of exactly what it is that constitutes a violation. It remains to be seen whether clarification of precautionary expectations increase regulatory strength. As of November 2000, officials with the British Columbia Ministry of Agriculture, Food and Fisheries (BCMAFF) were not aware of any charges having been laid (B. Barker and A. Morgan, BCMAFF, personal communication). In defence of not having charged any fish farms, it was suggested that the new amendments to the regulation were introduced extremely quickly and a phase-in period would be necessary for industry compliance (K. Stinchcombe, BCMAFF, personal communication). In February of 2002, BCMAFF issued a news release on “Fish Farm Compliance,” advising that their staff had “inspected all 83 active fish farms during the 2001 inspection cycle” and that staff had “informed companies about areas of concern, and operators have been told to fix them. Firms failing to comply will face enforcement action, which may include warnings, violation tickets, fines or charges” (BCMAFF 2002b). Clearly, the agency was taking a discretionary approach toward violations, with escalating mechanisms for enforcement similar to those in Washington. More recent information from BCMAFF suggests that this approach continues, as a current list of their compliance and enforcement activities includes:

- awareness, education, promotion and training activities;
- promoting industry best practices, developing cooperative partnerships and agreements contributing to government objectives;
- conducting monitoring, inspections and audits;
- conducting investigations on alleged legislative and licensing violations or both for marine plant and wild oyster industries;
- acting as initial contact for public and industry complaints for finfish and shellfish aquaculture and referring enforcement files to the Ministry of Water, Land and Air Protection;
- if necessary, recommending administrative remedies such as licence suspension or cancellation; and;

- public reporting on the compliance status of salmon farm inspections (BCMAFF 2005a).

Moreover, in his 2004/2005 *Assessment of the Provincial Role in Sustaining Wild Salmon*, the Auditor General of British Columbia recommended that the province “strengthen the penalty provisions in its current aquaculture policy framework” (2004:70).

If past conduct can be taken as indicative, however, even strengthened sanctions will remain underutilized. Previous regulations under the *Waste Management Act* were not hampered by the same ambiguity as that of the escape regulations. Yet, despite there being clearer enforcement mechanisms under that Act, there seems to have been little enforcement against fish farms in practice.<sup>9</sup> Significantly, in specific reference to the *Waste Management Act* the Salmon Aquaculture Review noted the difficulty in assessing whether “the lack of charges and prosecutions indicates a high level of regulatory compliance throughout the industry or inadequate monitoring by regulators” (BCEAO 1997:Volume 4- Part B XIII). More recently, a decision by provincial officials not to lay charges for an escape in 2000 of more than 30,000 Atlantic salmon from a farm near Vancouver Island led to the resignation of the British Columbia Fisheries minister in 2003, amidst allegations that the minister’s office had interfered with the investigation in support of the industry (CBC News 2003). A special prosecutor found that there was no criminal intent involved.

### **Research and Monitoring**

Concurrently with the introduction of the new regulatory framework in 2000, the British Columbia government increased its emphasis on monitoring. Following escapes from Stolt Seafarm Inc. in the summer of 2000, British Columbia announced that it would intensify inspection of farms, including random spot audits and under-water videotaping (BCMAFF 2000b). That monitoring followed an already established predisposition. A joint federal and provincial program to “monitor the presence of Atlantic salmon” was initiated in British Columbia in 1991 (BCEAO 1997:Vol. 4, Part B). This program was expanded in 1992 to become the Atlantic Salmon Watch Program (ASWP) and included monitoring by commercial and sport fishers as well. In 2001, the program was further expanded with the First Nations Atlantic Salmon Watch, in which members of coastal first nations conduct surveys of streams in traditional territories for Atlantic salmon (Fisheries and Oceans Canada 2005).

This level of monitoring and data collection appeared earlier in British Columbia than in Washington State where monitoring began officially only in 1998, after the WDFW settlement agreement required that the agency monitor Atlantics “during their usual course of business” (Amos and Appleby 1999). While that was a significant step in monitoring, it lagged behind British Columbia’s program both in timing and in comprehensiveness of data collection. Adoption of a program similar to British Columbia’s has been on the agenda for Washington for some time, but authority and funding issues have impeded its implementation. As a result, data collection in Washington has been sufficiently hampered that the official in charge in 2000 observed that he “couldn’t quantify, necessarily, but could detect presence or absence” (A. Appleby, WDFW, personal communication).

In a clear example of cross-border learning, a December 1998 appeal of NPDES permits<sup>10</sup> was based on a report published by the British Columbia Ministry of Environment Lands and Parks (Rimmer 1998) on the discovery of Atlantic salmon by British Columbia fisheries staff during field surveys. Of further significance is the reliance on British Columbia reports in the assessments of Washington State agencies,<sup>11</sup> from which it appears that there were insufficient comparable reports available in their own state.

The BCMAFF has also indicated a certain level of commitment to research and development of new technologies that may alleviate some of the environmental concerns, including escapes, regarding aquaculture in both jurisdictions. In 2000 the province invited proposals for alternative “green” salmon farming projects and offered to grant new tenures (even though there was a moratorium in place at the time) to successful proposals (BCMAFF 2005b). By 2005 three of the proposed projects were operating, and each “involved various versions of closed-containment systems, along with other ‘green’ technologies and production approaches” (BCMAFF 2005b).

British Columbia has launched or contributed to several other major research and development initiatives related to aquaculture in the last few years, as has the Canadian federal government. These include:

1. The British Columbia Aquaculture Research and Development Committee, established in 2001;
2. The British Columbia Aquaculture and Environment Fund, established in 2002 with \$3.75 million from the province;

3. The University of British Columbia Centre for Aquaculture and the Environment, initiated in 2002, in which Fisheries and Oceans Canada is a partner and the province contributed \$1.25 million toward a Research Chair;
4. The Aquaculture Collaborative Research and Development Program, a Fisheries and Oceans Canada initiative funded at approximately \$4.5 million per year; and
5. AquaNet, which receives funding from the federal government to support joint university-industry research initiatives (BCMAFF 2005c).

Overall, it would appear that from the perspective of monitoring, research and technological development, British Columbia has been substantially more engaged than Washington State.

### **How Did We Get Here: Development Potential, Regulatory Authority, Interest Groups, and Background Conditions**

In this section we revisit the key domestic policy factors identified earlier in the paper and discuss how they have shaped policy approaches and contributed to convergence and divergence in the two jurisdictions.

#### ***Development Potential***

The suggestion that British Columbia has allocated more resources than has Washington to research and development should come as no great surprise given the substantially larger size of the British Columbia aquaculture industry. However, even taking industry size into consideration, further dynamics appear to have relevance. Block (1977) outlines a Marxist theory of the state that steers away from the traditional conscious ruling class explanations of capitalism and turns to an economic imperative perspective, where state managers, mindful of the need to maintain the social order, serve the interests of capital in general. Although not catering to the interests of particular capitalists, serving the capitalist class is essential to preserving business confidence and maintaining the economic order.

Another way of looking at this issue is to extrapolate from Hoberg's (1998) observation that there is an "inverse relation between profitability and the power resources of industry groups" to influence policy. In the case of aquaculture, this relation is not restricted to a particular sector but has a rural community component: the power of

the developing aquaculture industry increases inversely with the profitability of the traditional resource-based industries that have historically supported coastal communities.

In this spirit, there has been a highly cooperative relationship between government and capital in the British Columbia aquaculture industry, directed toward their shared goal of improving aquaculture's environmental image. Furthermore, the industry has claimed to welcome the BCEAO environmental review, the implementation of its recommendations and many of the other provincial efforts at greening the industry, at times even deflecting criticism over escapes with entreaties for the government to act on the recommendations outlined by the BCEAO (British Columbia Salmon Farmers Association 1998a). Two factors cannot be overlooked concerning this level of cooperation: 1) critics have been dubious about the actual impact of many of these policy changes, suggesting that the cost to industry of these improvements is more than offset by the benefit of better image; and 2) the government has demonstrated, from its funding of research, monitoring, and technological development, that it has a preference for passive monitoring over command and control regulatory enforcement and that it is willing to take a wide variety of environmental expenses onto its own shoulders, effectively subsidizing the environmental component of the industry. The Canadian Centre for Policy Alternatives has argued that the amount expended by the provincial and federal governments on aquaculture research and development, together with tax credits and other direct and indirect subsidies, is so large that it is "questionable ... whether the aquaculture industry is contributing positively to government revenue" (Marshall 2003:17).

Although resource communities in Washington are also in great need of economic alternatives, the development potential of the Washington industry has been limited for reasons that are not related to escapes, such as a limited number of suitable site locations, the prevalence of plankton blooms and, to a lesser extent, strict local foreshore access regulations. That is not to say that the industry could not develop further in Washington but that, unlike in British Columbia, the impetus to develop has been tempered by external expansion limitations. Although potential for growth and pressure to expand do not alone account for the differential development of environmental controls, in the context of powerful interest group dynamics they take on great salience, for the state necessarily must play "a critical role in maintaining the legitimacy of the social order" (Block 1977:8). As expressed in a news release from Fisheries and Oceans

Canada's Commissioner for Aquaculture Development, "the debate over the potential of escaped farm salmon to negatively impact wild salmon stocks has hindered the development of salmon aquaculture in Canada" (Fisheries and Oceans Canada 1999). Any government interested in furthering development will necessarily have to address this debate.

### **Regulatory Authority**

The allocation of regulatory authority is relatively similar in terms of nation and sub-nation dynamics, with practical authority held primarily at the state and provincial levels for both nations and residing in a small number of agencies, depending on the issue.<sup>12</sup> However, primary control over aquaculture in British Columbia is allocated to the provincial BCMAFF, and a formal "Service Agreement" is in place between BCMAFF and other provincial agencies setting out the relationship among them and how they will coordinate compliance and enforcement activities (BCMAFF 2005a). That is a key difference with respect to escaped salmon compared to the less coherent history of allocation of authority in Washington State. As noted, while the WDOE has regulatory authority over aquaculture permits in Washington, between 1985 and 2001 the WDFW was responsible for farmed salmon, and for any potential impact they might have on wild salmon—only after an escape had occurred. This created a serious regulatory hurdle, described by Andy Appleby of the WDFW as the mop and bucket approach: the WDFW had the authority to mop up the mess but no authority to fix the leak (personal communication, July 2004). Bill 1499 which returned limited authority to the WDFW went some way to correct this imbalance. Interestingly, whereas the WDFW worked with industry to prevent escapes, the most significant feature of the resulting regulations was the provision of a means of marking fish to distinguish Washington escaped Atlantics from those that originate in British Columbia (A. Appleby, WDFW, personal communication).<sup>13</sup> The impact of this new ability remains to be seen, although the effect on escapes within Washington no doubt remains limited by the weak penalties imposed on those responsible.

Frequent mention has been made in British Columbia—at least as recently as in a 4 October 2000, news release (BCMAFF 2000b)—of plans for coordinating policies between Washington and British Columbia via a formal inter-governmental agreement. While the logic behind this coordination of policy is obvious—given the commonality of the problem, and, to an uncertain de-

gree, the result—the actuality of coordination is not so simple. Conversations with key players on both sides of the border (personal communications, Andrew Appleby, WDFW, and Andrew Morgan, BCMAFF), indicate that despite the repeated promotion, at least the formal side of a coordination effort has stalled, impeded by the division of regulatory authority (and therefore of the authority to commit to a coordinated policy) in Washington State. Some attempts have been made to consolidate authority over aquaculture at the state level in Washington, and the return of limited authority to WDFW was a step in this direction, but the practicalities of this leave some doubts.<sup>14</sup> At bottom, despite the passage of years, no formal agreements specific to aquaculture have been struck, although informal meetings and consultations appear to continue. That the WDFW's decision to proceed with marking of fish for identification of escapees was made in full awareness of (including consultations with British Columbia officials), and yet in direct contrast to, British Columbia's more prescriptive regulatory approach is a case in point (A. Appleby, WDFW, personal communication).

It is not the intent here to overstate the importance of a formal agreement, when, all else being equal, similar ends could be achieved informally. The chronology of policy development in British Columbia and Washington makes it clear that much policy convergence has in fact been the result of a process of cross-border learning and sharing. The escape response plans and the Atlantic Salmon Watch Program are cases in point. However, all else is rarely equal, and Washington is significantly disadvantaged by regulatory difficulties. The problem with regulatory authority is not limited to the sub-state level, and much criticism has also been directed at the U.S. federal government for its weak role in aquaculture development.<sup>15</sup> By the assessment of a 1996 joint sub-committee, the U.S. federal regulatory framework is "complex, fragmented, and uncertain," with those engaged in offshore marine aquaculture subjected to a "highly uncertain regulatory framework" (Joint Subcommittee on Aquaculture National Science and Technology Council 1996:4.4.8). Although the Canadian federal government has not been free of criticism concerning its approach to the allocation of regulatory authority, it has directed a fair amount of effort toward maintaining cooperation and inter-jurisdictional understanding. The 1988 Canada-British Columbia Memorandum of Understanding regarding respective roles in the development of aquaculture is a good example. A shared desire to promote the industry has facilitated federal provincial cooperation. Furthermore, the Canadian federal government seems to be committed financially to aquaculture development in a

manner that the U.S. government has not been. In August of 2000, the Canadian government dedicated \$75 million to a “program for sustainable aquaculture,” of which \$32.5 million was allocated to science, research, and development (Fisheries and Oceans Canada 2000a). The effects of this federal involvement have been felt at the provincial level. There are clear indications, however, that U.S. federal support for aquaculture is on the upswing as the country moves to promote offshore aquaculture.

A unified push to development does not necessarily equate with stronger regulations, which are dependent on a variety of other factors. More specifically, the problems of fractured regulatory authority and weak federal commitment on the Washington side have not ultimately meant a lack of environmental regulation because they have been compensated for by a different institutional structure and by the use of this structure by environmental groups to force regulatory response. Nevertheless, problems with regulatory authority and commitment have contributed to weaknesses in research and monitoring.

#### ***Interest Groups, available Strategies and Background Conditions***

A substantial body of theory has developed explaining the different institutional frameworks in which Canadian and U.S. environmentalists operate and how that has affected their available strategies for action. It is undeniably the case that “within a given institutional context and ideational context, actors adopt the strategies most likely to advance their interests” (Cashore, et al. 2001:245). For example, environmental actors in Canada have on occasion attempted to use the courts to stop or restrict the activities of British Columbia salmon farms, but these attempts have been few and for the most part unsuccessful. The Canadian legal system is much more focused on ensuring procedural fairness in administrative decision making processes than on substituting the judgment of the courts for the judgment of regulatory decision makers and therefore is much less conducive to the legal campaigns that are possible in the United States. As a result, environmentalists’ strategies in British Columbia have placed greater reliance on public pressure tactics.

How successful has this approach been? In British Columbia, a large body of environmental, First Nations, and commercial fisher groups has been able collectively to mount a substantial lobby against fish farms. In addition to the banding together of diverse interests within the province, cross-border efforts along the Pacific coast have been initiated by British Columbia lobby groups to

increase the pressure, resulting in solidarity actions such as a collective letter by the Puget Sound Gill-netter’s Association against the potential lifting of the British Columbia moratorium. Here, cross-border learning mixes with cross-border intervention.

Cross-nationally, there have been two main action streams: 1) scientific knowledge, such as escape data and stream monitoring research, has been readily shared and distributed, not only among government groups in the policy context, but among interest groups seeking to strengthen their positions (predominant direction of flow from British Columbia to Washington); and 2) political successes from one jurisdiction are used as exemplars in the other (predominant direction of flow from Washington to British Columbia). That has had some interesting effects when, at the same time that U.S. environmentalists were using British Columbia data to prove their cases in court, British Columbia industry proponents were using Washington environmentalists’ legal failures as an indication of the lack of validity of the environmentalists’ claims (B.C. Salmon Farmers Association 1998b).

Therefore, although British Columbia’s powerful lobby force provides a highly charged context, it would appear that the most recent surge of policy development on the British Columbia side can largely be explained by the hypothesis that “significant policy change is unlikely without significant change in background conditions” (Hoberg 2001:15; and see Sabatier 1993). Significant background conditions for aquaculture policy include the aforementioned developments in neighbouring jurisdictions and the size and timing of escapes.

In 1995, when the British Columbia government placed a moratorium on the expansion of salmon farms while it referred the issue to the BCEAO for review, it was a highly demonstrative “addressing” of the concerns that these lobby groups had raised in public fora. In 1997 the BCEAO review issued its recommendations and again the provincial government made many public statements about its concern and its lack of tolerance for escapes and environmental risk. That the “moratorium” itself did not prevent a huge increase in production of farmed salmon<sup>16</sup> suggests that the government’s actions were simply an attempt to placate these groups while not threatening capital. Similarly, in February of 2000, a multi-stakeholder Salmon Aquaculture Implementation Advisory Committee was formed “to involve First Nations, coastal communities, environmental organizations, industry and the federal and provincial governments in the implementation of regulations, policy development, and the strategic development of the salmon farming industry” (BCMAFF 2002c), but

much to the surprise of some committee members, minutes were not even taken at an early meeting (personal communication, David Lane, T. Buck Suzuki Foundation). At the time, one might have speculated that as capital became further entrenched and the public tired of the debate, the regulatory “evolution” would stall. However, two escapes (one of over 30,000 fish) within two weeks in the summer of 2000 during this period of high publicity regarding the potential lifting of the moratorium and a huge federal grant for research and development did much to intensify the debate. Amendments to the aquaculture regulations were announced within months thereafter. The excessive speed with which this occurred, a fact not concealed by the officials in charge, is testament to the power these opposition groups have amassed.

Elements of this concession to environmental groups can be found in Washington as well. For example, a significant portion of the 2003 “new regulations” included sections on escape reporting and recapture plans that only reiterated existing requirements. The redundancy would seem to indicate a need, similar to that in British Columbia, to appease as the redundancy is acknowledged in the text itself: “For the purpose of meeting the requirements of this section, plans and manuals required by the department of ecology through the National Pollution Discharge Elimination System (NPDES) permit process may be submitted for approval” (WAC 220-76-120).

Nonetheless, the magnitude of counter pressure that exists in British Columbia is simply not available in Washington. The Washington industry is vastly smaller and there is a multiplicity of causes competing for environmentalists’ attention. Even for those groups focused on the preservation of wild salmon, aquaculture is often not even on their list of active concerns, falling so far behind habitat protection and hydroelectric dams as to be almost negligible.

However, profitable avenues for action open to Washington environmental groups do include the legal system. Legal actions can be effective for attaining and perhaps enforcing license criteria, but, the WDFW settlement agreement notwithstanding, the courts seem less likely to force research or monitoring actions. Although further study is needed to establish the differences in impact these groups have had on the evolution of regulations, it appears that in Washington a small but dedicated group, the “environmental consortium,” has been able to use the courts effectively to initiate change.

NPDES permit appeals are not the only source of salmon farming lawsuits in the U.S. In 2003, for example, a class action lawsuit was launched against the three

largest U.S. grocery chains (accounting for 6,000 stores in 30 states) for “failing to comply with federal law requiring disclosure of artificial colouring in farm-raised salmon” (Smith and Lowney, PLLC 2003). Although the suit is specific to colouring, it advertises an opposition to farmed salmon more generally by claiming that the failure to report colouring misleads the public into believing it is purchasing wild salmon. Associated news releases and a website provide publicity and support for the negative effects of farmed salmon. All in all, the evolution of aquaculture policy in Washington State is quite in keeping with the characterization of the U.S. environmental regulatory process as “costly, confrontational, litigious, formal, and unusually open to participation” (Jasanoff 1997:393).

## **Conclusion**

It appears that in British Columbia the evolution of aquaculture regulation has primarily been the result of continuous interest group pressure, combined with the government’s keen interest in facilitating development as smoothly as possible. In addition, changes in background conditions have acted strategically to facilitate recent developments. To the extent that significant salmon escapes coincide with well-publicized attempts to advance aquaculture, there is likely to be a concomitant symbolic tightening of the environmental regulations and criteria with which the industry must comply. In Washington, where the industry’s potential for development is limited, these interest group pressures are not as influential, but the institutional structure is more open to the legal efforts of environmentalists, and that has dictated a particular kind of success for them.

It is possible that a consolidation of regulatory authority over aquaculture in Washington would be to the benefit alike of industry and environmentalists. The fragmentation has no doubt in part been allowed to persist because of the lack of development potential. In any event, the inability of Washington and British Columbia to sign a cooperation agreement about aquaculture is clearly not impeding the sharing of knowledge and research or emulation of policy. Despite the external forces for divergence, the overall convergent tendency of escape regulation appears to be due in large part to what some comparative policy analysts consider the ‘homogenizing effect’ of shared knowledge. Research and data, even judicial victories, are freely traded across the border, with Washington relying a little more heavily on British Columbia’s greater budget and resources for research.

COMMON FUTURE, DIFFERENT POLICY PATHS? MANAGING THE ESCAPE OF  
FARMED ATLANTIC SALMON IN BRITISH COLUMBIA AND WASHINGTON STATE

From a pragmatic point of view, the conditions of license are currently very similar between British Columbia and Washington, and the actions taken by regulatory agencies against fish farms with escapes are not substantially different, except for Washington's future ability to distinguish between its own and British Columbia's escaped Atlantics. Significantly, while British Columbia and Washington State both came to require escape prevention and response plans, their approaches towards the requirement reflected cultural differences that may have implications for future effectiveness of enforcement. British Columbia's prescriptive approach concerning what constitutes adequate prevention leaves the onus and the expense on the provincial ministry to see that these regulations are met. To the extent that the British Columbia provincial government is willing and able to undertake this monitoring and enforcement, all else being equal, the regulations may be more environmentally effective, for example, in having a greater potential to improve the problem of "chronic leakage."<sup>17</sup> However, in forming its regulations through the judicial system, Washington State may be less subject to changes in the ideological imperatives of succeeding governments, and consequently may be developing a greater *potential* for future enforcement.

Both Washington and British Columbia have, in effect, needed to go back to the drawing board to establish clearer conditions of aquaculture licensing. Whereas British Columbia chose to focus on specifying the particulars of what is expected as preventative measures, Washington, focusing on the outcome, has been developing clearer definitions of what constitutes a violation. This difference opens up the potential for future divergence. As discussed by George Hoberg (1997), the "discretionary nature" of Canadian policy making allows for "a greater risk of backsliding." Under conditions of low environmental pressure, such as when the salience of the issue for the public declines, or when there is an economic downturn sufficient to tip the perceived "jobs versus environment" scale, there may be a concordant relaxing of net pen regulation compliance monitoring. With the "end product" approach in Washington, backed by a more interventionist judicial system, this monitoring is not as necessary, and enforcement is less subject to political will than to the will of environmental groups to pursue violations through legal means.

That said there are new conditions developing in the Washington-British Columbia aquaculture regulation arena that could significantly shift these dynamics. First, since 2001 the provincial government in British Columbia has been promoting performance-based measures rather than command-and-control regulation to deal with a

variety of environmental issues. It is quite possible that British Columbia's prescriptive approach to aquaculture regulation may change accordingly.

Second, the U.S. has designs to address its "seafood deficit" by increasing its domestic aquaculture production from \$1 billion to \$5 billion annually by the year 2025 (Weiss 2005). The greatest emphasis of research and legislative efforts towards this increase of production is being placed on the development of offshore aquaculture operations (E. McVey, National Ocean and Atmospheric Administration Central Library, personal communication). While the loss of public awareness resulting from moving operations beyond the view of the public should not affect the regulatory potential of the NPDES permits, moving operations beyond State waters certainly could. It is yet to be determined how great this effect will be, but opening up offshore aquaculture would shift the development potential of the heretofore limited Washington industry, while also shifting regulatory authority to the federal level.<sup>18</sup>

Third, as the new "marking" regulations in Washington come into full expression, there is likely to arise a new level of Washington-British Columbia integration. While the finding of marked escaped Atlantic salmon would strengthen any case brought by Washington environmentalists for a violation of the NPDES, a finding of unmarked salmon would indicate escapes from British Columbia and could stimulate a new form of cross-border negotiation.<sup>19</sup> The impact of these new dynamics remains to be seen.

**Appendix****Washington State Aquaculture Policy  
Significant Events**

1970s	Industry gets its start.
1989	As a result of environmentalist's threats to sue U.S. EPA under <i>Clean Water Act</i> , EPA compels WDOE to issue permits for net pen facilities.
1990	Permits issued by WDOE and appealed by environmental groups.
1993	Washington legislation requiring WDOE to set standards for net pen pollution.
1995	WDOE sets standards (WAC 173-221A and 173-204).
1996	More permits issued by WDOE and appealed by environmental groups.
1997	(May) Escaped Atlantic salmon designated a "pollutant" by PCHB.
1997	(July) WDOE issues administrative order to Global Aqua to develop "fish release prevention plan" and "accidental fish release response plan."
1998	Via legal settlement, WDFW agrees to monitor for Atlantics.
1998	PCHB rules WDOE must amend NPDES permits to include conditions addressing fish escapes and trial studies using all female smolts.
1999	PCHB orders WDOE to undertake a review of British Columbia's Tsitika River data.
2001	Bill 1499 grants WDFW authority to negotiate escape prevention with industry.
2003	New regulations (WAC 220-76) result from Bill 1499: farmed fish must be marked to identify the aquatic grower.

**British Columbia Aquaculture Policy  
Significant Events**

1970s	Industry gets its start.
1980s	Industry rapidly develops.
1986	30 day moratorium on licenses: Gillespie Report.
1988	Federal/Provincial Memorandum of Understanding, re: roles and development of aquaculture.
1990	Aquaculture Regulations: "reasonable precaution" license condition for escape prevention.
1991	Atlantic salmon monitoring program initiated (joint federal/provincial program).
1992	Atlantic Salmon Watch Program launched.
1995	Federal Aquaculture Development Strategy.

1995	BCEAO asked to conduct review of aquaculture regulations.
1995	Moratorium on the issuance of new salmon tenures.
1997	BCEAO Salmon Aquaculture Review completed, includes 49 recommendations.
1999	Five point salmon aquaculture policy initiative announced.
2000	(Feb) Multi-stakeholder Salmon Aquaculture Implementation Advisory Committee formed.
2000	(Aug) Federal government announces \$75 million for sustainable aquaculture program.
2000	(Oct) Amendments to the Aquaculture Regulations stipulating what "reasonable precaution" entails and including detailed escape prevention and response requirements.
2000-01	Approval of "green technology" pilot projects.
2001	Change of British Columbia government from NDP to Liberal.
2002	Further amendments to the Aquaculture Regulations to target prevention efforts and resources at higher risk activities.
2002	Moratorium on new salmon tenures is lifted.
2002	British Columbia announces \$5.1 million funding for three independent research partnerships on aquaculture and the environment.

**Notes**

- \* A different version of this paper is forthcoming in *BC Studies*.
- 1 For a more in depth discussion of British Columbia's introduction attempts, and how they compare to salmon escapes, see Volpe (2000). Volpe posits that "the very factors that resisted Atlantic salmon colonization years ago have now been altered to favour colonization" (Volpe 2000:2).
  - 2 See Goldstein and Keohane (1993) for a discussion of the role of ideas as "road maps" in policy development.
  - 3 For a more detailed discussion of the differences in the environmental regulatory regimes and the institutional reasoning behind the differences, see Hoberg (1997).
  - 4 In British Columbia, for example, responsibility for the implementation of aquaculture escape policy has been divided into *compliance*, assigned to the Ministry of Agriculture Food and Fisheries, and *enforcement*, assigned to the Ministry of Water Land and Air Protec-

- tion (the two ministries merged in 2005 to become the Ministry of Environment).
- 5 The Atlantic Salmon Watch Program is a cooperative research program in which fishers, hatchery workers, and others report observations of Atlantic salmon (Fisheries and Oceans Canada 2005).
  - 6 This could include technologies to aid in preventing the escapes of salmon (such as closed containment net pens), or technologies to aid in reducing the potential impact of escaped salmon, such as the development of non-reproducing stocks.
  - 7 Bill Moore, from the WDOE, stated in November 2000 that to his awareness at that time there was only one other case of an Administrative Order issued since Global Aqua/Cypress Island Inc. (personal communication). Furthermore, at that time, it appeared that the maximum penalty imposed on violating fish farms had been the issuance of a notice of violation against Northwest Sea Farms, Inc, for their June 1999 escape of 115,000 fish (Amos and Appleby 1999).
  - 8 Email correspondence with Alexandra Morton, of Wild Orca (an environmental organization based in the Broughton Archipelago), 17 November 2000.
  - 9 To our knowledge, there was only one incident, where an environmental group attempted to pursue charges against Stolt Seafarm Inc. on the basis of habitat degradation for sediment deposits under the net pen.
  - 10 PCHB Nos. 96-257, 96-258, 96-260, 96-261, 96-262, 96-263, 96-264, 96-265, 96-266, and 97-110.
  - 11 For example, the Amos and Appleby (1999) report relied on both the British Columbia Environmental Assessment Office's Salmon Aquaculture Review and on yearly published Summaries of British Columbia Catches and Sightings of Atlantic Salmon.
  - 12 For example, specific issues like tenure rights, waste disposal, or antibiotic usage will each be handled by the appropriate government agency.
  - 13 In British Columbia, such marking of fish could actually distinguish between different growers within the province, but implementation would be complicated because smolt production for the British Columbia industry is not limited to one grower.
  - 14 The significance of this new authority is tempered somewhat by the departure of Andy Appleby, the aquaculture coordinator in WDFW. As of July 2004, his position remained unfilled.
  - 15 For a much more in depth analysis of the chronology and inefficiencies of United States' federal authority over aquaculture, see Tiddens (1990).
  - 16 Based on Fisheries and Oceans Canada (2004) statistics, the total production of salmon from aquaculture in British Columbia increased from 27,275 tonnes in 1995 (the year the moratorium was put in place) to 68,000 tonnes in 2001 (the year before the moratorium was lifted).
  - 17 Escapes of multiple fish are only one facet of the salmon escape problem. "Chronic leakage" refers to the unknown number of salmon that escape from small holes in damaged or ill kept net pens—estimated by WFW (1999) at 100,000 fish per year in British Columbia.
  - 18 In June 2005, the U.S. Administration recommended legislation to Congress that would set up a system for expediting federal permitting of offshore fish farms in federal waters (Weiss 2005). Although the proposal includes a requirement that offshore farms be consistent with state laws, specific environmental protection measures are left to be decided by the Commerce Secretary (Weiss 2005).
  - 19 To further complicate these questions of the future, there is the question of whether any inclusion of Atlantic salmon in offshore aquaculture production would require the same marking procedure as that for Washington State Atlantics.

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# *The Determinants of Convergence in Canada–U.S. Environmental Policy-Making: An Automotive Air Pollution Case Study*

Suna Bayrakal

## **Introduction**

Similarities and differences between Canada and the United States (U.S.) in political systems, policy styles, and domestic and international political, economic, and legal pressures shape environmental policy-making in Canada and affect the degree of policy convergence with the U.S. This paper will explore these factors through a case study of the automotive fuel additive methylcyclopentadienyl manganese tricarbonyl (MMT) in Canada to examine the extent to which they contribute to convergence or divergence from the U.S. in this area of environmental policy. MMT has been accused of interfering with the functioning of the new generations of automotive air pollution control technology systems, and debate about its toxicity is ongoing. The considerable contribution automobiles make to air pollution problems and the economic significance of the motor vehicle manufacturing and petroleum refining industries make them important industrial sectors for examination. Furthermore, choice of this particular case study allows exploration of the connections between environmental policy, trade, and Canada-U.S. policy convergence and aims to contribute to the literature on policy convergence by suggesting how the complexity of existing policy convergence analytical frameworks might be extended.

Policy convergence can be seen to be “a measure of the relative similarity or difference in policy objectives, instruments, and consequences across political jurisdictions” (Hoberg, Banting, and Simeon 2002:253). Note that convergence is “a dynamic concept that asks whether policies are becoming more alike over time” (Hoberg, Banting, and Simeon 2002:253). This study will be centred on the MMT policy process in the 1990s through 1998 to include a 1995 policy change on the use of MMT in gasoline in the U.S. and, in Canada, a 1997 law affecting the use of MMT and a 1998 MMT policy reversal.

## **Framework for Analysis**

As the basis for analysis, this study will use the analytical framework developed by Banting, Hoberg, and Simeon (1997) to explain policy convergence between two countries. To tailor the model further for the purposes of this paper, additional distinguishing features and conditions specific to environmental policy are also considered here.

Three broad categories of explanatory factors of convergence are identified within the model developed by Banting, Hoberg, and Simeon (1997). First, convergence

may result from parallel domestic pressures in different nations without one country exerting influence directly on another. Similar policy challenges (e.g., patterns of urbanization and industrialization, new technological impacts, or the emergence of social movements) may evoke similar policy responses. Second, emulation can cause convergence to occur as a result of the exchange of ideas and related learning processes. In this mode, one country may choose to adopt policies similar to those of another country. Third, international constraints can result in policy convergence. These constraints can be legal (e.g., bilateral and multilateral treaties) and economic (e.g., economic integration or concerns about the mobility of factors of production in a globalized world) or both. Explanatory factors of divergence in Banting, Hoberg, and Simeon's (1997) framework fall into five broad categories: (1) the different relative positions of individual countries within the global economy and international order, (2) culture and distinctive national values, (3) differences in political institutions, (4) differences in the domestic economy and social cleavages, and (5) the legacy of past policies.

Specific to environmental policy, Hoberg (1997) identifies four factors which are analyzed for their contribution to policy convergence. First, the state of science and technology and the nature of the problem can influence policy convergence. Science and technology may act as a harmonizing force, depending upon the degree of uncertainty; the larger the uncertainty, the greater role played by values, economic interests, and political factors in policy-making. The nature of the problem can influence policy convergence: common problems (including, for example, similar levels of pollution) tend to promote convergence. Second, domestic pressures can be forces for convergence (e.g., similar levels of public concern) or divergence (e.g., different economic and political interests result in different types and levels of trade-offs between environmental protection and the economy). Third, institutional structures and policy regimes influence policy convergence. Fourth, international influences (globalization of environmental problems, economic integration, emulation, and cross-border lobbying) are expected to influence policy convergence.

In sum, seven categories of factors relating to environmental policy convergence can be discerned for the purposes of analysis of the case study of interest. These include domestic pressures, emulation, international influences, differences in political institutions, distinctive national features (culture, national values, and economic and social cleavages), the legacy of past policies, and the nature of the problem and influence of science and technology.

## MMT Policy-Making

### *A Brief Chronology of MMT Policy Change in Canada and the U.S.*

In the late 1970s, MMT began to be added to automobile gasoline in Canada as an alternative to tetraethyl lead for boosting gasoline octane ratings and reducing engine knock. In June 1997, the Canadian federal *Manganese-based Fuel Additives Act* came into force which banned the importation of, and interprovincial trade in, MMT. In the same year, the U.S.-based Ethyl Corporation (Ethyl), the sole manufacturer of MMT, filed a claim against the Canadian government for violating the North American Free Trade Agreement (NAFTA) and Ethyl Canada, Ethyl's Ontario-based subsidiary, filed a lawsuit in a Canadian court claiming that the bill contravened provincial rights. A third challenge to the law, also in 1997, came from the government of Alberta which submitted its concerns, on behalf of Alberta oil refiners, to a dispute resolution panel of Canada's Agreement on Internal Trade (AIT). A fourth challenge under NAFTA's Chapter 20, which involves state-to-state disputes, was not supported by the U.S. government and did not move forward. In June 1998, the AIT's dispute resolution panel ruled against the "internal trade" portions of the ban. In July 1998, the ban on trade in MMT was rescinded by the Canadian government which settled with Ethyl Corporation for US\$13 million thus foregoing a NAFTA final decision in the case.

In the late 1970s, MMT was banned in the U.S. for its potential contribution to hydrocarbon emissions. Since that time, Ethyl has formally requested four times that the U.S. Environmental Protection Agency (EPA) allow MMT to be added to gasoline in the United States. EPA repeatedly denied the requests based first on concerns for emissions control system function and then on concerns for public health. In 1995, Ethyl obtained a court order directing EPA to allow MMT to be added to gasoline. It is currently legal in the U.S. except in California but is reported not to be in widespread use among major U.S. oil refiners (Environmental Defense Fund 1996, 1998).

### *Canadian Domestic Policy Influences*

#### *Political and Economic Context*

In Canada, the MMT issue positioned those with health and environmental concerns and the automakers against the oil refiners and the manufacturer of MMT. Government policy-makers were caught between the assertions

and arguments of these groups, the uncertainties surrounding the effects of MMT on health and vehicle emissions control technologies, and the obstacles and assistance of various institutions and policy instruments. The potential for increased automotive combustion emissions from the possible malfunction of air pollution control systems as well as the potential neurotoxicity of manganese from MMT use had environmentalists and health professionals concerned. This issue is further discussed later in this paper.

The auto industry in Canada, in concert with that in the U.S., has argued that use of MMT causes manganese to accumulate in the exhaust system and increases hydrocarbon emissions, causes spark plugs to misfire, and interferes with the operation of the new generation of emissions control equipment, including catalytic converters and those systems that monitor fuel combustion and exhaust emissions. Canadian automakers indicated that if action was not taken on MMT, it would boost the cost of vehicles to cover warranty costs and might void parts of warranties and “take technology out of Canadian cars” (Morton 1994:8). The economic importance of the Canadian auto industry in Canada is significant with (1) major contributions to GDP, employment, exports, and investment, (2) extensive links to other parts of the economy (as a significant consumer of steel, iron, aluminum, copper, rubber, plastics, textiles, glass, chemicals, machine tools, machinery, electrical products, and semi-conductors), and (3) an important role in the development of high technology goods and services (Adams and Brock 1995; Federal Task Force on the Canadian Motor Vehicle and Automotive Parts Industries 1983; Industry Canada 1996a; Industry Canada 2001; Kumar and Holmes 1998; Molot 1993). Given the contributions to the economy of the auto industry as noted above, the sector has the potential to wield substantial political power within Canada.

The Canadian petroleum refining industry has maintained that MMT is a good product as an octane enhancer and antiknock additive. Furthermore, MMT was argued to be an inexpensive fuel additive and use of alternatives to MMT would not only require excessive investment to re-tool refineries, but also potentially take up market share (e.g., ethanol works as an antiknock additive, but may take up to ten percent of the gasoline tank, that in contrast to a much smaller amount of MMT) (Industry Canada 1996b; Traynor 1998). More generally, the Canadian refining industry supported the development of national environmental fuel standards to address concerns of “dumping” of lower-quality fuels in Canada at prices below Canadian products. However, there were significant concerns about

the investment costs associated with the potential future production of “ever more environmentally friendly transportation fuels” and the need to continue to respond to automotive technological changes (Industry Canada 1996b:53). Like the auto industry, the refining industry is of significant economic importance in Canada. It is a net exporter, a major contributor to GDP, and a major employer (Industry Canada 1996b). The refining industry has a significant role in Canada’s wealth and security. (Unlike the U.S., Canada is self-sufficient in petroleum products.) (Industry Canada 1996b). The petroleum products industry has been asserted to be a “strategic infrastructure industry” in that it provides essential inputs to other major businesses, such as petrochemicals, transportation, power utilities, chemicals, chemical products, agriculture, and mining. Canadian refining is a mature industry with little demand growth and low profitability (Industry Canada 1996b). The industry is highly competitive, very capital-intensive, and has a strong domestic market focus (more than 90 percent of gasoline sold in Canada is domestically refined) (Geddes 1996b; Industry Canada 1996b). As for the auto industry, the Canadian refining industry has the potential to wield substantial political power within Canada.

Ethyl, the sole manufacturer of MMT, argued that use of MMT in automotive gasoline reduces air pollutants, such as nitrogen oxide, and does not harm automotive emission systems or present any significant risks to human health or the environment (Afton Chemical 2004). Ethyl pointed to a 1994 Health Canada study that concluded that combustion of MMT in gasoline poses no additional health risk to Canadians (Wood and Egyed 1994) as well as to a study in 1998 by Research Triangle Institute of North Carolina (which was funded by Ethyl) to support its position. In addition, Ethyl indicated that MMT had been used safely in Canada for over twenty years without vehicle problems (Afton Chemical 2004). All of the MMT sold in Canada is manufactured in the U.S. and transferred to a plant in Ontario. This plant is Ethyl Canada, Ethyl’s Canadian subsidiary, which blends the MMT with a solvent prior to distribution to Canadian refineries. Ethyl Canada also pointed to the 1995 court decision requiring the EPA to allow the use of MMT in gasoline in the U.S. and to EPA statements that the use of MMT does not result in failure of auto emission control systems (Ethyl Canada 1995).

In the early 1990s, Environment Canada unsuccessfully urged the auto and oil refining industries to resolve the MMT issue without government intervention (Pole 1995; Standing Senate Committee on Energy, the Environment, and Natural Resources 1997). In 1995, Environment

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Canada introduced a bill to prohibit MMT use as an auto fuel additive, and in 1997, the *Manganese-based Fuel Additives Act* was passed. In 1998, after the AIT dispute resolution panel ruled and the NAFTA tribunal had made a preliminary award in Ethyl's favour, Environment Canada rescinded the MMT trade ban. As part of the announcement of this policy reversal, Environment Canada indicated that the government would initiate a third party review of all data concerning MMT, including the results of studies on health and automobile tailpipe emissions impacts currently under way in Canada and the U.S. (Environment Canada 2000b).

Environment Canada has adopted as general policy that "continuing to align Canada's national vehicle emission standards with stringent U.S. federal standards represented the preferred approach" (Environment Canada 2000a:6) because it is the most cost-effective strategy, the U.S. standards are some of the most stringent in the world, and the auto industry is highly integrated in North America; so "a harmonized approach to setting vehicle emission standards has, over the years, provided Canadians with advanced emission control technology at a low cost" (Environment Canada 2000a:7). Environment Canada has also indicated that gasoline reformulation in Canada, including removal of certain components, prevents dumping of lower quality fuel in Canada (a concern about the U.S. acting first on reformulated gasoline), maintains the competitiveness of the Canadian refining industry, assures the performance of auto emission control devices given the integration of the North American auto industry, and reduces risks of trade sanctions by countries with more stringent requirements (Energy, Mines, and Resources Canada, Canadian Petroleum Products Institute, and Environment Canada 1992; Environment Canada 2000b; Monenco Engineers and Constructors Inc. 1984).

Environment Canada found the evidence regarding the effect of MMT on the latest vehicle emission controls to be inconclusive but decided to invoke "the precautionary principle which this government signed on to at Rio, with Agenda 21, back in 1992" and proceed with the introduction of the bill to regulate MMT (Standing Senate Committee on Energy, the Environment, and Natural Resources 1997:19). The Canadian Standing Senate Committee on Energy, the Environment and Natural Resources (the Committee) which held hearings on the proposed law, supported that decision and also included a section in their interim report on the bill summarizing the U.S. experience with MMT, given that many stakeholders from both sides of the issue had referred to activities in the U.S.

### *Legal Issues*

Environment Canada encountered multiple difficulties in trying to regulate fuel formulations under the department's jurisdiction at the time. Prior to the assent in 1999 of the revised *Canadian Environmental Protection Act* (CEPA), responsibility for fuel formulations rested primarily under provincial jurisdiction. The Canadian General Standard Board, a standard setting organization of the government of Canada, specifies a limit of 18 milligrams of manganese per litre of gasoline which has been adopted by some provinces (Canadian Vehicle Manufacturers Association 2002; Wood and Egyed 1994). Under the original CEPA of 1988, as recommended by both the minister of the Environment and minister of Health, Environment Canada could act to regulate MMT only if its combustion would cause a significant contribution to air pollution or if it could be designated a "toxic substance" (*Canadian Environmental Protection Act* 1988; Soloway 2000). This second option faltered against a 1994 Health Canada study asserting that "the combustion products of MMT in gasoline do not represent an added health risk to the Canadian population" (Wood and Egyed 1994:69). Furthermore, other studies had not been conclusive regarding the low-level, chronic exposure to manganese from the combustion of MMT. The Canadian government therefore decided to make use of its power to regulate trade. In attempts to meet NAFTA requirements to treat foreign and domestic firms equally, the government prohibited both the "interprovincial trade in or import for a commercial purpose" of MMT (*Manganese-Based Fuel Additives Act* 1997:1; McCarthy 1998).

As noted above, three legal challenges moved forward against the Canadian federal *Manganese-based Fuel Additives Act*, all in 1997. First, Ethyl filed a claim for US\$251 million against the Canadian government under NAFTA's Chapter 11 provisions for investment. That will be further discussed below under international issues. Second, Ethyl Canada filed a lawsuit in a Canadian court arguing that the bill intruded into an area of provincial jurisdiction. Third, the government of Alberta, supported by Québec, Saskatchewan, and Nova Scotia, submitted its concerns, on behalf of Alberta oil refiners, to a dispute resolution panel of Canada's AIT. The objective of the AIT, as stated in Article 100, is "to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada and to establish an open, efficient and stable domestic market" (Agreement on Internal Trade 1995). Alberta argued that the MMT law contravened the AIT and could not be justified by AIT provisions for legitimate objectives. The AIT

Article 1505(7) requires that “an environmental measure shall not be considered to be more trade restrictive than necessary to achieve a legitimate objective” (Agreement on Internal Trade 1995). In mid 1998, the AIT dispute resolution panel ruled in Alberta’s favour (Agreement on Internal Trade Article 1704 Panel 1998).

### *Other Issues*

Manganese emissions in Canada primarily result from manganese-bearing alloy production, iron and steel production, gasoline-powered motor vehicles, power generation, and pesticide application (Wood and Egedy 1994). Ingested manganese is important in the human diet for bone development, carbohydrate metabolism, and reproduction, but high levels of airborne manganese have been found to lead to speech and movement disorders (Black 1998).

There have been numerous studies on MMT both in Canada and the U.S. and by those from both sides of the border working jointly (e.g., EPA had a representative who was a peer reviewer on the Health Canada’s 1994 study) (Black 1998). These studies fall into two main categories: those assessing the impact of MMT on health and those examining the effects of MMT on automotive air pollution equipment and tailpipe emissions. Much uncertainty surrounds the effects of MMT in both these types of studies, and they have therefore been questioned on several fronts for applicability to policy-making including (1) exposure versus health effects, (2) the effects of low-level, chronic exposures versus high-level, acute exposures, (3) the location of the studies, (4) the source of the manganese being studied (auto exhaust, subway rails, subway areas as auto exhaust sinks, soil, water, and air from industrial sources such as steel mills), and (5) the population on which the studies have been performed (occupational white male versus fetuses, children, or other populations) (Black 1998; Hileman 1998; McKinsey 1998).

### *International Influences*

#### *Political and Economic Context*

#### *Canada-U.S. Differences in Political Institutions and Policy Regimes*

Hoberg notes that international factors “affect both the United States and Canada, but the vulnerability to external forces is much greater in Canada because of its smaller size and more open economy. In addition, Canada faces the

unique problem of being overwhelmingly dependent on the United States (Hoberg 1998:317). More specifically, in examining Canadian and U.S. environmental policy, Hoberg also indicates that although there is some apparent convergence (since the late 1980s) between U.S. and Canadian policy styles, political structures have limited the degree to which these systems have come together. Because of the separation of powers in the U.S., the U.S. Congress does not trust the executive to implement its policies as intended; so legislators write explicit statutes to force compliance. In contrast, the Canadian parliamentary system holds few incentives to limit executive discretion in policy-making. The legislature and executive are joined in cabinet government, and a norm of tight party discipline prevails and, thus, adequate executive authority (ministerial discretion) rather than specific statutes are sought. Where the “institutional fragmentation and a culture of distrust militate against the emergence of cooperative bargaining” in the U.S. (Hoberg 1998:312), the parliamentary system in Canada “militates against legalism” (Hoberg 1998:313). The difference in the degree of specificity of regulatory laws is identified as the primary explanation for the “different roles of the courts in environmental policy in the two countries” (drawing on Howlett, Hoberg 1998:313). In sum, the U.S. system is more open, formal, legalistic, inflexible, and adversarial with significant restrictions on regulator discretion (Hoberg 1998; Wallace 1995). In Canada, policy-making is more informal and cooperative, and regulators are relatively more autonomous.

Although Canada and the U.S. are both federal states, Canada is significantly more decentralized, and that is reflected in the less significant federal role in environmental protection where Environment Canada’s focus has tended towards research and development of national guidelines agreed upon and largely enacted as regulations and enforced by the provinces (Doern and Conway 1994; Hoberg 1998; Lundqvist 1974). Environment Canada has also been seen as unprepared and somewhat unwilling to be a political actor (Conway 1990). In contrast, the U.S. federal government has taken on a leadership role and considerably expanded its authority over the states since 1970 (Hoberg 1998; Lundqvist 1974).

The potential for U.S. to influence Canada through economic integration and international trade agreements raises concerns about domestic power to make and implement environmental policy. However, Hoberg draws attention to the benefits for Canada of having its major trading partner as the U.S. whose environmental regulations are at least as stringent as Canada’s (Hoberg 1998). Concerns about stringent standards across the border making Can-

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ada a pollution haven have, in the past, spurred new legislation. However, in the absence of capacity to develop new regulations, Canada has to a certain extent, been a free rider on U.S. laws.

Specific to automotive air pollution control policy in Canada and the U.S., Hoberg (1997) notes that auto emissions regulations are generally more stringent in the U.S. than in Canada but that convergence is occurring with U.S. leadership in this regulatory area. Hoberg also states that “Canada is highly vulnerable to U.S. policies and action when markets are integrated and economies of scale exist. For instance, in the case of automobile emissions, the highly integrated market for cars and the scale economies in the production process significantly reduced the cost to Canada of following the U.S. lead on tailpipe controls” (Hoberg 1991:125).

### ***U.S. MMT Policy Activities***

The U.S. Congress banned MMT use in gasoline under the *Clean Air Act Amendments* of 1977 but authorized EPA to issue waivers to allow its use (Alliance of Automobile Manufacturers 2002). Ethyl has applied to EPA four times for a waiver to allow use of MMT in gasoline in the U.S. (Alliance of Automobile Manufacturers 2002; McKinsey 1998; Pirusso Research Associates and De Kany Associates 1984). EPA originally denied Ethyl’s waiver application (submitted in 1978) because of concerns about an increase in hydrocarbon emissions. Subsequent applications were denied based on lack of data and then because of health concerns (Environmental Protection Agency 1993, 1995). EPA found that Ethyl had demonstrated that “MMT would not ‘cause or contribute to failure of any emission control device or system’ in a vehicle” but that there was “a reasonable basis for concern regarding potential adverse effects on public health” from MMT use (Environmental Protection Agency 1995:36414). Ethyl appealed the EPA decision on their fourth waiver application (submitted in 1991) through the U.S. Court of Appeals for the District of Columbia Circuit which subsequently ruled in Ethyl’s favour. The Court found that the U.S. *Clean Air Act* (CAA) Section 211(f)(4) “does not afford [EPA] the discretion to consider factors other than the mandatory ‘cause or contribute’ determination in deciding whether to issue a fuel additive waiver” (Environmental Protection Agency 1995:36414). Effective 11 July 1995, EPA granted Ethyl a waiver for MMT use in unleaded gasoline in the U.S. at a maximum allowable concentration of 1/32 g manganese/gal (8.26 mg Mn/L) (Environmental Protection Agency 1995).

Upon the 1995 change in policy regarding MMT use in gasoline in the U.S., environmental activists, led by the Environmental Defense Fund, asked U.S. oil companies to avoid using MMT (Environmental Defense Fund 1996; Geddes 1996a). A survey of major U.S. refiners indicated that, at the time, they had no plans to begin using MMT (Geddes 1996a; Halpert 1996). In response, Ethyl launched a national advertising campaign in the U.S. citing MMT’s use over more than twenty years in Canada as evidence that their product is safe (Geddes 1996a). A subsequent survey by the Environmental Defense Fund also showed little usage of MMT by major U.S. refiners (Environmental Defense Fund 1998)

### *Legal Issues*

#### *Canada-United States Automotive Products Trade Agreement (Auto Pact)*

The high level of integration of the Canadian auto industry with that of the U.S. dating from the 1965 Canada-United States Automotive Products Trade Agreement (Auto Pact) is one of the most significant and distinctive factors that has since molded the Canadian auto industry. Industry restructuring in the late 1980s and early 1990s and the signing of the Canada-U.S. Free Trade Agreement (FTA) in 1989 led to further rationalization of vehicle and parts production and deeper integration of the auto industry in the U.S. and Canada (Federal Task Force on the Canadian Motor Vehicle and Automotive Parts Industries 1983; Kumar and Holmes 1998). The North American Free Trade Agreement (NAFTA) of 1994 served to rationalize the auto industry across North America (most significantly by integrating Mexico) but did not significantly affect the Canadian auto industry which was more radically changed by the Auto Pact. The Auto Pact has integrated the North American auto industry such that harmonization of standards and regulations are “critical to the long term competitiveness of the auto industry” (Energy, Mines, and Resources Canada, Canadian Petroleum Products Institute, and Environment Canada 1992:35).

#### *The North American Free Trade Agreement (NAFTA)*

Ethyl’s claim under the 1994 North American Free Trade Agreement (NAFTA) Chapter 11 provisions related primarily to unfair treatment (domestic favouritism) within Canada of Ethyl and its investors (Appleton Associates 1997). Because the ban was on importation and international trade, it would have required Ethyl to establish

MMT manufacturing plants in each province in which it wished to sell MMT rather than the current practice of manufacturing MMT in the U.S. for export to sell in Canada. In the initial NAFTA arbitration process, the government of Canada argued that the NAFTA tribunal did not have jurisdiction to hear Ethyl's claim because of failure to meet certain procedures to bring the claim to the tribunal and that the claim was outside of NAFTA provisions (Hughes 1997). Prior to the settlement between Ethyl and Canada, the NAFTA tribunal did rule on jurisdiction, finding that it did have jurisdiction in the case, but also went beyond that decision to address Canada's defence related to the scope and application of NAFTA, finding it to be, at first review, inadequate (North American Free Trade Agreement Dispute Settlement Tribunal 1998; Weiler 2000). Weiler notes that although the NAFTA tribunal needed to argue only that it had jurisdiction, "one wonders whether the tribunal was attempting to send a signal to Canada that it might think better of raising the issue later" (Weiler 2000:198). Perhaps that also encouraged Canada to move towards a settlement with Ethyl.

### **MMT Policy Convergence: Analytical Results**

As noted previously, factors relating to environmental policy convergence include domestic pressures, emulation, international influences, differences in political institutions, distinctive national features (culture, national values, and economic and social cleavages), the legacy of past policies, and the nature of the problem and influence of science and technology. Each of these is considered below in relation to the MMT policy case.

#### ***A. Domestic Pressures***

In both countries, the automotive and petroleum industries carried significant economic weight which could be brought to bear as political pressure to further their interests. However, although MMT was a very divisive issue in Canada in the 1990s, it does not appear to have been as much so in the U.S., as MMT had already been prohibited from use for approximately as long as Canada had been using it (since the mid 1970s). U.S. refiners had already made adjustments to alternatives to MMT, and the fuel additive was not in widespread use even immediately after the lifting of EPA's effective ban. U.S. automakers, thus, did not appear to have as much cause for alarm. However, Ethyl's actions which put pressure, through legal means, on governments on both sides of the border represents a form of "parallel domestic pressure" acting as a

force for convergence. One significant difference between Canada and the U.S., however, appears to be the role of oil refiners on this issue, in large part determined by their histories. U.S. refiners had already made technological changes to refineries to adapt to octane enhancing alternatives to MMT several years prior to the 1995 reversal of EPA's policy banning MMT. Although at least some U.S. refiners generally supported the use of MMT (Environmental Protection Agency 1993), they may have had less interest in becoming actively involved in the controversial MMT policy issue (including the formation of a coalition with Ethyl) than their Canadian counterparts who were facing potentially significant capital investments to adjust to the substitution of MMT. The fact that Canadian refiners served mostly domestic markets (and not the U.S. market) also further reinforced differences in position on MMT policy between Canadian and U.S. refiners.

#### ***B. Emulation***

Canadian policy actors involved in the MMT case looked regularly across the border and made use of U.S. information and activities in evaluating alternatives in formulating its MMT policy. American policy actors involved in the MMT issue have also made use of Canadian science and information on activities in the U.S. MMT policy process, although perhaps less explicitly and with relatively less influence. Both in the political aspects of the Canadian policy process and in the scientific research processes on the impacts of MMT, links to the U.S. were evident.

At the time of assent of the Canadian MMT law (1997), EPA had already been forced to allow use of MMT in gasoline in the U.S. (except California where it is banned). However, Canadian harmonization concerns (related to automotive air emissions which in part pushed the bill forward) were perhaps focused on an expectation that widespread use of MMT in the U.S. was not imminent.

Hoberg (1991) suggests that the most important force behind Canadian emulation is value consensus. In light of that, it is interesting to note that both Environment Canada and the EPA attempted to invoke the precautionary principle under the uncertainty associated with the impacts of MMT in gasoline. However, both agencies ended up with similar resulting policies (allowing use of MMT in gasoline) because of disagreements over the limits of their jurisdictions lost with the courts, trade agreements, existing policies, subnational governments, and stakeholders, or all the foregoing.

### *International Influences*

#### *International Economic and Trade Constraints*

The use of NAFTA by Ethyl, especially in combination with Canada's own AIT and its dispute resolution panel findings, was a major international constraint in the MMT policy process. Although Ethyl, in its claim, did draw attention to the fact that since December 1995 MMT was allowed to be used in gasoline in the U.S., NAFTA did not itself necessarily make a major contribution to convergence between MMT policy in the U.S. and Canada. NAFTA was not used to force EPA to reverse its MMT ban, and the EPA MMT ban was not a direct consideration in the claim leveled by Ethyl. Three other trade-related constraints that did encourage convergence included the Auto Pact agreement, Canadian concerns about fuel dumping from the U.S. into Canada if the U.S. acted first and alone on reformulated gasoline, and concerns about maintaining the international competitiveness of the Canadian refining industry if the more stringent fuel standards of major trading partners were not applied in Canada.

Other international economic and trade-related constraints in this case included the integration of the North American auto industry and, in particular, integration of the Canada-U.S. auto industries dating back to the 1965 Auto Pact. At the time that Canadian automakers began putting pressure on the government to harmonize the regulation of MMT with the U.S., the EPA had continued to deny Ethyl a waiver for use of MMT in U.S. gasoline. That was essentially part of a broader pattern of Canadian convergence on U.S. policy in other auto emissions standards. Another international economic-related constraint was the Canadian government's concern that the integrated North American auto industry would follow through on threats to remove the "technology" out of Canadian cars because of the effects of MMT on advanced air pollution control systems.

#### *Country Position in International Order*

Canada's position in the international order relative to the U.S. might suggest that its policies would diverge from those of the U.S. However, given that Canada is a smaller state bordering on a larger, more powerful state with which it has a significant economic relationship, its role is often more as policy-taker than policy-maker. Hoberg (1991) also notes that, whether forced by international pressures or impressed by foreign experience, in small countries like Canada, regulators are often not so much policy-makers

as policy-takers. That is true in the case of automobile emissions control regulations and in the MMT case, where Canada ultimately allowed use of MMT (which was U.S. policy as well). As policy-taker in relation to the U.S. in this instance, Canada tends to promote convergence rather than divergence.

#### *Differences in Political Institutions*

As discussed in the previous section, differences between the Canadian parliamentary system of government and the U.S. balance of power structures are argued to be a factor for policy divergence. These institutional differences are expected to lead to a difference in the environmental policy regimes, including the role of the courts and of the lead environmental agencies. The Canadian environmental regulatory approach tends to be more informal and cooperative with relatively more autonomous regulators, whereas the U.S. approach is more open, formal, legalistic, inflexible, and adversarial with significant restrictions on regulator discretion (Hoberg 1998; Wallace 1995). The difference in EPA and Environment Canada roles and regulatory styles can be seen in the MMT case. Environment Canada originally attempted to get Canadian automakers and oil refiners to reconcile the MMT issue without government intervention, whereas the U.S. had banned MMT outright, and EPA had refused repeated Ethyl requests for permission to sell MMT. Less accustomed to the judicialization of environmental policy-making than the EPA and in keeping with their more cooperative approach, Environment Canada settled with Ethyl prior to a NAFTA final ruling (although the department did await the AIT ruling). In contrast, the EPA's ongoing struggle with Ethyl over permission to allow MMT use in U.S. gasoline was decided through the court system.

Furthermore, fragmentation in the U.S. is said to be horizontal and in Canada, vertical (Hoberg 1997). Although both countries are federal states, Canada is seen to be the more decentralized of the two which, in the case of fuel additive policy-making, is reflected in the following statements issuing from a government and industry workshop on gasoline reformulation: "unlike in the U.S. where the U.S. EPA takes the lead role and has regulatory powers on a national basis, there is a lack of strong leadership on this issue [gasoline reformulation including possible removal of MMT] in Canada. There are many jurisdictions, which makes it difficult to set national standards" (Energy, Mines, and Resources Canada, Canadian Petroleum Products Institute, and Environment Canada 1992:26). The "many jurisdictions" included

Environment Canada, Health Canada, Transport Canada, Natural Resources Canada (formerly Energy, Mines, and Resources Canada), and the provincial governments. At the time of the MMT policy-making in Canada, regulating fuel formulations was a provincial responsibility, and automotive emissions regulations were established by Transport Canada. In addition, Health Canada had a large role in determining the risk to public health of potentially toxic substances. This fragmentation made it more difficult for Environment Canada to choose a stronger position in regulating MMT, although uncertainty about its toxicity and impact on auto emissions control also contributed to difficulties in policy-making on this issue. However, despite less fragmentation and a greater leadership role for EPA than Environment Canada, both countries arrived at a similar policy on MMT. Note, however, that EPA's leadership can be seen to have resulted in a maximum limit being established for MMT, along with permission for its use, which was not the case in Canada. Hoberg (1997) cautions that environmental policy regime differences may not necessarily be forces for divergence in policy outcomes but depend on case-specific circumstances, as well as on other factors. However, in this case, differences in environmental policy regimes tended to be divergent forces, in part because of differences in jurisdiction and the regulatory styles of the lead environmental agencies in each country.

#### ***Distinctive National Features***

The economic importance of the MMT manufacturer Ethyl paled in comparison to the other economic interests with which it was competing in this policy issue area. The auto industry and petroleum industries in Canada and the U.S. are of significant economic importance and carry the associated political weight. That factor did not appear to be of significance as a force for policy divergence in the MMT case because the relevant economic cleavages were similar.

#### ***The Legacy of Past Policies***

The MMT policy process in Canada was significantly influenced by the design of past policies with their associated mandates, jurisdictions, and requirements. First, the original decision in Canada to permit the use of MMT in gasoline in the 1970s bore the weight of inertia on the MMT policy process of the 1990s, including the fact that it could be argued that no harm had been done in the intervening years. Second, the CEPA of 1988 did not facilitate

regulation of MMT in gasoline, for it neither allowed Environment Canada to regulate MMT as a toxic substance (given Health Canada's analysis of MMT) nor provided it the authority to regulate fuel formulations more directly. Third, because of the difficulties regulating MMT under CEPA, the regulatory route chosen (prohibiting the importation and interprovincial trade of MMT) triggered responses under Canada's AIT and NAFTA which in turn shaped the policy process and outcomes, pushing environmental and health concerns to face a direct challenge by trade interests. Furthermore, the high-level of integration of the Canada-U.S. auto industry and the past policies of the government of Canada of harmonizing auto emissions control regulations with those of the U.S. also influenced the policy process encouraging convergence.

In the U.S., because MMT was banned years ago, U.S. refiners chose technologies other than MMT for octane enhancement. Therefore, the policy reversal in the U.S. in 1995 did not affect U.S. refiners to the extent that the policy reversal in Canada did.

#### ***Science and Technology and the Nature of the Problem***

The state of science and technology played a significant role in the MMT policy process. Health and automotive vehicle emissions studies have proceeded on both sides of the border, with information sharing and ideas exchange taking place in both directions. The uncertainties and basis of questioning of the studies were similar on both sides of the border, and so science can be seen to play a converging role here. With the science being inconclusive, it was more difficult for both U.S. and Canadian environmental regulators to support their intentions to restrict use of MMT. Uncertainty here provides for a large political role by automakers and others, but given that the economic importance of the most prominent industrial stakeholders were similar in both countries, that also reinforced policy convergence. The role of technology mostly encouraged convergence through auto industry integration and harmonization of vehicle emission standards and thus vehicle air pollution control systems in both Canada and the U.S. However, lesser diverging forces of technology were in operation with respect to differences in the state of technology at Canadian versus U.S. oil refineries.

Although it has been suggested that "the impact of MMT may be different in the U.S., ... in part because of the vastly greater number of cars on the road" in the U.S. in contrast to Canada (Consumer Reports 1996:8), the nature of the problem (automotive air pollution) was similar

enough in both countries to be considered a converging force in MMT policy-making.

### Conclusion

#### *Canada-U.S. MMT Policy Convergence: Nature, Extent, and Critical Factors*

Although the MMT policies of Canada and the U.S. have converged to a large extent (use is currently permitted in both countries), there remain important differences between these policies and their outcomes. EPA initially banned MMT use in gasoline; however, its change in policy permitted use of MMT in gasoline with a maximum limit of 1/32 g manganese/gal (8.26 mg Mn/L). After over twenty years of allowing use of MMT in gasoline, Canada banned the trade in MMT, but its subsequent policy reversal established no national standard for MMT use. (The Canadian General Standards Board's voluntary standard allows MMT up to 18 mg Mn/L—note that this is more than twice the U.S. limit.) (Canadian Vehicle Manufacturers' Association 2002; Wood and Egyed 1994). It is also interesting to note that although both Canada and the U.S. ended up with similar and converging policies, the situation in each country remains distinct with use of MMT in gasoline continuing in Canada and generally avoided in the U.S.

Contributing most significantly to convergence in Canadian and U.S. MMT policies were the international constraint of economic integration, the uncertainty of the science associated with the policy problem, and the technology associated with a sector (the auto industry) very much economically integrated between the two countries. Furthermore, emulation played an important role in this policy convergence, in significant part, because the countries are economically integrated and because trade agreements such as the Auto Pact as well as the legacy of past policies. Because trade agreements such as the Auto Pact encouraged harmonization of auto emission standards in Canada with those of the U.S., convergence pressure was placed on the Canadian MMT policy to be consistent with that of the U.S., where MMT not in widespread use, such that advanced auto emission control technologies would be used in Canada. International trade agreements had a dual role as a force for policy convergence in one case (the Auto Pact) but not in another (NAFTA). Note that convergence was essentially Canadian convergence on U.S. policy.

Policy divergence in the MMT case emerged from multiple sources. First, policy regimes and political in-

stitutions influenced the jurisdictions and mandates of the environmental agencies attempting to regulate MMT use. EPA had the authority to set a standard for the use of MMT, whereas Environmental Canada had to defer to the subnational level for fuel formulation requirements. Second, the difference between the two countries in the interests and role of the oil refiners in combination with the legacy of the past policies fostered divergence in MMT policy. In addition, the difference in the extent of economic integration between Canada and the U.S. of the auto industry and the oil refining industry in combination with the legacy of the past policies was also a force for divergence in the policies of the two countries.

#### *The Analytical Framework and Further Research*

In the literature on environmental policy convergence and policy autonomy, there is some debate surrounding the significance of international pressures relative to other pressures including those that arise domestically. Hoberg (1997) and Hoberg, Banting, and Simeon (2002) are more skeptical of the demands of international pressures and foreign policy, as opposed to the factors of emulation and parallel domestic forces on policy convergence, than Toner and Conway (1996) who have a more strongly held view that international agreements (not only emulation but also constraint) impinge on Canadian domestic policies. From analysis of the MMT policy case, it would appear that these two positions can be reconciled in that these factors are often linked. A significant finding of this study is that there are several instances of interactions between sources of policy convergence including (1) that emulation is sought, in part, because economic integration exists or trade agreements are in place, and (2) that the state of science and technology can be associated with economic integration, trade agreements, and the legacy of past policies. (The Auto Pact affected decisions to harmonize Canadian with U.S. auto emissions standards which then further influenced MMT because of concerns about the state of automotive air pollution control technologies.) In their work, Hoberg, Banting, and Simeon (2002) acknowledge the existence of connections between different convergence factors but do not pursue extensive examination of these links. Further research might more closely consider the implications for policy convergence of these relationships as well as those between factors of policy divergence.

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# *Canada–U.S. Convergence in Environmental Regulation: The Case of Marine Vessel Emissions*

Steven Rybolt

Political boundaries are defined by imaginary lines that are drawn on a map and have little if any regard for the environment. Additionally, political boundaries, which define political, social, economic, and demographic systems, affect the management of shared natural resources (Spenner 2001). Transboundary environmental management practices will further attract attention as populations rise and environmental problems escalate. Reducing air pollution, in particular, is a high priority for many regions around the world because of the undisputed importance to sustain life and the free flow across political boundaries (Paule 1996; Spenner 2001).<sup>1</sup> When analyzing political systems, the question is not whether political issues will arise but whether political regimes can effectively manage transboundary issues associated with air pollution.

The study of the Georgia Basin/Puget Sound region offers a unique opportunity to investigate the potential for transboundary environmental regimes' effectiveness, especially addressing air quality management. Based on a mutual concern over the impacts of pollution and the economic effects of unilateral regulations, it is likely that Canada and the U.S. will converge on management issues addressing marine vessel emissions.

To address this conflicting view of environmental management, it is important to understand the importance of air quality and the current frameworks of environmental regimes addressing air quality, emphasizing marine vessels emissions.

## **Importance of Air Quality**

Air quality can have significant effects on human health, the environment and local economies. In particular, there are many health effects associated with poor air quality. Nitrogen oxides (NO<sub>x</sub>) and sulfur oxides (SO<sub>x</sub>) can cause respiratory effects, including chest pain, coughing, shortness of breath, acute respiratory problems that aggravate asthma, decrease lung function and damage the immune system, leading to the susceptibility of respiratory illness. Particulate matter (PM<sub>x</sub>) causes a range of human health problems, including premature mortality, aggravation of respiratory and cardiovascular disease, aggravated asthma, acute respiratory symptoms including aggravated coughing, painful breathing, decreased lung function, and symptoms of immunological effects such as wheezing and increases in allergies (Somers 2004).

As human health is affected by poor air quality, so is the environment. SO<sub>x</sub>, a constituent of acid rain, damages buildings, erodes soils, decreases soil productivity and damages flora. NO<sub>x</sub>, a component of ozone (O<sub>3</sub>), contributes to climate change and reduces crop yields and the productivity of forest lands. PM<sub>x</sub> can also affect the environment by causing soil and erosion damage that can include culturally important objects, such as monuments and statues (Somers 2004).

The environment and human health may have sizeable ill effects as a result of poor air quality; so does tourism. For example, particulate matter (PM<sub>x</sub>), or small airborne particles, are a major component to haze that contributes

to reduced visibility. This reduction in visibility can cause negative impacts on transportation safety, aesthetics, business, and tourism (GBEI 2003). Within the region a very poor visibility day could result in the loss of over \$8 million in future tourist revenues for the Lower Mainland and Fraser Valley and in 2002 health effects related to air pollution in the Fraser Valley were estimated at US\$2 billion (Genesis 2002, GBEI 2003, Delucchi, et al. 2002).

Air quality in the Georgia Basin/Puget Sound region is of particular concern. Although pollutants, such as SO<sub>x</sub>, NO<sub>x</sub>, and PM, show slight downward trend, they still pose a threat to the region (GBEI 2003). Comparably, PM<sub>10</sub> levels across the Georgia Basin/Puget Sound region are similar to those of other areas nationwide but have the potential to decline dramatically.<sup>2</sup> The primary source of PM<sub>10</sub> in the Georgia Basin/Puget Sound region is mobile emissions. This includes emissions from cars, large diesel fleets and marine vessels. Of these mobile sources, marine vessels account for an extremely large portion of this emissions inventory and are comparable to those of motor vehicles (GBEI 2003). That can be attributed to the Georgia Basin/Puget Sound region's being strategically located to the Pacific Ocean and Pacific Rim countries, as well as to its many ports.

### The Georgia Basin/Puget Sound Ecosystem

The Georgia Basin/Puget Sound ecosystem stretches as far south as Olympia, Washington, and as far north as Campbell River and Powell River, British Columbia. Its water marine component is comprised of the Strait of Juan de Fuca and the Strait of Georgia. This inland sea is characterized by a convoluted network of deep basins, long channels, narrow shallow tidal passages, sheltered embayments and islands connecting to the Pacific Ocean. The ecosystem is ringed by the crests of the Olympic Mountains, Vancouver Island Ranges, the Coast Ranges and the Cascades (Hildebrand, et al. 2002). In between all of this magnificent landscape lies an invisible political boundary that divides the United States and Canada (see figure 1).

This ecosystem, combined with the natural beauty of its ocean front access and forested landscape and the economic opportunities in trade and technology, this region has drawn many to the Georgia Basin/Puget Sound region. Today, the region is home to two major metropolitan cities; Vancouver, British Columbia and Seattle, Washington. These large urban centers have a combined population of which are almost four million people (Melious 2003). At present, the Georgia Basin/Puget Sound ecosystem is home to just fewer than eight million people and is

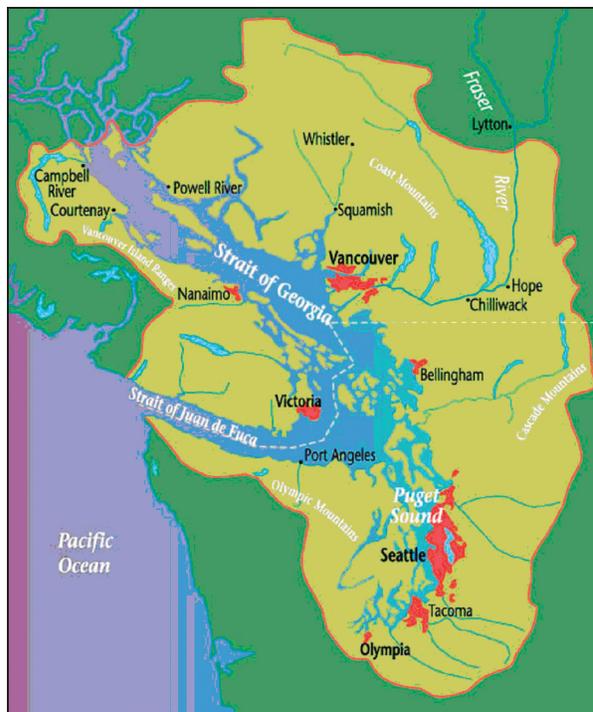


Figure 1. Georgia Basin/Puget Sound Region (Pacific Northwest National Laboratory 2004).

growing rapidly (Melious 2003). This increase in population is an enormous impairment upon the region and its environmental amenities. The very quality of life that attracts people to the region is precisely what threatens it the most (Hildebrand, et al. 2002). A major question facing the ecosystem is whether population growth can be accommodated without destroying the environment and consequently the quality of life of the region's residents.

### Georgia Basin/Puget Sound Region Partnership

On both sides of the border increases in population have led to concerns over the environment, health, and economic impacts of air pollution (GBEI 2003). The problem of air pollution is a large concern on both sides of the border, but not until the late 1980s did either country start to look at the issue of air pollution as a priority for the region. That being said, transboundary agreements are still in an early development phase.

Not until recently has the Georgia Basin and Puget Sound region experienced a shift towards a more formal partnership, and this partnership focuses on common approaches for reaching sustainability goals. The Georgia Basin/Puget Sound partnership has set the stage for a new wave of municipal and regional planning, grounded on urban containment, compact communities and comprehensive transportation planning goals. These goals include,

but are not limited to, sustainable growth management and, in particular, a greater understanding of transboundary air quality and airshed management (Hildebrand, et al. 2002).

### Marine Vessel Emissions

Marine vessel emissions are an issue that has arisen throughout the world. The European Union, Sweden, California, and the International Maritime Organization (IMO) are all groups that have regulated, or are attempting to regulate, marine vessel emissions. Although this issue is being looked at throughout the world, it has only just begun to be regarded as a major issue in the Georgia Basin/Puget Sound region (IAS 2004). Currently, neither the United States nor Canada has any restrictions on marine vessel emissions. With a common goal between British Columbia and Washington to address air quality and airshed management, marine vessel emissions offers an opportunity for both nations to address cooperatively management options to regulate marine vessel emissions. As noted by the Environmental Protection Agency in regard to transboundary management, to be “successful, you’re going to have to pick some particularly egregious, high-profile problems and get them solved” (Branscombe 2002). Marine vessel emissions appear to be the most “egregious, high-profile problem” within the Georgia Basin/Puget Sound region.<sup>3</sup>

In 2000, Marine vessels within the Georgia Basin/Puget Sound region accounted for approximately for 59 percent of the SO<sub>x</sub>, 22 percent of the NO<sub>x</sub>, and 5.6 percent of the PM<sub>x</sub> in the Lower Fraser Valley. By not later than 2010, marine vessel emissions are expected to be the largest single source of air pollution within the Georgia Basin/Puget Sound region (MVE conference 2004) and by 2025 it is estimated that SO<sub>x</sub> will rise by 34 percent and PM by 39 percent (Quan, et al. 2002). What is unique about these emission factors is that not until recently, 2000, were marine vessels taken into account within the region’s air emissions inventory analysis (Levelton 2004).

### Management

Canada and the United States have the largest undisputed border in the world, with 5,526 miles of shared borderland. The stable nature of this border provides an opportunity to look at transboundary management issues without the burden of stressed political relations (Spenner 2001). As Young points out, “Relationships between Canada and the United States have long been fertile grounds for the

development of regimes intended to solve transboundary problems and, in process, to institutionalize cooperation in well-defined areas” (Young 1998:76).

The border between Canada and United States divides the Georgia Basin/Puget Sound region into two distinct political systems; however, air pollution still flows freely between Washington and British Columbia. While the environment has no borders, Canada and the United States do. This divergence among the two political systems has stimulated minor controversies throughout history but has resulted in such agreements as the Boundary Waters Treaty 1909 and the Pacific Salmon Agreement 1999. Today, the region is developing relationships to address transboundary issues. Specifically, the region is looking at the overall problem of air quality, but little if any movement is being made to address marine vessel emissions.

The difficulty in managing marine vessel emissions within the Georgia Basin/Puget Sound region can largely be attributed to the mobile nature of the marine vessels, most of which travel between multiple jurisdictions and nations. The problem of mobility may be addressed at the federal level for each nation, but most federal agencies have granted authority to regional levels that do not have the resources to regulate marine vessel emissions, especially in regard to transboundary enforcement. What is unique about each jurisdiction is that many of the areas overlap and none want to overstep the bounds of another.

Transboundary management may be the best option to regulated marine vessel emissions within the Georgia Basin/Puget Sound region, and with both the United States and Canadian federal authorities having similar ideas on how to manage marine vessels, it is feasible that collaborative planning will occur in the near future. This convergence among ideas poses the question of how two nations can work together to manage cooperatively one shared common area.

In an effort to distinguish the problem among cooperative management, with the Georgia Basin/Puget Sound region addressing marine vessel emissions, all organizations directly associated with air quality, specifically that of marine vessel emissions, have been listed [in descending order based on geographic scale] to distinguish the current policy or regulatory efforts addressing marine vessel emissions cooperatively and on each side of the Canada-United States border.

### International Joint Commission

The International Joint Commission (IJC), which was created by the *Boundary Waters Treaty* 1909, is one of the

earliest international agreements to address pollution. The IJC consists of six commissioners, three from the United States and three from Canada, all of which are appointed positions. The IJC has the power to advise the government on issues and also has the authority to arbitrate matters referred to it by both governments, but that has not occurred (Melious 2003).

The IJC is primarily associated historically with matters concerning water quality and quantity issues but has also addressed air quality issues along the Canada-United States border. That has resulted in the establishment of the International Air Quality Advisory Board (IAQAB). In 1998, the IAQAB issued the “Special Report on Transboundary Air Quality Issues,” stating that air quality standards in British Columbia and Washington State could be addressed more thoroughly; that included more monitoring stations and cooperative management (IJC 2004).

#### ***International Maritime Organization***

The International Maritime Organization (IMO) is a permanent international organization established to promote maritime safety. The purpose of the organization is “to provide machinery for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade and to encourage and facilitate the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships” (IMO 2004).

The IMO administered the International Convention on the Prevention of Pollution from Ships and Shipping (MARPOL 73/78) that regulates waste disposal from ships. Within MARPOL is Annex VI – Prevention of Air Pollution from ships, which limits the amount of SO<sub>x</sub> and NO<sub>x</sub> from stack emissions (IMO 2004). Recently, 18 May 2003, Annex VI was ratified by 15 countries constituting of 50 percent of the world’s merchant shipping nations and will go into effect on 19 May 2005.<sup>4</sup> Neither Canada or the United States have ratified MARPOL Annex VI.

Annex VI establishes goals to reduce sulfur in fuels to 4.5 percent for marine fuels and also designated SO<sub>x</sub> Emissions Control Areas (SECA) where sulfur fuel must be below 1.5 percent.<sup>5</sup> The Annex further designated NO<sub>x</sub> standards for ships built after January 2000 and also would create provisions to regulate volatile organic compounds (VOC) and ozone depleting substances (IMO 2004).

#### ***British Columbia/Washington State - Statement of Intent (SOI) Addressing Air Quality***

The Regional Director General of Environment Canada, Pacific and Yukon Region and the Regional Administrator of EPA Region 10 signed a statement of intent (SOI) in August 2002 to acknowledge air quality “and [that] the interdependency the national and regional economies of the two countries create a need to ensure collectively that the policies and regulatory frameworks of the two countries are complementary.”

#### ***Georgia Basin/Puget Sound International Airshed Strategy Coordinating Committee***

The British Columbia/Washington State statement of intent (SOI) brings together individuals representing the stakeholders involved in air quality management in British Columbia and Washington State. This group, known as the International Airshed Strategy Coordinating Committee includes the Environmental Protection Agency (EPA), Northwest Air Pollution Authority (NWAPA), Puget Sound Clean Air Agency (PSCAA), Environment Canada, Fraser Valley Regional District (FVRD), Greater Vancouver Regional District (GVRD), Department of Ecology (DOE), the Swinomish Indian Tribe, the National Park Service (NPS), and Rowan Williams Davies & Irwin Inc. (RWDI). The goal of the committee is to achieve “air quality ‘for all citizens.’” That entails principles that include achieving current goals of the involved stakeholders, the consideration of air quality within an ecosystem approach, and actions that will take into consideration costs and benefits (IAS 2004).

The goal of this group is to recommend option(s) for cooperative management and would either add an Annex to the existing air quality agreement between Washington and British Columbia or simply recommend actions that can be taken by individual agencies that will address the air pollution concerns within the region. That includes establishing a practical and effective instrument to address shared concerns regarding transboundary air pollution, and enhancing air quality management practices to protect public and ecosystem health. The goal for this recommendation is June 2004 (IAS 2004).

#### ***Environment Canada***

At the federal level in Canada, Environment Canada has not adopted any regulations or policies that address marine vessel emissions. Through its efforts to be a cata-

lyst for regional action and authority over international environmental issues, Environment Canada does play an integral role within the Georgia Basin/Puget Sound region and has created the Georgia Basin Ecosystem Initiative (GBEI), which is now the Georgia Basin Action Plan (GBAP), and has funded numerous studies addressing marine vessel emissions. Currently, Environment Canada is making a final report, *Management Options for Marine Vessel Emissions*, addressing feasible management options for marine vessels within the Georgia Basin/Puget Sound Region (Green 2004).

As of October 2004, Canada has not ratified MARPOL Annex VI, and it does not appear that ratification will occur any time soon. Officials note that Canada desires to establish its own regulations addressing marine vessel emissions before it ratifies Annex VI (Green 2004).

### **Transport Canada**

Transport Canada is a federal agency that has jurisdiction over marine vessel emissions. Transport Canada receives its authority from the 2001 *Canada Shipping Act – Air Pollution Regulations*. These regulations limit smoke emissions from ships in Canadian waters within one mile of land and further prohibit blowing soot within 1,000 yards of land (Green 2004). Transport Canada delegates jurisdictional authority to regional air authorities to administer its regulations and rarely, if ever, enforces any rules that would directly impact air emissions from marine vessels (Transport Canada 2003).

### **Environmental Protection Agency**

The United States Environmental Protection Agency (EPA) is a federal agency that can adopt emissions standards for marine diesel engines that will be installed on vessels flagged or registered in the United States (Elson 2004). That authority is granted to the EPA through the *Clean Air Act* of 1990 (CAA90) that states that delegated authorities shall “conduct a study of emissions from non-road engines and nonroad vehicles to determine if such emissions cause, or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare” (CAA 1990).<sup>6</sup> Under the CAA90, the EPA has created policies to address the emissions from marine vessels.

Currently the EPA has set a national NO<sub>x</sub> standard for all new ships. This policy, *Part II - Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel Proposed Rule* (Part II - 40 CFR Parts 9 and 94), will

reduce NO<sub>x</sub> by implementing standards for new marine diesel engines built after 1 January 2004, or Tier 1. Tier 2, which will be implemented in 2007, will require further reductions in marine engines.

In May 2003, the EPA proposed diesel fuel requirements to lower SO<sub>x</sub> emissions. That was published in *Part II – Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel Proposed Rule* and will become effective in 2007, but will not apply to marine fuels. This exemption occurred because the EPA was concerned that “regulating fuel sold in the US would not necessarily ensure that lower-sulfur fuel is used in US waters, since ships could purchase their fuel in other countries” (Part II - 40 CFR Parts 9 and 94). Other initiatives that the EPA is working on include the West Coast Diesel Emissions Reductions Collaborative which is still in its early development stages.

As of October 2004, like Canada, the United States has not ratified MARPOL Annex VI and it does not appear that ratification will occur any time soon. Officials note that also like Canada, the United States wishes to establish its own regulations addressing marine vessel emissions before it ratifies Annex VI (Elson 2004).

### **Department of Ecology**

Under the United States system of cooperative federalism the Washington State Department of Ecology (DOE) has the authority to develop Washington's State Implementation Plan (SIP) which delegates air authority to the county or multi-county level (RCW 70.94 and RCW 43.21A and 43.21B). The DOE does not regulate marine vessel emissions but has signed a memorandum of understanding (MOU) to work with other agencies on “cross-border air quality impacts” relating to air permits (MOU 1994).

### **Northwest Clean Air Agency**

Northwest Clean Air Agency (NWCAA), formally Northwest Air Pollution Authority (NWAPA), is a regional regulatory authority that is responsible for enforcing air quality laws and regulations in Island, Skagit, and Whatcom counties. This agency does not have any *direct* regulations that effect marine vessels (Mahar 2004; Randles 2004). Regulations that do affect marine vessels are those that apply to air emissions as a whole and these include opacity limitations that may not exceed 20 percent and PM emissions limitations. Sulfur content in fuels is also regulated, but marine vessels are exempt from this rule (Randles 2004).

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THE CASE OF MARINE VESSEL EMISSIONS

The NWAPA has the authority to regulate marine vessels but only when in port and the agency has cited vessels for its opacity exceedances (Randles 2004). The NWAPA has also signed a MOU to work with other agencies on “cross-border air quality impacts” relating to air permits (MOU 1994).

***Puget Sound Clean Air Agency***

The Puget Sound Clean Air Agency (PSCAA) is a regional regulatory authority that is responsible for enforcing air quality laws and regulations in Snohomish, King, and Pierce counties. It is one of seven local air agencies in Washington State (PSCAA 2004). The PSCAA does not have any *direct* regulations that affect marine vessels. The only time PSCAA can regulate marine vessels is when they are in port. These regulations include exceedances of visual standards (i.e. opacity limitations of 20 percent) and the burning of refuse aboard vessels (Hudson 2004).

The PSCAA, like the NWAPA, has the authority to regulate marine vessels but only when in port, and they have cited marine vessels for opacity exceedances. Currently the PSCAA has voluntary agreements among ports and vessels that encourage the use of low sulfur fuels and is trying to establish a West Coast Initiative to become a low-sulfur region. This initiative would include California, Oregon and Washington, as well as Canada and Mexico (Hudson 2004).

***Greater Vancouver Regional District***

The Greater Vancouver Regional District (GVRD) is an operational, administrative, and planning jurisdiction that has air quality authority over sources within its region but does not enforce emission limits on marine vessels (GVRD 2004). Policies that are currently being implemented by GVRD work through provincial authority. GVRD’s air authority comes from their Air Quality Management Plan and is currently being updated with plans to address marine vessels. Currently the AQMP states: “While no emission reduction measures have been specified for aircraft, railway locomotives, marine vessels and off-road vehicles, the emission inventory shows these sources, particularly marine vessels, to be significant. The AQMP calls for further investigation of the emission control aspects of these sources in order to determine appropriate emission reduction strategies” (GVRD 1994).

The AQMP also includes recommendations from the federal government to include marine vessels in inventory

data to “develop appropriate emission reduction strategies” (GVRD 1994).

While GVRD does not regulate marine vessels, it has produced documents to further the knowledge of air emissions from marine vessels under their AQMP. That includes the numerous inventory models for marine vessels within the Georgia Basin/Puget Sound region (Newhook 2004). The GVRD has also signed a MOU to work with other agencies on “cross-border air quality impacts” relating to air permits (MOU 1994).

***Fraser Valley Regional District***

The Fraser Valley Regional District (FVRD) does not have any regulatory enforcement authority when it comes to air quality and so plays only a minimal role in the region. The FVRD has an AQMP that seeks to “identify air quality, issues and goals and to identify options for future air quality policy and management strategies.” Further, the FVRD AQMP provides information on current air quality issues and initiatives to develop further a regional AQMP. What FVRD primarily contributes to the region in regard to air pollution are emissions inventories (FVRD 2004).

**Convergence**

Marine vessels contribute a significant amount of air pollution within the Georgia Basin/Puget Sound region, especially in the case of nitrogen oxides (NO<sub>x</sub>), sulfur oxides (SO<sub>x</sub>), and particulate matter (PM). The air pollution from marine vessels may be attributed to policies and regulatory based measures that do not encourage or require marine vessels to reduce emissions or to economic opportunities that take precedence over environmental protection.

The region’s modern maritime ports have become beacons of efficiency, productivity, and economic prosperity. The enormous increase in international trade, especially with the Pacific Rim nations, has fueled remarkable growth in trade volumes through west coast ports, especially those located within the Georgia Basin/Puget Sound region. The success of these gateways in meeting and responding to booming trade volumes is vitally important to the economies of western North America (Air Quality – International Trade and Transportation 2004), thus placing environmental regulations second.

However, success has brought with it significant challenges. Concerns about air quality, traffic congestion and land use planning have become major topics of discussion among nations, states, regional and local governments and communities. Within the Georgia Basin/Puget Sound re-

gion, marine vessels have become the focus of binational, and even international, cooperative efforts, primarily because they are a significant source of air pollution. The difficult question facing both Canada and the United States is how to address cooperatively the environmental concerns associated with ocean going vessels and simultaneously maintain the economic prosperity among ports in both nations.

To address the issue of marine vessel emissions, regional, state, and federal pressure may be required for both the United States and Canada to promote actions that substantially address the transboundary air pollution caused by marine vessels. Although governments have formed international cooperative groups to address air quality within the region, most action, though minimal because of the infancy of the issue, is taking place at a federal level because of the national and international scope of the issue. The Environmental Protection Agency is at present working on the West Coast Diesel Emissions Reductions Collaborative, as well as setting performance standards for new marine diesel engines that will assist in reducing particulates from marine vessel emissions. Environment Canada is completing a report addressing management options within the Georgia Basin/Puget Sound region for marine vessels and will include voluntary, regulatory, and market-based options to reduce further emission from ocean going vessels. The IAS, the collaborative group of environmental managers, is beginning to formulate ideas for cooperative management but lacks any enforcement authority. Action is also being taken at the local level, but because of the lack of enforcement authority, only voluntary measures are being taken. That is illustrated by the voluntary agreements PSCAA has for the implementation of shore-side power and for making low sulfur fuel available. Addressing marine vessel emissions within the region has just recently taken precedence in both nations but driving economic factors still play a fundamental role in the development of new regulations among marine vessels and port authorities.

Marine vessel emissions are also not unique to the Georgia Basin/Puget Sound region. Regional or international groups do provide a great deal of input on how to address the issue of emissions within Georgia Basin/Puget Sound region, especially in regard to the recent ratification of MARPOL 73/78 Annex VI. Numerous parties in both nations have expressed interest in investigating the feasibility of making the Georgia Basin/Puget Sound a SECA, but opponents argue that SO<sub>x</sub> emissions are not substantial enough for such designation. What is clear to both nations is that regulations will be adopted within

each country before either ratifies Annex VI. Although such working groups as Environment Canada and the Environmental Protection Agency and collaborative groups as the IAS are taking steps to address emissions from ocean vessels, progress is slow.

The United States and Canada agree that marine vessel emissions are a major environmental concern and must be addressed, but minimal actions are being taken by either country. Groups such as the IAS, regional, state, and federal air agencies, studies addressing marine vessel emissions on both sides of the border, and a mutual concern for increased air quality show the beginning of convergence in environmental regulations and the need to address cooperatively marine vessel emissions within the Georgia Basin/Puget Sound region.

## Notes

- 1 This is analogous to Paule's *Underground Water: A Fugitive at the Border* (1996).
- 2 This decline in air pollution may be the result of stringent standards being implemented through federal legislation.
- 3 This analogy is similar to what is used by Melious (2003).
- 4 The nations that have ratified Annex VI as of 19 October 2004 are Azerbaijan, Bahamas, Bangladesh, Barbados, Denmark, Germany, Greece, Liberia, Marshall Islands, Norway, Panama, Samoa, Singapore, Spain, Sweden, United Kingdom, and Vanuatu.
- 5 The only designated SECA is the Baltic Sea.
- 6 Delegated authorities will vary between states. In Washington, local or regional authorities are responsible for air inventory analysis.

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*Multilateral Federalism  
along a Bilateral Boundary:  
On Bilateral, National, and Subnational  
Transboundary Environmental  
Management on the Columbia River*

Terry A. Simmons

Two sophisticated federal states, Canada and the United States, meet peacefully under the shadow of the Peace Arch. Both simple and reckless, the border creates ambiguities and inconsistencies and provides opportunities for cooperation and innovation in pursuit of mutual interests. Simultaneously, boundaries articulate and allow for enforcement of stark differences in political and legal power, in cultural values, and in economic and social circumstances.

Transboundary environmental conflict resolution and cooperation as well as international relations generally assume bilateral political and institutional relations between two sovereign nation-states. In this respect, everything begins and ends at the border, whether one moves northward or southward, notwithstanding much collaboration, co-ordination, and co-operation existing on the border. The most powerful symbol of the relationship between Canada and the United States is a simple map demarcating blank space on the foreign side of a straight line.

In nineteenth century Africa, European diplomats drew new national or colonial boundaries on the map, and infamously divided distinct cultures and political groups, and combined common enemies. Thus, twentieth century and twenty-first century nation-states, wars, and chaos were predestined with great diplomatic skill, ignorance, and sloth. Similarly, the forty-ninth parallel became the World's longest undefended boundary and the loci of several peace parks and arches. The boundary demarcated two new, growing nation-states on a wild, not very well known continent. The new border divided rivers, mountain ranges, and migratory fauna artificially and created future transboundary environmental management challenges.

Simple lines on the map can be brutally straightforward and dangerous like a quiet, peaceful, green meadow planted with land mines. Boundaries may also provide opportunities for cooperation and innovation in pursuit of ordinary mutual interests. Simultaneously, boundaries articulate and foster enforcement of stark and subtle dif-

ferences in political and legal power, in cultural values, and in economic and social circumstances. They invite both legitimate commerce and smuggling, and incite cooperation and conflict. The forty-ninth parallel is a simple line of ambiguity and contradiction.

On the Columbia River, transboundary environmental conflicts can be as plain as the *Trail Smelter* case, the first international environmental law case, where air pollution from the smelter destroyed farmers' crops downwind in Washington. Eventually, farmers were compensated. Or the conflicts can be as complex as the still controversial Columbia River hydroelectric development, where downstream benefits, derived from the system design of the Columbia River Treaty dams, redefined hydroelectric power and regional economies in British Columbia and in the Pacific Northwest of the United States. The Columbia River is now, with few exceptions, a series of water works, dams, and reservoirs from Revelstoke to Portland. And, of course, magnificent historical salmon populations suffered the most in a conscious trade of salmon for megawatts. Such situations sometimes seemingly border on the incomprehensible.

The most lively Columbia River transboundary dispute today concerns plans to cleanup smelter slag or effluent in Lake Roosevelt, the reservoir behind the Grand Coulee Dam. Until the 1990s, the Trail Smelter deposited tons of slag and metallurgical waste into the Columbia River. Then, the slag migrated downstream across the border into Lake Roosevelt. This slag contains arsenic, cadmium, copper, lead, mercury, and zinc causing water, fish, and lake bed sediment contamination. Understandably, these heavy metal deposits raise questions about public health, adverse consequences for flora and fauna, water quality, and general environmental deterioration.

Teck Cominco is a major mining corporation with many associated corporate entities and global activities. Teck Cominco Metals, Ltd. is the current owner and operator of the Trail Smelter. The smelter has been a major processor of lead, zinc, and other ores for over a century. The smelter has been among the most important industrial facilities and employers in British Columbia since 1892.

Teck Cominco admits discharging the slag. Nevertheless, it denies liability for the slag in Lake Roosevelt and for remediation or cleanup. Teck Cominco maintains that it complied with all environmental laws and regulations in British Columbia. The corporation operates only in British Columbia and has no formal transboundary environmental responsibilities and no liability for environmental damage in the United States. All of this is true enough;

however, no one is naïve enough to believe that it is the whole story.

Also relevant here is Teck Cominco Alaska, Inc. It operates the Red Dog mine, the world's largest zinc mine, in partnership with the NANA Regional Corporation, an Alaska native corporation, owned by the Native people of Northwest Alaska. The Red Dog mine's zinc ore is shipped to Trail for smelting.

Teck Cominco American Incorporated conducts business in Washington and volunteered to fund remediation in Lake Roosevelt. In particular, this American entity studied the feasibility of a Lake Roosevelt project and proposed a \$13 million private sector cleanup program to the United States Environmental Protection Agency, Region 10 office in Seattle (EPA).

Most importantly, Teck Cominco Metals, Ltd. with headquarters in Vancouver, British Columbia insists that it is a Canadian company operating in Canada, subject only to Canadian laws and regulations. Teck Cominco Metals, Ltd., Teck Cominco Alaska, Inc. and Teck Cominco American Incorporated are separate corporate entities. In particular, Teck Cominco Metals, Ltd. does not conduct business or exist in the United States. Of course, all of this is true.

Meanwhile, EPA's Region 10, which includes Alaska and Washington, is responsible for the investigation of, and the remediation or cleanup of, the contaminated sediment and water in Lake Roosevelt under the *Comprehensive Environmental Response, Compensation and Liability Act* (CERCLA), 42 U.S.C. 9601 *et seq.*, also known as the *Superfund Act*. Under CERCLA, EPA and its consultants conduct environmental assessments, risk assessments, and inventories. Official Superfund sites are designated, and cleanup programs are conducted under EPA supervision. Unfortunately, Superfund remediation tends to be very expensive, complex, highly political, bureaucratic and time consuming.

EPA and Teck Cominco negotiated the ways and means to do necessary remediation work at Lake Roosevelt until December 2003, when negotiations collapsed. Then, EPA produced an order and a draft consent decree requiring Teck Cominco Metals, Ltd. to comply with CERCLA. Teck Cominco declined to participate.

Often, private corporate entities, various local, state, and federal government entities, other than EPA itself, and the business community prefer to create public-private partnerships and to avoid Superfund designation. (No one welcomes the local landfill being designated as a "toxic waste dump," for instance.) Teck Cominco is willing to shoulder much of the financial burden and to cooperate

with and to fund a private project, but everyone wants to minimize the burdens imposed by EPA and the cleanup project costs.

Fundamentally, Teck Cominco Metals, Ltd. and EPA agree that Trail Smelter discharges created adverse environmental consequences. While they may quarrel about the appropriate environmental assessment of and the standards for cleanup at Lake Roosevelt, they do agree the reservoir and the Columbia River should be cleaned up. (NB: sometimes it may be better to leave the contaminants inert in the mud.)

Despite all this, after negotiations stalled, EPA turned to CERCLA and declared Teck Cominco Metals, Ltd. liable for the costs of the cleanup to be conducted by EPA and its consultants or contractors. That is the crux of the *real* dispute between the two. (Recall that Teck Cominco had been willing to contribute voluntarily millions of dollars to a private or mutual cleanup fund.) The basic disagreement is about liability, about who pays and how much, but most of all about how the cleanup program will be managed.

Ultimately, the locus of this disagreement is the international boundary on the Columbia River. Effectively, a Canadian corporation and a United States federal agency are subnational disputants in a situation that parallels the original *Trail Smelter* case. The two federal governments in Washington, D.C. and in Ottawa have little directly to do with the actual circumstances on the banks of the Columbia. Dynamic transboundary disputes are rarely solely bilateral or as simple and straightforward as a straight line might imply.

The oldest and most important transboundary environmental agency is the International Joint Commission, Canada and the United States (IJC). This pioneering, bilateral, consultative organization was established by the *Boundary Waters Treaty of 1909*. Today, the six IJC commissioners, three from each country, oversee relatively small staffs in Ottawa, Washington, D.C., and Windsor, study a wide variety of environmental transboundary issues, especially concerning environmental quality of the Great Lakes, and oversee boundary waters management on transboundary rivers from sea to sea. The IJC reports primarily to Canada's Minister of Environment and to the United States' EPA Administrator. However, the IJC's agenda is mandated by references or dockets received jointly from the Secretary of State and the Minister of Foreign Affairs.

The famous *Trail Smelter* case (or docket or reference) was referred to the IJC shortly after the IJC was established. Air pollution from the Trail Smelter flowed across the border and destroyed farmers' crops in and around Northport, now at the northern end of Lake Roosevelt.

Eventually, after much study and deliberation, the operators of the then Cominco lead zinc smelter were ordered to compensate downwind farmers for their contaminated or destroyed crops. The *Trail Smelter* case established the principle that governments and corporate entities are responsible for transboundary environmental management and liable for adverse conditions. The international border is not, and should not be, a wall where transboundary environmental responsibilities and liabilities end.

In a bilateral world, only two national governments are involved in formal dispute resolution. The ambassador from the United States communicates with the minister of Foreign Affairs, and the ambassador from Canada speaks to the secretary of state about difficulties and misunderstandings in far away British Columbia. However, today, transboundary disputes are seldom only bilateral. Typically, environmental disputes involve corporate, non-profit, and governmental entities together operating at local, subnational, national, and international scales, with unilateral, bilateral, and multilateral perspectives and allegiances. The formal bilateral border is, in fact, the site of many intertwined formal and informal relationships. That is the spatial, legal, social and political context for current relations between Teck Cominco and EPA.

EPA is moving forward with its CERCLA process. In August 2004, EPA began a CERCLA remedial investigation and feasibility study, a scoping plan and an outline of future environmental assessment, risk assessment and other practical inventories. Meanwhile, Teck Cominco Metals, Ltd. states explicitly that EPA's "unilateral actions" are "inflammatory, precipitous and unnecessary." The Canadian corporation insists that it is not subject to United States law, CERCLA, or EPA jurisdiction. The border is a legal barrier, an apparent bilateral impasse.

However, in our multifaceted world, EPA and Teck Cominco find themselves involved in a lawsuit in U.S. federal district court in Spokane and Yakima. In fact, neither entity is a party or present in the courthouse. The litigants are de facto surrogates. Two individual members of the Confederated Tribes of the Colville Reservation sued Teck Cominco American Incorporated, an American corporate entity. The state of Washington joined the suit as a plaintiff with the Colville Indians in an effort to force Teck Cominco's involuntary participation in the Superfund program. EPA is not a party but is the primary beneficiary if the plaintiffs are successful. Thus, litigation creates a new forum for the dispute.

Teck Cominco responded with a Motion to Dismiss under Federal Rules of Civil Procedure 12(b) (1), (2), and (6) for failure to state a claim upon which relief may be

granted. Oral arguments on the motion were heard in Yakima the week after this paper was presented. Ultimately, the district judge dismissed the motion. Nevertheless, the legal pleadings remain a primary source, regardless of the formal, legal outcome.

Ironically, the defendant's memorandum in support of the motion to dismiss is Teck Cominco's most extensive articulation of its rationale for not submitting to EPA's regulatory authority. Essentially, Teck Cominco American Incorporated argues that a Canadian corporation is protected from American regulators by Canadian sovereignty. The district court has no subject matter jurisdiction because CERCLA is a domestic law. No provisions exist within CERCLA to allow for the extraterritorial application of CERCLA without explicit legislative intent. Also, EPA's administrative activities under CERCLA are restricted to American territory. Most importantly, Teck Cominco argues the district court does not have personal jurisdiction over Teck Cominco Metals, Ltd., alleged "bad actors" who own and operate the Trail Smelter, because the Canadian corporation exists and conducts business in Canada only. There are no "minimum contacts" in Washington. The district court has no jurisdiction outside the United States.

Teck Cominco's American corporate entity and its American lawyers present the fundamental arguments well. If the motion to dismiss were granted, then the district court could not and would not force Teck Cominco to submit to CERCLA and to meet EPA around the negotiating table. Interestingly, ultimately, the U.S. district court could set rules for, or appoint a federal court master to, oversee the Canadian corporation's participation in the American cleanup of Lake Roosevelt. Also, Teck Cominco could refuse and stay in British Columbia as an odd fugitive from American justice, as it were. Thus, one would remain in approximately the same place as before litigation began. One might simply sit on the banks of the Columbia River and watch the diplomatic discomfort increase.

In the American criminal justice system, fugitives are extradited across jurisdictional lines after a court hearing to confirm that the proper person is in custody and that the accusations against the prisoner are legitimate. Under certain circumstances, the extraditing jurisdiction may extract a political or policy concession. For example, American fugitives in Canada who are wanted for capital murder are not returned routinely to the United States until the receiving jurisdiction agrees to seek only a prison term instead of capital punishment. The jurisdictional boundary prompts procedural checks and balances.

In extreme cases, the fugitive may be rescued from his fate altogether when the second jurisdiction opts not to return the fugitive. If the prisoner is wanted in Michigan, the governor of Oregon may opt not to pursue an extradition order for a variety of political, legal, or humanitarian reasons. Then the prisoner can be released and may be relatively safe so long as he does not return to the jurisdiction seeking the return. Michigan can only wait for a new governor to be elected in Oregon or for the fugitive foolishly to return to Michigan. The fugitive is protected from Michigan jailers, much as Canadian jurisdiction could protect Teck Cominco from CERCLA.

Jurisdiction is "a government's general power to exercise authority over all persons and things within a territory." In court, jurisdiction is "a Court's power to decide a case or to issue a decree" (Garner 1999: 855). Jurisdiction is the general application of government powers vested in sovereignty. In domestic law, governments have the inherent ability to exercise power and authority over their dominions.

In international law, sovereignty and jurisdiction are among the most important and explicit elements for viable, independent nation-states. For a nation-state, sovereignty is the quality of independence and dominion that allows a state to have a separate and independent existence. (Garner 1999:1401) External sovereignty is "the power of dealing on a nation's behalf with other national governments." Internal sovereignty is "the power that rulers exercise over their own subjects" (Garner 1999: 1402). Thus, Canada is a sovereign state because it says it is and because the United States and two hundred or more other states recognize Canada's independent existence and *vice versa*.

Accordingly, Teck Cominco is protected by Canadian sovereignty because it has submitted to the power and authority of the state, its laws and regulations. Indeed, Teck Cominco is explicitly is a product of Canadian corporation laws. (Although not discussed here, Teck Cominco argues significantly that the Trail Smelter complied with Canadian and British Columbian environmental laws and regulations. The slag in Lake Roosevelt is therefore "legal" waste because the operators of the Trail Smelter followed the laws and regulations of the day.) Meanwhile, south of the border, when the district court asserts jurisdiction over Teck Cominco, implicitly the district court insults and questions the integrity and competence of the individuals and agencies administering environmental laws and regulations in British Columbia. Essentially, sovereignty defines authority and independent existence for professional environmental decision-makers too.

When the government of Canada protects Teck Cominco from the EPA, Canada is protecting its own sovereignty and independence also. Canada is exercising its own authority to maintain peace, order, and good government generally. In turn, Teck Cominco implicitly asserts and contributes to the long-term protection of Canadian sovereignty when it seeks to protect its own corporate interests in District Court. Teck Cominco contributes to Canada's claims for legitimacy in a courthouse the government of Canada would refuse to enter.

Instead, Canada operates primarily at the national level through official channels, notwithstanding well-known efforts to educate American politicians and the general public. After negotiations between EPA and Teck Cominco failed, and EPA moved unilaterally to apply CERCLA, the Embassy of Canada sent the Secretary of State a polite, but firm letter expressing its concern that EPA was attempting to enforce CERCLA against a Canadian corporation on Canadian territory. Canada rejected the extraterritorial application of CERCLA and encouraged EPA to re-examine its unilateral policies and efforts. This diplomatic note concludes "Canada hopes that EPA and Teck Cominco Metals will work together to develop a mutually acceptable and enforceable agreement, in the spirit of the long history of joint Canada-U.S. stewardship of our shared environment" (Embassy of Canada, Note No. 0001, January 8, 2004).

Canada's one page diplomatic note is a concise summary of the situation. EPA cannot as yet reach across the border. Teck Cominco can wait quietly in British Columbia, at least if one ignores legal entanglement of its American corporate entities. EPA and Teck Cominco are essentially frustrated and deadlocked.

The key to mutually advantageous resolution of this transboundary environmental dispute is not litigation in Spokane or Yakima. Again, the last paragraph of the Canadian diplomatic note is a not very subtle invitation to negotiate a "mutually acceptable" agreement for the modern Trail Smelter case. A process needs to be devised that respects all parties for what they are. EPA and Teck Cominco need to renew discussions where they are treated as equal parties without the application in British Columbia of the "supremacy clause" from the Constitution of the United States. Furthermore, environmental laws and regulations in Canada and in the United States must be viewed and honored in context. The goals and principles are quite similar; however, specific laws and regulatory processes differ in significant, albeit sometimes subtle, ways.

Ultimately, the two federal governments may reach back to the IJC's rich history at the Trail Smelter and on the Columbia River. Give the IJC a reference, a formal,

mutually agreeable set of instructions from both governments, to investigate and to mediate the dispute. The modern Trail Smelter dispute can be resolved satisfactorily even with today's multilateral federalism along a bilateral boundary.

### A Bibliographic Note

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# Toronto, Trash, Michigan, and Free Trade

Michael E. Unsworth

**M**ore than 120 garbage trucks leave Toronto daily and travel Ontario Highway 401 to London where they take Highway 402 to Sarnia. After crossing the Blue Water Bridge to Port Huron, the trucks then travel on U.S. Interstate 94 to Interstate 275. They leave the expressway at the Will Carleton Road Exit (Exit 8) and go roughly two miles to the Carleton Farms landfill. The empty trucks then take Detroit area expressways to the Ambassador Bridge and cross over to Windsor. After traveling eight miles on surface streets, the trucks return to Toronto via Highway 401. This round trip covers 525 miles. Roughly 1.1 million tons of solid waste a year—“enough to fill the Pontiac Silverdome”—is thus transferred from Toronto to Michigan at a price of \$22 million.<sup>1</sup>

## The Waste Problem

Waste disposal has been a problem for all societies, but modern societies seem to generate more complicated situations. During the sixties and seventies there was some popular exaggerated fears that garbage would threaten to overwhelm cities. More ominously, evidence of the dangers of contamination by toxic and hazardous waste surfaced, the most prominent example being the Love Canal.

Governments responded to these situations by exacting laws and rules that would result in environmentally sound means of disposal. In essence, there are two solutions:

1. Slow the generation of waste by reduction and recycling.
2. Insure that the disposal of the remaining waste would be sound and non-threatening.

### *Waste Reduction and Recycling*

Waste reduction can be accomplished through a variety of means. One method is to design products and services that minimize the creation of waste. Another method would be the development of smarter packaging of materials to insure freshness and reduced breakage in transport. That is often done through the marketplace. It can be spurred by intelligent government regulations.<sup>2</sup>

Another form of reduction can be taken on the personal level in which individuals and families consciously limit their consumption of products. Such activity is accomplished through education (on a variety of levels) and moral suasion. Of course, such behavior runs counter to our present consumer society.

Governments have the option of playing a more active role in recycling. It can ignore the marketplace and the cult of convenience by requiring individuals and businesses to take measures to dispose of items. It can place fees on items to insure that products are properly disposed of at the end of their life cycles or that they can gain value (such as a container deposits).<sup>3</sup>

**Ontario's Recycling**

Ontario has adopted progressive recycling plans. Two major studies in the 1970s identified recycling as being feasible and competitive with landfills.<sup>4</sup> Ontario localities implemented curbside recycling programs, the “blue boxes,” that were considered to be international models. New Provincial legislation, generated by increased public environmental pressure, forced jurisdictions to make this move (see table 1). Because of this tightening of regulations, municipalities faced a landfill shortage. Moreover, a Provincial public consultation process makes it “virtually impossible to receive approval for a new landfill or incinerator if recycling is not also planned.” In addition, the Province funds half of localities’ Waste Management Master Plans only if recycling programs are in place.<sup>5</sup> Despite these laws and incentives for recycling, only 28 percent of the Province’s solid waste is currently being diverted from landfills.<sup>6</sup>

**Table 1. Ontario Recycling Regulations**

Number	Particulars
101/94	Municipalities over 5,000 people must operate recycling programs that certain standards: -Source separate and recycle seven types of material -Implement composting the scope of which is determined by the size of the municipality
102/04	Schools, businesses, hospitals, and demolition projects must conduct waste audits, development & implement waste reduction plans, and update plans & audits annually
103/04	Owners of specified establishments and apartment buildings with six or more units must have source separation programs for specified wastes and ensure that wastes are recycled
104/94	Specified business must conduct a packaging audit and implement a packaging reduction work plan
347	Waste approval is not required when materials are transported directly from a waste generator to an industrial user or manufacturer that will use it in their operations or in recycling activities
340	Non-refillable containers that are recycled in a multi-material recycling system
357	Carbonated soft drinks must be solid in refillable containers. Retailers must refund deposits

Source: Ontario Ministry of the Environment, *Ontario's 60% waste diversion goal*, <http://www.ene.gov.on.ca/envision/land/wda/bluebox60percent.htm> (October 18, 2004)

**Michigan's Recycling**

Michigan's 1976 “Bottle Bill” (a ban against throwaway beer and soft drink containers), has been heralded as an important environmental measure.<sup>7</sup> It took effect after four years of contentious legislative manoeuvring and a statewide ballot initiative.<sup>8</sup> It was later amended to include wine coolers and mixed-spirits bottles.<sup>9</sup> Over the years there have been a number of State programs and initiatives that were intended to spur recycling.<sup>10</sup>

Despite this start, Michigan has not done as much recycling as its neighbors. The Michigan Department of Environmental Quality (MDEQ) estimates that the State's municipal rate of twenty percent is lower than that of the other Great Lakes States (Ohio, Indiana, Illinois, Wisconsin, and Minnesota) of twenty-seven percent.<sup>11</sup> Nationally, its recycling is ranked twenty-eighth.<sup>12</sup> Local governments have the basic responsibility for recycling programs, which are often the first activities to be cut in economic downturns. Moreover, environmentalists contend that the State, especially under the Engler administration (1991–2000), showed little commitment to recycling programs.<sup>13</sup> Whereas some jurisdictions, such as Ann Arbor, can generate recycling rates as high as 52 percent, Michigan's overall effort remains dismal.<sup>14</sup>

**Waste Disposal**

The laws and regulations for waste disposal in Canada and the U.S. have many similarities, yet implementation hides significant differences. In both countries, the states and provinces have to follow federal guidelines for disposal facilities.<sup>15</sup> Materials are divided into separate “hazardous and toxic wastes” and “solid wastes” (traditionally referred to as trash or garbage) streams. Each stream is regulated by stipulations that are intended to protect the environment.

The result is that the local dump on the edge of communities is now a thing of the past. It has been replaced by large facilities that receive waste from a large number of jurisdictions and private concerns. Another consequence is that local governments have left the running of disposal sites to private businesses.<sup>16</sup>

Interestingly enough, Michigan and Ontario have adopted laws and rules that have made each other magnets for different types of waste: Michigan ships most of its hazardous and toxic waste to Ontario while Toronto relies on Michigan landfills for its solid waste.

### **Toronto's Solid Waste Quandary**

Toronto is Canada's largest generator of solid waste. Beginning in the late 1980s, planners for the Metropolitan Toronto Council (which consisted of the City of Toronto and six regional municipalities) recognized that its last operating landfill at Keele Valley would reach capacity at the end of 2002. The planners studied a number of options, but ultimately favored shipping the solid waste by rail to the Adams Mine near Kirkland Lake, 367 miles (600 kilometers) northwest of Toronto. This proposal utilized two existing infrastructure assets: a Canadian National rail line and an abandoned iron strip mine. It also benefited from being so far from the Greater Toronto Area that urban sprawl would not surround it. The city pointed out that this proposal would benefit an economically depressed area both with tipping fees (charges on each truck) and jobs.<sup>17</sup>

The Province of Ontario complicated Toronto's plans. In 1991 Bob Rae's NDP government legislated the Metro Toronto government to include waste generated from four neighboring jurisdictions that comprised the Greater Toronto area. The Province wanted to extend waste disposal capacity for more of southwestern Ontario and achieve economies of scale. This proposal generated opposition from local officials who disagreed with provincial policy. The Province's Interim Waste Authority (created to handle the Toronto solid waste problem) spent \$85 million examining potential landfill sites (those sites close to Toronto generating significant opposition) with opposing jurisdictions commissioning \$15 million worth of counter-studies.<sup>18</sup>

In late December 1995 Metro Toronto rejected a provincially owned Adams Mine landfill because of conflicts with Greater Toronto jurisdictions over "spatial equity (i.e., the geographical and socioeconomic distribution of benefits and burdens)."<sup>19</sup> Also entering the equation was financial and environmental consideration. Moreover, there was strong sentiment in the Province against government owned landfills.<sup>20</sup>

During the final deliberations, private interests proposed that they could succeed where the Province and the other jurisdictions had failed.<sup>21</sup> Such initiatives dovetailed with the new Mike Harris Conservative government's orientation towards favoring the private sector.<sup>22</sup> It: "changed the *Environmental Assessment Act* (EAA), dropping the requirement to consider facility need (i.e., whether the landfill was necessary to provide disposal capacity), and more importantly, alternatives to landfills (e.g., waste reduction and recycling)."<sup>23</sup> In 1998 the Province

"fast-tracked" a proposal from the North Bay based Rail Cycle North (RCN) to an environmental assessment hearing. The three-member review panel issued a split decision with the majority recommending more tests and the minority member saying that engineering and environmental problems doomed the Adams Mine proposal. However, under the new laws, the Ministry of the Environment, not the review panel, would have the final say.<sup>24</sup>

Substantial opposition arose with the RCN proposal; Environmental groups and neighboring Québec and native jurisdictions opposed it. Protection of ground water was their biggest concern. Aboriginal groups also claimed title to Adams Mine. Even Richard Denton, the mayor of Kirkland Lake (the closest town to Adams Mine) broke ranks with his city council and opposed the proposal.<sup>25</sup> Opponents kept a steady drumbeat of public opposition, including protests that blocked the Canadian National rail line.<sup>26</sup> Further clouding the situation was the allegation that Premier Mike Harris held a conflict of interest because several of the RCN backers were his friends.<sup>27</sup>

By the fall of 2000, Toronto was running out of time. Its remaining landfill at Keele Valley was due to close at the end of 2002. On October 12, 2000, after "days of raucous debate and heckling by protesters,"<sup>28</sup> the Toronto City Council voted a one billion dollar contract to Rail Cycle North to ship approximately one million tons of trash to Adams Mine. Bill Enouy, the new mayor of Kirkland Lake, welcomed the vote by trumpeting the "\$1 million per year in royalties...and 80 full-time jobs."<sup>29</sup> Several days later, the deal was undone. During the contract talks, the City of Toronto and Rail Cycle North reached an impasse over responsibility for future cost increases. The City pulled out of negotiations on October 20.<sup>30</sup>

With the "made-in-Canada" option for the short- and medium-term blocked, Toronto embarked on a two-phased approach. For the long term, city officials drew up an ambitious recycling effort that would have "100% waste diversion" by 2010.<sup>31</sup> Until that time, Toronto made the "cost-effective" decision to truck all its solid waste to the metropolitan Detroit area (see table 2).<sup>32</sup> On December 31, 2002, the Keele Valley landfill accepted its last load. Beginning the next day, all of Toronto's trash would be shipped to Republic Services' Carlton Farms Landfill in suburban Detroit.<sup>33</sup>

**Table 2. Toronto's Solid Waste Disposal Costs in 2000**

Site	Cost/tonne (\$ Cdn.)
Carleton Farms, Michigan	\$53
Adams Mine, Ontario	\$50
Keele Valley, Ontario	\$21

Sources: Ruryk, Zen, "Firm Set To Mine Trash Push On To Find New Dump Site For City," *Toronto Sun* (Jan. 4, 2000): 18; Cameron, Amy, "Garbage North: A Small Ontario Town Is Being Ripped Apart by Toronto's Trash," *Maclean's* 113 (Aug. 21, 2000): 38.

### *Michigan's Waste Infrastructure*

While paying lip service to recycling, Michigan lawmakers and bureaucrats have devoted much effort to devise environmentally safe landfills.<sup>34</sup> A consequence was the proliferation of large sites that produced surplus capacity. Toronto was naturally drawn to that capacity.

Current Michigan law (1994 *Michigan Public Act 451*, Part 115) obligates counties to establish solid waste management plans that would cover disposal of "non-hazardous solid waste generated or to be generated in the planning area for a period of 10 years or more."<sup>35</sup> Once initially approved, these plans are updated every five years. The Michigan law has sufficient flexibility to allow various combinations of jurisdictions.<sup>36</sup> All plans have to be approved by the Department of Environmental Quality (MDEQ); they must meet all the specifications required by Michigan law and regulations.<sup>37</sup> Consequently, smaller landfills were replaced by state-of-the art larger ones.

#### *A "Waste Magnet"?*

Under its current legal framework, Michigan should not have surplus solid waste capacity since all local plans had to be approved by the MDEQ which theoretically would ensure that duplication would not occur. Things did not turn out that way.

The Carlton Farms Landfill is the prime example. Wayne County did craft a solid waste management plan, which called for four landfills that would serve Detroit and its suburbs. Carlton Farms, then owned by City Management, was authorized a maximum capacity of 22 million cubic yards which was to last for 20 years. The company then petitioned the State to expand the facility, claiming that the current capacity was too small and that Carlton Farms should be expanded to 156 million cubic yards. Furthermore, City Management felt that it did not need to submit a new siting plan.<sup>38</sup>

Wayne County staff disagreed with an expansion and requested that the siting process be re-opened. Michigan Department of Natural Resources (MDNR which then had responsibility for solid waste) staff concurred with Wayne County. The Michigan Environmental Council charges that MDNR Deputy Director Russ Harding declared that Carlton Farms could be enlarged without a siting process. "This action not only usurped county authority but put the State in opposition to its own solid waste plan by creating virtually unlimited cheap landfill space which will surely attract waste from all over and deter recycling and recovery programs...." County Executive Ed McNamara said, "If the DNR amends our plan to increase disposal capacity, it will be the first time in the history of the State it has amended a county plan which is in compliance with *Act 641*, for the sole purpose of satisfying the desires of a particular interested party."<sup>39</sup>

Critics contended that Carlton Farms was not an isolated instance. The Engler administration made a conscious decision to assist the waste industry with tax breaks and lax regulation.<sup>40</sup> In the eyes of the Sierra Club, the State has become a "garbage magnet."<sup>41</sup> Thus, by the mid-1990s Toronto found that Michigan was the cheapest option.<sup>42</sup> Moreover, it was a perfectly legal alternative.

### *U.S. Legal and Diplomatic Framework for Wastes*

A number of legal and diplomatic decisions have led to Michigan being the solid waste depository for Canada's largest city. Beginning in 1978 U.S. federal appellate courts have consistently ruled that trash qualifies as a commodity under interstate commerce (see table 3). A state therefore cannot prevent out-of-state garbage from being stored within its borders. The 1994 North American Free Trade Agreement extended that decision to Canadian and Mexican actors. Further complicating matters, 1992 amendments to the 1986 *U.S.-Canada Agreement Concerning the Transboundary Movement of Hazardous Waste* (Transboundary Agreement) regulate both hazardous and solid waste. Some actors contend that it could be used to ban out-of-state trash.<sup>43</sup>(see table 4.)

The federal courts have stated that the U.S. Congress could enact legislation authorizing states to ban interstate movement of waste.<sup>44</sup> The Congress has not been able to craft such legislation because of the complexity of the problem (see table 5). Complicating matters is that most states export some form of waste to other jurisdictions.<sup>45</sup>

**Table 3. Commerce Clause Decisions by Federal Courts**

Year	Court	Case	Citation	Decision
1978	Supreme Court	Philadelphia v. New Jersey	437 U.S. 617	A State can not ban out of state waste
1980	10th Circuit	Hardage v. Atkins	619 F.2d 871	A State can not ban out of state waste if jurisdiction lacks “substantially similar standards”
1986	Supreme Court	Maine v. Taylor	447 U.S. 131	A State can ban import of matter for genuine health concerns
1992	Supreme Court	Fort Gratiot Sanitary Landfill v. Michigan DNR	504 U.S. 353	A State can not ban out of county waste
1992	Supreme Court	Chemical Waste Management, Inc., v. Hunt	504 U.S. 334	A State can not charge different surcharges according to origin of hazardous waste
1994	Supreme Court	Oregon Waste Systems v. DEQ of Oregon	511 U.S. 93	A State can not charge different surcharges according to origin of waste
1996	7th Circuit / Supreme Court	National Solid Waste Management Association v. Meyer	165 F.3d 1151 / 517 U.S. 119	A State can not ban out of state recycleables (except for jurisdictions that have “effective recycling programs”)
2000	4th Circuit / Supreme Court	Waste Management Holdings v. Gilmore	252 F.3d 316 / 122 S.Ct. 1203	A State can not pass waste laws that, while appearing to be non-discriminatory, effectively ban out of state waste
2004	U.S. District Court, Eastern District, Michigan	Waste Management Holdings v. Wayne County	303 F. Supp.2d (E.D. Mich.)	A County can not ban waste from jurisdictions that lack a Michigan-style beverage container law

**Table 4. Canada-U.S. Bilateral Agreements Dealing with Waste**

Date	Title	Particulars
1986 /1992	Agreement on Transboundary Movement of Hazardous Waste	Originally confined to Hazardous Waste but amended in 1992 to include SW. imposes a “gnarl obligation” on signatories to “permit the import, export, and transit of waste across the common border for treatment, storage or disposal.” Exporting country must notify the importing country in writing of proposed waste shipments. Importing country can consent or object to shipments.
1994	North American Free Trade Agreement	Applies to all commodities, including trash, between Canada, the U.S., and Mexico: -Article 309 states that “no party may adopt or maintain any prohibition or restriction on the importation of any good of another party ... except in accordance of Article XI of GATT. -Article XI of GATT forbids restrictions except when it is “necessary to protect human, animal, or plant life or health” or when dealing with measures “relating to the conservation of exhaustible natural resources.”

Source: Katzman, Kelly. “Trash Across the Border: Analyzing the Michigan-Ontario Waste Exports Issue.” Bachelor’s thesis, University of Michigan, 2004, pp 13-14.

**Table 5. Issues in Interstate Waste Transportation**

1. **Should there be a “presumptive ban” on new waste shipments?** New shipments would not be allowed unless a local government acted to allow them.
2. **State or local primacy?** Would State governors have the primary authority? Or should it be the domain of local jurisdictions?
3. **Restricted to landfills or pertaining to other facilities?** Can disposal facilities be included? Transfer stations (which are not regulated by the EPA)? What about environmental justice aspects (facilities being located in poor and/or minority areas)?
4. **What types of waste would be subject to restriction?** Solid waste? Construction & demolition waste? Medical waste? Non-hazardous industrial waste? Many facilities that accept solid waste also accept other.
5. **What should be grandfathered?** Should existing arrangements (often called “host community agreements” be honored? If so, would that prevent jurisdictions from restricting out-of-area materials?
6. **Should grandfathered shipments be “frozen” or “ratcheted down?”** Can receiving states be empowered to prevent further increases or to gradually reduce total imports?
7. **Should importing states be allowed to charge fees on out-of-state waste?**
8. **Should the Congress authorize the use of indirect measures to limit imports?** Can local governments limit landfill capacity, impose needs assessments, apply stringent requirements such as separating recyclables, etc.?
9. **Should interstate waste legislation also address flow control?** Should state and local governments be given the power to designate where waste must be deposited?
10. **Should the legislation be simple or complex?** “Should Congress simply authorized state or local governments to impose restrictions on interstate commerce in waste, without setting conditions on the use of such authority? Or should it delve into the details of a set of preconditions implied by the first nine questions?”

Source: McCarthy, James E., *Interstate Waste Transport: Legislative Issues*. Washington, D.C.: Congressional Research Service, 1999, 2-5. <http://www.ncseonline.org/nle/crsreports/waste/waste-29.cfm?&CFID=16564891&CFTOKEN=75428544> (accessed June 23, 2004).

This legal framework also covers hazardous waste (HW). An overlooked (or ignored) fact in the entire debate is that Ontario receives almost all of Michigan’s hazardous wastes. Canada’s laws on HW disposal are laxer than those of Mexico and the United States. Consequently, U.S. firms find it cheaper to send HW to Canada.<sup>46</sup> Trucks carrying the hazardous wastes of Michigan and other states cross

the Blue Water Bridge on their way to the Safety Kleen facility outside of Sarnia.<sup>47</sup>

### ***Ontario Solid Waste Shipments to Michigan***

Prior to the closing of the Keele Valley Landfill, the Ontario government and firms exercised their right to ship trash in Michigan. Toronto, for instance, had a 1998 variable multi-year contract with Browning-Ferris Industries’ Arbor Hills Landfill.<sup>48</sup> Macomb’s County’s Pine Tree Acres Landfill began to receive Canadian shipments in 2000. “Up to 80 trash-hauling trucks per day, each carrying 40 tons of garbage cross the Blue Water Bridge ... to the Lenox Township facility.”<sup>49</sup> In April 2003, Crawford County’s Water Landfill began receiving two truckloads daily from Sudbury, Ontario. On their return trips, they haul recycled newspapers and cardboard to Ontario.<sup>50</sup>

### ***Environmentalist Reaction***

Reaction by Michigan environmental and political groups has been almost uniformly negative. A number of environmental groups formed Don’t Trash Michigan (DTM) an umbrella organization devoted to changing the existing situation that provides for “discount dumping.”<sup>51</sup> The Network of Waste Activists Stopping Trash Exports (NO WASTE) bills itself as “an informal, Michigan-based, grassroots organization dedicated to educating the public about the huge problems associated with transborder (both state and national) shipment and disposal of solid wastes.”<sup>52</sup> Both groups call for the State to ban Canadian trash, federal legislation to give the states control over interstate trash shipments, and increased tipping fees.<sup>53</sup> In few, if any, instances did these groups mention the shipment of hazardous wastes from Michigan to Ontario.

### ***Political Reaction on the Local and State Level***

There was also political opposition. In February 2001 Michigan Governor John Engler, reversed his policy of actively promoting solid waste disposal in Michigan. He wrote letters to Toronto Mayor Mel Lastman and Ontario Premier Mike Harris asking that Toronto abandon its shipping plan and send its garbage to Adams Mine.<sup>54</sup> Critics of the Premier charged that Harris specifically asked and had his staff assist Engler, his ideological soul mate, to write the letter as a last-ditch effort to resuscitate the Adams Mine option. All parties issued denials.<sup>55</sup>

In January 2003, coinciding with Toronto’s stepped-up trash shipments, Vancouver-born Democrat Jennifer

Granholtz became Governor of Michigan. She lost no time in calling attention to the trash situation. In both her annual addresses to the legislature, she urged it to pass laws that “will allow us to refuse to accept solid waste loaded with batteries, bottles, cans and toxic substances that jeopardize our health and safety.”<sup>56</sup> The Governor’s speeches did not mention the substantial legal precedents against such types of restricting legislation nor did they refer to the shipment of Michigan’s hazardous waste to Ontario.

Wayne County, home of the Carlton Farms landfill, was the first jurisdiction to act. On August 2003, the County Commission passed amendments to the County’s Solid Waste Management Ordinance that eliminated solid waste that did not conform to the Michigan Bottle Bill. The law was to take effect in October 2003. In early September 2003, the National Solid Wastes Management Association and Republic Services (current owner of the Carlton Farms landfill) challenged the law in Federal court. On February 3, 2004 the U.S. District Court, Eastern District of Michigan invalidated the law, citing the commerce clause.<sup>57</sup>

The Michigan Legislature was slow in passing a package of anti-shipment laws desired by Governor Granholtz. For the first half of 2003, there was much posturing, buck-passing, and dickering between the parties in the Republican-dominated body.<sup>58</sup> In frustration, Democrats went gimmicky, touring the Detroit suburbs with a “trash-ometer.”<sup>59</sup> Despite the volume of court decisions against it, the Legislature passed the package of bills.<sup>60</sup> In March 2004, Governor Granholtz signed the package.<sup>61</sup> Conspicuous by its absence, was the most meaningful measure, an increase in the tipping fee. Business groups and local governments successfully argued that such an increase in a recession was ill timed.<sup>62</sup> On April 12, 2004, the National Solid Wastes Management Association challenged the laws in Federal District Court of Michigan.<sup>63</sup>

In late September, the City of Toronto undercut a major portion of the new Michigan legislation. It proved to the MDEQ that “it could meet stringent new requirements that the State has placed on all waste entering its landfills.”<sup>64</sup> Thus, the Department was obligated to place the City on a list of approved jurisdictions that could ship to the Michigan landfills.

### ***Political Reaction in the U.S. Congress***

Michigan Democrat representatives David Bonior and John Dingell established themselves as early champions of local rights by introducing bills in the late 1980s and early

1990s opposing out-of-state trash imports. Republican Congressman Mike Rogers joined them in 2001. The laws themselves never made it out of committee.<sup>65</sup>

In January 2003 with the shipping of all of Toronto’s waste to Michigan, opposition from Michigan’s congressional delegation became frequent and vocal. The most active were Congressmen John Dingell and Senators Levin and Debbie Stabenow, all Democrats. Their efforts included the following:

- Require the U.S. Environmental Protection Agency to use the *Transboundary Agreement* to ban Canadian trash.
- Have the Homeland Security Department enforce truck inspections.<sup>66</sup>

The three made numerous public statements denouncing the importation of Canadian trash and introducing anti-shipment legislation.<sup>67</sup> Joining them were other members of the Michigan delegation, most notably Republican Mike Rogers who famously vowed to stop the parade of “dirty diapers and leftover Canadian bacon.”<sup>68</sup>

Recently a major light of hope emerged for opponents of waste shipments. The House Subcommittee on Environment and Hazardous Materials approved the *Municipal Solid Waste Responsibility Act of 2004* (H.R. 4940; cosponsored by seven Michigan representatives).<sup>69</sup> It is doubtful if it will be approved by the entire membership of the House Committee on Energy and Commerce.<sup>70</sup>

### ***Injected into the 2004 Presidential Campaign***

The Canadian trash issue first entered the 2004 Presidential contest with a question from a twelve-year-old journalist during the campaign for the Michigan Democratic presidential nomination. Scholastic News Online reporter Patrick Buetow asked Senator John Kerry about the shipments at a February 6 campaign stop. “I don’t like it,” he said. “It seems silly to accept trash as a commodity. We shouldn’t import trash from other countries. I plan to review this issue in the first 120 days of my presidency.”<sup>71</sup>

That short response enabled Kerry deftly to side step an issue that he had likely encountered in his years in the Congress. Interestingly, that was the only time that Kerry addressed the situation during the Michigan caucus.

Thus, it was somewhat surprising for the Kerry-Edwards Presidential campaign to embrace the issue in early September. On September 6, Vice-Presidential candidate John Edwards led off in Kalamazoo, taunting President Bush with “He’s perfectly happy to let garbage into this

country from Canada, right? [...] How about we let in prescription drugs from Canada?” The next day, Kerry expanded on the issue. He called for the Environmental Protection Agency (EPA) to utilize the *Transboundary Agreement* to require that Canada notify the U.S. of each individual shipment of waste.

EPA Administrator Mike Leavitt said that Kerry was misinterpreting the treaty; the notification stipulations applied only to hazardous waste. Leavitt said the Bush administration would introduce legislation that would empower the U.S. government to do so. The administration had asked Canada voluntarily to begin notifications in early 2005.<sup>72</sup>

### Analysis and Conclusion

The waste issue will plague Michigan-Ontario relations until (and if) Toronto and the Province reach their goals of waste diversion by 100 percent and 60 percent respectively.<sup>73</sup> Despite the unfavorable publicity and criticism that Ontario and Toronto have endured, the new McGuinty government seems committed to current policies. The government introduced legislation that has firmly closed the door on the Adams Mine option.<sup>74</sup> McGuinty is prepared to remind Michigan forcefully that it sends hazardous waste to Sarnia. In late September, he announced forthcoming regulations that would require toxic waste to be pre-treated before land filling.<sup>75</sup> Furthermore, Michigan companies may find that shipping their HW to Ontario to be too expensive. The state would then have to go through the contentious process of authorizing new storage facilities.

A Bush victory in November would likely mean a continuance of the status quo. The EPA would not reinterpret the *Transboundary Agreement*. Bills giving states the power to regulate interstate waste shipments would continue to die in Congressional committees.<sup>76</sup>

Things would be more interesting if a Kerry administration keeps its campaign promises on waste. It could make the politically popular decision to interpret the *Transboundary Agreement* to slow, if not outright ban, Ontario's trash. America's relations with Canada then would suffer.

It could also prodded Congress to give states the power to regulate interstate waste shipments. Representatives and Senators from exporting states would certainly fight the proposal.<sup>77</sup> A Kerry Administration would expend much political capital to pass such legislation.

If Michigan did receive and exercise the power to ban Canadian solid waste, it is very likely that Canada would

ask for an NAFTA dispute tribunal to settle the question. If a tribunal upheld Canada's right to continue sending its waste, a Kerry administration would have two undesirable choices. It could accept the decision and face domestic ridicule for backing down on a highly public and visceral issue. Or it could ignore the decision and face charges of hypocrisy in free trade, as well as having Canada appeal to the World Trade Organization (WTO).

Conversely, if the U.S. position prevails in either a NAFTA or a WTO decision, the Canadian public will likely see free trade having declining utility for Canada. Trash shipments are a more tangible issue for Canadian voters than softwood lumber or mad cow bans. The desire to compromise in future trade matters would likely be lost.

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# *A Comparative Analysis of Some Trends in Canadian and U.S. Forest Policy*

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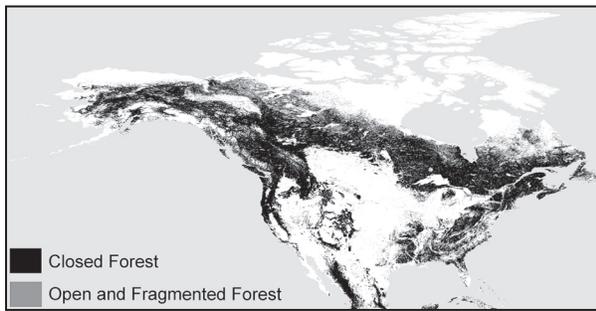
## **Introduction**

The forests of Canada and the United States are a vast resource. Forests and other wooded land occupy 45 percent of Canada's land area, 31 percent of the United States' land area, and when combined, make up 12 percent of the world's forest area (FAO 2001a). Figure 1 shows the extent of forests in Canada and the U.S. These forests are incredibly diverse and contain a wide range of economic, ecological, aesthetic, recreational, and cultural values. The volume of timber harvested annually in the U.S. is approximately 450 million cubic meters (USDA 2001), creating roughly 1.5 million direct jobs (USDA 2004a). In Canada, approximately 190 million cubic meters of timber are harvested annually, creating roughly 376,000 direct jobs (CFS 2004d). In addition to commercial forestry jobs, many people depend on the forests of Canada and the U.S. for income from tourism and trapping, for other resources such as drinking water, berries, mushrooms and game, and for the many cultural, spiritual, and aesthetic benefits provided by forests.

Policies that affect the conservation and use of these forests are clearly of great importance. This paper examines several important areas in Canadian and U.S. forest policy, many of which have evolved in recent years. The areas we examine include forest management policy on public lands, the role of forests in climate change mitigation, and natural disturbance management. After outlining reasons for the observed trends, we describe some of the challenges facing both countries as these changes are implemented.

## **Forest Management Policy**

Public forests in Canada and the U.S. are managed under a wide variety of legislation and policy. Both countries have various regulatory frameworks and government agencies for managing forests on federal lands, state or provincial lands and Aboriginal controlled land. Some municipal or community controlled public lands also exist in both countries. In Canada, a National Forest Strategy provides some high-level guidance for forest policy and sets out the overall vision and goals for sustainable forest management. Federal laws that can affect forest practices include the *Fisheries Act*, the *Canadian Environmental Assessment Act* and the *Canada Wildlife Act*. The *Species at Risk Act* (SARA) was recently created to prevent wildlife species from becoming extinct, and to provide for their recovery. SARA requires that the government of Canada regularly assess species at risk, and implement the necessary recovery strategies to protect or restore populations. In the U.S., high-level forest policy is found in the *National Forest Management Act* (NFMA) that establishes forest management planning requirements on federal public forests. More recently, the Healthy Forests Initiative was developed to provide a high level strategy for addressing fire risk and forest health concerns. The *Forest and Rangeland Renewable Resources Planning Act* and the *National Environmental Policy Act* also provide national level guidance to forest management. The *Endangered*



**Figure 1. Forest cover in Canada and the U.S., data from FAO (2001b)**

*Species Act* requires that a register be kept of endangered and threatened species and prohibits activities that adversely affect these species.

In Canada, the Canadian Forest Service (CFS) is the national-level government agency concerned with forest management. The CFS mandate includes policy development, research, and international promotion of Canada's forest sector. Of the 401.5 million hectares of forestland in Canada, 94 percent is publicly managed (CFS 2005). Parks Canada manages some forestland in Canada's national parks, and the Department of Indian Affairs and Northern Development oversees forest management on Aboriginal lands. Some federal lands (such as national defence lands) are directly managed by the CFS; however, the management of publicly owned forestland in Canada is largely under the jurisdiction of the individual provinces and territories which have their own legislation, regulation, and policies governing the use and management of forests. The United States contains approximately 302 million hectares of forestland, of which 204 million hectares are classified as productive, non-reserved timberland. Commercial forestry is conducted on both private and public lands; however, private land provides most of the commercial forest landbase in the U.S. In 2001, 91 percent of the U.S. annual harvest was estimated to have come from private lands (Smith, et al. 2004). Public forest management in the U.S. can fall under federal or state jurisdiction, under the U.S. Department of Agriculture Forest Service, Bureau of Land Management, other federal agencies, or forest management bodies of individual states.

The evolution of forest management policy is often characterized as passing through a series of distinct and predictable stages. Kimmins (2002) describes a progression from exploitative use to "administrative forestry" focused on timber, and eventually to the adoption of "social forestry" where both ecological considerations and the needs of society for a wide range of forest values drive forest management decisions. Forest management that is

economically, ecologically, and socially sustainable is often referred to as sustainable forest management, or SFM. Wang (2004) describes SFM as a two-tiered approach, where traditional economics continues to play a key role, though caution is exercised when ecosystem integrity is at stake. SFM is essentially a manifestation of the concept of sustainable development, with a core objective of meeting society's current needs without compromising the needs of future generations. Forest policy developments in both Canada and the U.S. contain a variety of indicators that demonstrate a trend towards SFM, which we will outline in the following paragraphs.

### ***Criteria and Indicators***

At a high level, SFM has been defined within internationally recognized criteria and indicator frameworks such as those developed by the Canadian Council of Forest Ministers (CCFM 2000) and the Montréal Process Working Group (MPWG 2003). These frameworks recognize the importance of maintaining the productive capacity of forests for a wide variety of economic, ecological, and social benefits through time. Criteria represent the high-level goals at the core of SFM, and various indicators provide yardsticks by which progress towards these goals can be measured. Canada and the U.S. have both produced reports (CCFM 2000; USDA 2004a) that detail national-level progress towards meeting these measures of SFM. Both countries are still developing their capacity to report on all indicators, as well as working towards a better understanding of some indicators that currently do not have agreed protocols for measurement.

### ***Adaptive Management***

While the adoption of criteria and indicators reporting suggests that Canada and the U.S. are both moving towards an SFM approach, adopting SFM is a challenging undertaking that often highlights our incomplete knowledge of forest ecosystems and divergent views on how SFM objectives should translate into operational activity. Adaptive management (Walters 1986) has been proposed as a strategy to deal with this uncertainty and is based on accepting the incomplete level of understanding we have about ecosystem function. It involves taking an experimental approach to management decisions and a willingness to change course when the outcomes of our management activities become better understood. Key to this approach is the establishment of well-designed monitoring programs that can compare anticipated and actual results

and can feed directly into management actions. Canada and the U.S. are both introducing adaptive management in some areas of managed forest. Many examples of provincial forest policies that recognize adaptive management exist in Canada (Duinker and Trevisan 2003). and in the U.S. Northwest a series of Adaptive Management Areas have been established (USDA 1997a). The transition to adaptive management can also be challenging. Stankey et al. (2003) point out that adaptive management in the Pacific Northwest has been hampered by institutional and regulatory barriers, a lack of incentive for managers to take risks, and a need to assist practitioners in “learning how to learn.”

### **Public Involvement**

The challenging nature of SFM is further complicated by the proliferation of actors involved in forest policy and management (Lindquist and Wellstead 2002). Although government and forest companies remain the principal players, the public has an increasing influence, and stakeholders wanting a say in forest management now include individuals, local communities, labour groups, and even large international organizations. In addition to economic and ecological sustainability, social sustainability is a key aspect of SFM. With the complexities involved in working with such a wide range of stakeholders, community-based forest management is emerging as another tool to provide SFM. Community-based management shifts the public from an advisory role to a collaborative one through partnerships between government agencies and local communities (Berkes 1995). Several examples of community-based forest management now exist on both sides of the border that range from collaborative planning processes to communities gaining direct control of small to medium sized forest areas. The Model Forest Program is one example of this type of management, where partnerships between diverse stakeholder groups provide direction in the management of forests used as testing ground for sustainable forest management (CFS 2004b). Since its inception in Canada the program has expanded worldwide and now includes over thirty model forests established or under development around the world (IDRC 2004). The U.S. has also participated in the Model Forest Program by designating three of its Adaptive Management Areas as model forests in 1995 (CMFN 2004). Adaptive Management Areas in the U.S. are similar to the Canadian model forests, with collaboration playing an important role in decision-making. Although a new program of “charter forests” may replace the Adaptive Management

Areas program (Beckley, et al. 2003) the proposed charter forest program has also emphasized public involvement, as well as local control through management by local trusts (O’Laughlin 2002; White House 2002a).

### **Aboriginal Participation**

Aboriginal groups living adjacent to forests, as all forest dependent communities, do have economic, aesthetic, recreational, and other interests in forests. Additionally, there are often traditional knowledge systems and uses of forests in Aboriginal communities (Garvin, et al. 2001), as well as different worldviews (Parsons and Prest 2003) that can make Aboriginal opinions and approaches to forest management unique. While community and stakeholder groups have become prominent in forest management through the 1990s, Aboriginal groups are also playing an increasing role and may gain prominence rapidly in the current decade.

In Canada, recent court cases have confirmed the existence of Aboriginal rights on traditional territories, as well as requirements for consultation when activities may infringe on Aboriginal interests (Davis and Co. 1998). In some provinces and territories, particularly British Columbia and Yukon, forest management responsibility for some areas is shifting to First Nations communities through land claims and treaty negotiations. Furthermore, the British Columbia government has recently committed itself to direct-award allocation to First Nations of up to eight percent of the province’s AAC, as well as direct revenue sharing with First Nations from provincial stumpage revenues (BCMOF 2003a). Collaborative processes with First Nations are also occurring in other jurisdictions in Canada. In Newfoundland and Labrador, the provincial government is facilitating First Nations involvement in forest management planning (GNL 2004), and in Yukon, collaboration between government and First Nations have produced short-term timber harvesting plans (YTG 2004b, 2004c). At the national level, the First Nations Forestry Program has supported over 1,300 projects to develop First Nations forest management skills and capacity to participate in forestry (CFS 2002). Many examples of cooperation between forest companies and local First Nations across Canada also exist. These include joint business ventures, cooperative agreements between Aboriginal and non-Aboriginal companies, forest services contracting, socio-economic partnerships (such as training, capacity building, or employment agreements with First Nations communities) and collaborative forest management planning (NAFA-IOG 2000).

In the U.S., the indigenous population also play a prominent role in forest management. Aboriginal communities control 6.9 million hectares of forest and other wooded land (FAO 2001a) that was estimated to have generated over US\$465 million in revenue in 1991 (ITC 1993). The Bureau of Indian Affairs, in partnership with local tribes, has traditionally carried out forest management on native reserves, though in the 1990s a review recommended that this relationship be reconfigured to place tribes in more direct control of their forests (ITC 1993). As in Canada, the right of Aboriginal communities to carry out traditional activities on other public land has been recognized, as has the requirement for meaningful consultation when these activities may be impacted (USDA 1997b). The area of land controlled by Aboriginal people is also changing in one part of the country, namely Alaska. The *Alaska Native Claims Settlement Act* authorized Aboriginals (mainly through native-owned corporations) to select and receive title to over 17 million hectares of public land (ADNR 2000). Some 25 percent of Alaska's timber regions are now managed by native-owned corporations (AFA 2004). Collaboration in other areas of forest management occurs, including grants and technical assistance for the development of Aboriginal forest businesses, training to increase Aboriginal participation in fire fighting, and the sharing of traditional Aboriginal knowledge to support the development of forest management plans, research, and interpretive programs (USDA 1997b).

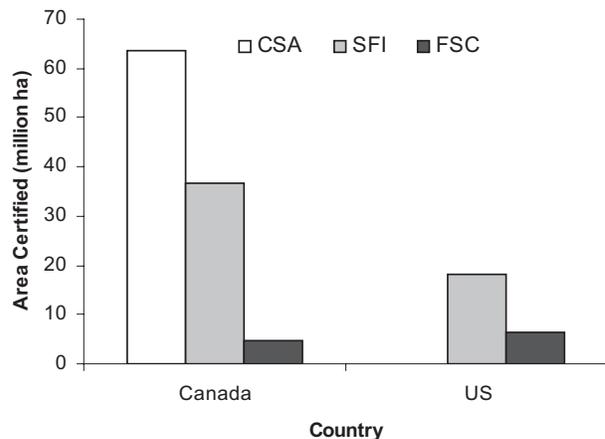
### Certification

Another important manifestation of the SFM paradigm is the adoption of third-party certification for forest products. Certification identifies forest products that originate from companies that adhere to a set of environmental and social standards, allowing consumers to advocate SFM by choosing certified products over uncertified ones. Certification by third-party organizations is a growing trend in both Canada and the U.S. Certification differs fundamentally from traditional forest policy in that it is based on markets and can be largely independent of government (Cashore 2002). Several certification schemes are in use in North America. The Forest Stewardship Council (FSC), Canadian Standards Association (CSA), and the Sustainable Forestry Initiative (SFI) are currently the three most recognized schemes. FSC certification emerged in the mid 1990s and grew from concern by NGOs and others over forest practices (FSC 2003). CSA and SFI (and the Programme for the Endorsement of Forest Certification Systems (PEFC) in Europe) were developed to compete

with FSC for legitimacy, largely through forest industry initiatives (Cashore, et al. 2005). Other certification schemes also exist.

Currently an estimated 63.7 million hectares have been certified in Canada under CSA, 36.8 million hectares under SFI, and 4.9 million hectares under FSC (Abusow 2005). This amounts to 104.6 million hectares certified in total under CSA, SFI, or FSC combined. (Some forests are certified under more than one scheme; so the total is less than the sum of the individual areas.) In the United States, an estimated 6.3 million hectares have been certified under FSC (FSC 2005) and 18 million hectares under SFI (SFI 2005).<sup>1</sup> The areas certified in Canada and the U.S. are compared in figure 2.

Figure 2. Certified forest area in Canada and the U.S.



### Integrating Forests into Climate Change Mitigation

Current evidence suggests that greenhouse gas emissions from human activities are at least partially influencing changing climate patterns (IPCC 2001). The rapidly emerging issue of global climate change has led to a recognition of the role forests can play in reducing atmospheric greenhouse gasses. Forests have the capacity to capture and store atmospheric carbon through respiration and growth, as well as releasing carbon to the atmosphere through fire or decay. The net effect of these processes determines whether forests are carbon “sources” or “sinks.” The United Nations Framework Convention on Climate Change, through the Kyoto Protocol (UNFCCC 1997), calls for participating countries to reduce net greenhouse gas emissions to less than 1990 levels. Under the Kyoto Protocol, the role forests play in absorbing and storing

atmospheric carbon are accounted for in two ways. The impacts of afforestation (planting areas not forested for 50 or more years), reforestation (planting areas not forested at the end of 1989) and deforestation are included in calculations of greenhouse gas emissions, either increasing or decreasing them. Additionally, each country has the option to include the effects of forest management on carbon storage and have this applied to national emissions targets.

The Kyoto Protocol was ratified by Canada in 2002. Canada projects that forest management may make a contribution to offsetting its emission reduction targets (Government of Canada 2005). However, this contribution is still uncertain, and choosing to include forest management carries the risk that natural disturbances or other unforeseen factors may reduce this effect, even resulting in a net emission of carbon. At present, forest products are not considered sinks; so carbon stored in long-term products such as furniture or building materials do not contribute to sequestration. Some private forest companies that increase forest carbon storage through enhanced management practices or afforestation may be able to sell storage “credits” to domestic or international emitters facing emission penalties or have them purchased directly by the Government of Canada’s new Climate Fund (Government of Canada 2005). Natural Resources Canada’s Forests 2020 Plantation Demonstration and Assessment Initiative is researching the carbon storage capabilities of afforestation projects with fast growing species and working to attract investment in plantations that help sequester atmospheric carbon (CFS 2004d). Furthermore, both natural forest and plantations may have the potential to provide renewable biomass energy that offsets some fossil-fuel consumption.

Systems for carbon accounting are still being developed, and Canada has been a major participant in the development of systems and models for accounting for the role of forests in the global carbon cycle (e.g., CFS 2004e; Kurz and Apps 1999). Canada is also an active participant in the Intergovernmental Panel on Climate Change (IPCC) that aims to assess continually the latest information and science on climate change. Over 30 Canadian scientists helped author and edit the IPCC’s Third Assessment Report in 2001 (Environment Canada 2001).

The U.S. government has stated that it will not ratify the Kyoto Protocol, citing reasons that include unachievable and arbitrary targets, economic costs, and a lack of strategy to reduce emissions from developing countries, namely China and India (USDS 2001). However, the U.S. does plan to work towards reducing greenhouse gas emis-

sions through a variety of voluntary schemes, education, technological advances, tax incentives, and regulations (USDS 2002). The U.S. government believes economic growth can be used to provide the wealth needed to use cleaner technologies and promote carbon sinks domestically, as well as in the developing world where the need to reduce emissions may be more urgent (White House 2002b). Domestic incentives that involve forests include the promotion of forest and agricultural carbon sinks under USDA’s Environmental Quality Incentives Program, Forest Land Enhancement Program, and Conservation Reserve Program (U.S.DA 2003a). Forest carbon sinks (and sources) are also recognized under the U.S. Department of Energy (DOE) Voluntary Reporting of Greenhouse Gases Program (USDOE 2005). Other programs may help to preserve forest carbon sinks outside the U.S. The President’s Initiative Against Illegal Logging provides assistance to nations working to prevent unwanted forest harvesting and forest sector corruption, and the *Tropical Forest Conservation Act* allows for some debt relief to developing nations that increase tropical forest conservation. Like Canada, the U.S. is conducting climate change research, including research better to understand the role of forests as carbon sinks (USGCRP 2004). The U.S. has also participated extensively in IPCC activities and assessments (CCSP 2003).

It is important to note that support for the Kyoto Protocol could shift in either Canada or the U.S. following the election of new governments with differing opinions on climate change policy. The previous U.S. Democratic administration supported the agreement until narrowly losing office in 2000. The 2004 election produced similar results and the Democratic Party had campaigned to improve climate change programs (DNCC 2004), although their specific position on Kyoto was less clear. Support for the Kyoto Protocol within Canada is also not without its detractors. The government of Alberta has stated that it does not support the agreement and will actively block any potential impacts to the province’s economy (Government of Alberta 2002). During the 2004 Canadian election, the Conservative Party of Canada stated it would direct funding away from initiatives related to Kyoto if elected, describing the agreement as “increasingly irrelevant” (Conservative Party of Canada 2004) and went on to win approximately 30 percent of the national vote. Mainstream political parties on both sides of the border have different views on the agreement from current governments and are supported by significant segments of the public. However, the role of forest in climate change strategies appears to now be established and unlikely to disappear.

### *Natural Disturbances*

In recent years, the impacts of natural forest disturbance have been a challenge for both Canada and the U.S. In the U.S., some of the worst fire seasons in fifty years occurred in 2000 and 2002 (USDA 2003b), and in 2003 brush fires in California resulted in 24 fatalities and the destruction of 3,710 homes (CDFFP 2003). In the same year, fires in British Columbia burned an area over ten times larger than the preceding ten year average (BCMOF 2004a), destroying several hundred homes and businesses and permanently closing a local sawmill that was in the path of one of the fires (BCMOF 2004d). Earlier, in 1988, large forest fires burned out-of-control in Yellowstone National Park, affecting over 250,000 hectares (Turner, et al. 2003).

Forest pests are also having notable impacts. The mountain pine beetle (*Dendroctonus ponderosae*) is currently infesting over seven million hectares in British Columbia (BCMOF 2004b) and is the largest outbreak in the province's history. In the southern United States, the southern pine beetle (*Dendroctonus frontalis*) caused over US\$200 million in damages in 2001 (USDA 2003). Spruce beetle outbreaks in 1978-1982 in central British Columbia resulted in the mortality of over two million cubic meters of timber (Safranyik and Humphreys 1993) and in the last 25 years have affected over 400,000 hectares of forest on Alaska's Kenai Peninsula (ADNR 2004).

Canada and the U.S. both actively suppress forest fires, and the various agencies responsible for fighting forest fires are characterized by a high degree of cooperation. In Canada, fire suppression is the responsibility of the individual provinces (and Parks Canada in Canada's National Parks), and each jurisdiction has its own fire fighting crews and equipment. However, the Canadian Interagency Forest Fire Centre in Winnipeg coordinates the sharing of these resources during times when fires overwhelm individual agencies (CIFFC 2004). In the U.S., firefighting is carried out by the USDA Forest Service, along with a variety of state and local fire agencies. As in Canada, resources are also coordinated by a central agency called the National Interagency Fire Center.

Cooperation between Canada and the U.S. in fighting large forest fires also occurs. Since 1982, Canada and the U.S. have had a formal agreement to share firefighting resources during catastrophic events, including established protocols for making resources available, responsibilities for costs, and facilitation of the quick movement of personnel and equipment across borders (CIFFC 2004).

Recent destructive fires in Canada and the U.S. have led to increasing concern over the causes of these events and for the vulnerability of forests and adjacent communities. Major government reviews occurred in response to large fires in the U.S. and Canada (Filmon 2004; USDA 2000). The reviews suggest ways of improving institutional effectiveness, assisting communities affected by wildfires, and rehabilitating burned forest areas. Public education aimed at residents in interface areas (transitions between human settlement and wild forest) was also proposed to increase awareness of the risks of living in or adjacent to forests, as well as some of the measures that can be taken to reduce risks. Both reviews concluded that more proactive management of forest fuels in interface areas is needed, and that successful fire suppression has likely increased risk because of a build-up of forest fuels.

Beyond the initial reviews, policy changes and action in response to these issues are also occurring. The Healthy Forests Initiative (HFI) was launched in the U.S. in 2002 with the aim of reducing risks to communities, water supply systems and the environment from forest fires, and of streamlining projects that will achieve these goals. Since 2000, over five million hectares have been treated under various fuel reduction and restoration projects (HFI 2005) and approximately US\$760 million in projects are proposed for 2005 (USDA 2004b). Legislative changes to improve and expedite consultation and administrative activities have also been introduced.

In Canada, the FireSmart program was initiated in the 1990s with the goal of creating awareness and of communicating solutions to the problem of vulnerable interface communities (Partners in Protection 2003). The program encourages homeowners to assess risks to their own property, local planners to consider FireSmart design principles for communities, and land managers to consider mitigating strategies in landscapes surrounding interface communities. The program is essentially one of public education, with the responsibility for implementation of FireSmart principles left to communities or individual property holders. As a result, some community-wide FireSmart programmes have been initiated, notably in Ft. McMurray, Kamloops, Hinton and Banff (Partners in Protection 2003). Some larger-scale projects have also occurred. The First Nations Forestry Program of the Canadian Forest Service funded FireSmart projects in several First Nations communities across Saskatchewan (CFS 2004a), and the Yukon territorial government has a territory-wide FireSmart Program. In 2004, Can\$1.5 million was allocated for projects across the Yukon (YTG 2004a).

While Canadian initiatives to manage fires proactively remain ad hoc compared to those in the U.S., a more coordinated approach is currently being developed in Canada. The Canadian Wildland Fire Strategy is being planned as a nation-wide initiative to develop resilient and informed communities, healthier forest ecosystems, and modernized fire management business practices (Hirsch, K. personal communication 2005). Specific projects under the strategy may include public education, policy improvements, risk analyses, assessments of vulnerable interface areas, hazard mitigation (including fuel treatments), improvements to building codes and local bylaws, and enhancements to Canada's firefighting infrastructure. Innovative uses of economic incentives (e.g., insurance, taxes, or fines) may also be explored to promote individual and corporate behavior that reduces risk.

Canada's record of successful fire suppression has also been recognized as a contributing factor to the mountain pine beetle epidemic in British Columbia (Hawkes and Taylor 2001). Lodgepole pine forests in the British Columbia interior are normally subject to frequent fires, but fire suppression has led to large areas of old forest dominating the landscape. However, recent weather trends have contributed to the destruction of forests. Hot dry summers have drought-stressed trees making them less able to resist attack, and a lack of prolonged cold winter weather has reduced beetle mortality. All of these factors combined have provided ideal conditions for beetle population growth. Although opportunities for salvage harvesting in affected stands exist, projections of future timber supply indicate that the infestation may result in a loss of approximately 4.5 million m<sup>3</sup> per year in long-term harvest levels (BCMOF 2003b).

In response to this epidemic, the British Columbia government is raising harvest rates to ensure effective salvage and rehabilitation in commercial forestry areas. Salvage plans are recognizing the ecological benefits of leaving some areas unharvested, and protected areas are being managed with alternative treatments such as prescribed fire. Support for communities dealing with socio-economic impacts is also being introduced, and new markets for beetle-killed timber are being explored (BCMOF 2005, 2004c). At the federal level, the government of Canada has introduced the Mountain Pine Beetle Initiative (CFS 2004c), which aims to reduce the impacts of current and future epidemics by researching management options, developing decision support systems, and developing a better understanding of biological and economic impacts. Direct management of the mountain pine beetle on federal lands (First Nations reserves, National Parks,

military, and other federal lands), as well as assistance to private landholders, is another aspect of the program.

In the U.S., similar strategies are being adopted to prevent and manage insect outbreaks. In the West, the Western Bark Beetle Report (USDA 2002) estimates that over eight million hectares of forest could be subject to bark beetle infestations over the next 15 years and proposes suppressing beetle outbreaks through baiting and removing host material, preventing outbreaks through thinning, and restoring beetle killed stands through reforestation. Funding for bark beetle management projects peaked in 2004, with over US\$20 million in projects being funded through the Forest Health Protection Program (USDA 2004d). The southern pine beetle is also being managed through prevention and restoration projects that totalled over US\$11 million in 2004 (USDA 2004c).

## **Discussion and Conclusion**

There are several notable differences between Canada and the U.S. relating to forest policy, many of which are widely recognized. These differences include a predominance of public managed forestlands in Canada as compared to privately owned plantation forests that make up the majority of the U.S. industrial landbase. Individual provinces control most Canadian public forests, with large areas under long-term tenure arrangements with forest companies. Federal agencies administer the majority of U.S. public forests and typically sell timber through small short-term timber sales. Canada continues to rely on public land for the majority of its timber supply, whereas the U.S. has curtailed timber production on public land because of costly litigation and a robust supply from private lands in the southeast. Harvesting in U.S. National Forests declined by 84 percent between 1986 and 2001, while increasing by 46 percent on non-industrial private lands (Smith, et al. 2004). The Canadian forest industry is essentially geared towards exports (especially to the U.S.) whereas the U.S. industry largely sells into its own domestic markets. Many of these differences, along with a greater relative scarcity of timber resources in the U.S., have contributed to ongoing trade disputes over forest products between the two countries (Beckley 2003; Reed 2001).

Despite these differences, we have identified a number of areas where Canadian and U.S. forest policies are changing in similar ways. These similar trends likely stem from the wide range of cross-border issues that relate to Canadian and U.S. forests, a similar cultural background, and the economic importance of forests in both countries. The physical proximity of the two countries also facilitates

**Table 1. Summary of areas examined in Canada and U.S. forest policy**

Area Examined	Main Features
Forest Management Policy	Common trend to adopt policies that promote SFM on public forestland.
Integrating Forests into Climate Change Mitigation	Both countries are researching the role that forests can play in mitigating climate change and integrating forests into climate change strategies, despite diverging in their support for the Kyoto protocol.
Natural Disturbance Management	A common interest better to protect forests and communities is leading to similar policies and programs that aim to manage disturbances proactively.

information exchange that almost certainly contributes to parallels in forest policy. Many of these factors have been linked to forest policy trends by others (e.g., Beckley 2003), and it has been suggested that shifts in forest policy tend to occur first in the U.S. and later migrate north to Canada (Thomas 2002). The areas we have examined are summarized in table 1.

Canada and the U.S. have both experienced dramatic and damaging natural disturbance events in recent years. By trying to learn from these events, both countries are developing strategies better to prepare for future disturbances and to move away from management activities that may be contributing to disturbance risk. In the wake of recent damaging fires on both sides of the border, several conferences have brought together Canadian and U.S. fire management experts, including those responsible for some of the policy changes we have outlined. It is, therefore, not surprising that parallels exist between policies that are emerging in this area. Managing and responding to forest disturbances will remain challenging as our reliance on forests for a wide range of values intensifies and as the value of assets at risk continues to increase. Complex tradeoffs are involved that balance the need to protect human safety and assets against recognition of the ecological role of fire and natural pests. Furthermore, disturbance processes will never be entirely controllable or predictable, and our best efforts to minimize risk may still fail from time to time.

Despite diverging over endorsement of the Kyoto Protocol, Canadian and U.S. programs and policies in some areas of climate change show similar trends. Both countries are incorporating forests into climate change policies and conducting research better to understand the contribution forests can make to climate change mitigation. Although support for the Kyoto Protocol could conceivably shift in either country, the issue of climate change itself is unlikely to fall off the agenda of any government, and the new role of forests in climate change mitigation appears to be here to stay. The long-term effect of adding

carbon storage to the ever-increasing list of values derived from forests remains to be seen. Demand for forest carbon storage may begin to compete with traditional forest values, or conflicts could occur over management practices that promote carbon uptake at the expense of other values. The unpredictable nature of forest disturbances may also confound some strategies to use forests as carbon sinks. Climate change itself may exacerbate some disturbances or alter growing conditions, creating stress on forests used as carbon sinks.

Forest management policy is evolving rapidly in response to the emerging sustainable development paradigm and new management practices that define sustainable forest management. Both Canada and the U.S. are initiating criteria and indicators reporting, adaptive management, increased public involvement, enhanced Aboriginal participation, and third-party certification. A key question surrounding these policies, however, is whether long-term public satisfaction with forest management will consequently stabilize. It may be easy to introduce some policies that include sustainability as a high-level goal and be even relatively straightforward to create public advisory committees with a wide range of stakeholders. It can be much more difficult to provide the institutional support and commitment required for long-term results, especially in the face of conflicting views over difficult tradeoffs and uncertainty. In comparing the U.S.'s and Canada's "Two Paths Towards Sustainable Forests," Beckley et al. (2003) conclude that institutional reforms will be required in both countries better to facilitate public involvement and incorporate social science. However, it is important to remember that collaboration will not always solve conflicts over resource management. Collaboration is about working relationships, and like all relationships, some will be easy, others stormy (but still worthwhile), whereas some will simply fail to produce desired results. The breakdown of collaborative processes may inspire new approaches that are more successful, though even with the best facilitation some may never result in more than an

“agreement to disagree.” Furthermore, the various influences on forest management exerted through SFM (e.g., local planning processes, criteria and indicators, or certification requirements) may deliver inconsistent priorities or even conflicting objectives. We will always be left with difficult tradeoffs to make in some forest areas, though a commitment to approaches like adaptive management acknowledges that decisions must be fluid and subject to continuous reevaluation.

Although a wide range of cross-border issues and shared contexts have likely led to the similar policies and trends we have identified, it will be many decades before we know whether these will result in sustainable forests (and forest communities), effective contributions to climate change mitigation, or more effective natural disturbance management. The goal of sustainable development will no doubt remain a moving target in both Canada and the U.S. as our understanding of forest ecosystems develops and the goals and opinions of stakeholders continue to evolve. Our ability to adapt to shifts in understanding and objectives will likely be a key determinant of whether we succeed, as will a commitment to processes that may go through unexpected twists and turns. It will be interesting to continue comparing Canadian and U.S. approaches through the upcoming century. Given the similar trends we have outlined and their significant challenges, collaboration between our two countries and the sharing of lessons learned will be of great benefit to both countries.

## Notes

- 1 Estimated from the 55 million hectares reported by SFI (2005) for the U.S. and Canada combined, minus the 36.8 million hectares reported for Canada from Abusow (2005).

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# *A Two Country Longitudinal Study of the Effect of Business Values on Firm Performance: Convergence and Divergence in the Canadian and U.S. Forest Product Industries*

Dorothy Paun

## **Introduction**

Since 1994, Paun, et al. (2004, 2003, 2001, 2000, 1999, 1998; Bjorkman, et al. 1997; Rahikainen, et al. 1995) have conducted annual financial performance analyses of the North American forest products industry, in particular the pulp, paper, and packaging industry (hereafter referred to as the paper industry). These two countries were chosen for analysis because they share the world's longest border and, financially, have the most substantial bilateral trade relationship in the world. Paper is the industry focus because paper manufactures, as compared to wood-focused manufacturers, has been chosen for two reasons. First, 80 percent of all forest products revenues in North America are generated by the sale of pulp, paper, and paperboard products, as compared to solid and engineered wood products. Second, paper production facilities are expensive, so the industry primarily consists of relatively few (26 in 2004), large, publicly traded firms, the latter of which requires (Securities and Exchange Commission) public disclosure of financial information in quarterly and annual reports that are prepared in accordance with Generally Accepted Accounting Principles. Conversely, wood products producers are highly fragmented, meaning the industry has many firms (ten of thousands) of which

the vast majority are too small to be publicly traded and thus provide public financial information that could be analyzed. The research reported here is the first effort to provide a longitudinal, comparative analysis of the U.S. and Canadian paper industries.

## **Research Goals and Methodology**

Study objectives were to compare and contrast the financial performance of Canadian and U.S. paper firms during the period of 1997-2002. A longitudinal investigation such as this may generate insights that reflect trends due to cross cultural business values rather than economic cycles. Business study variables included leverage, revenues, business activities, investments, profitability, and investment intensity.

Data used in this study were collected from financial statements published in corporate annual reports. To simplify the comparison of U.S. and Canadian firms, all dollar amounts reported in this analysis are U.S. dollars, converted using the *Bank of Canada* averaged conversion rates (table 1) (*Bank of Canada*). However, to calculate Canadian percent change between years, "local currency"

or Canadian dollars were used to avoid distortions arising from currency fluctuations (i.e., Canadian dollar appreciation or depreciation relative to the U.S. dollar) and not revenues or capital expenditure increases or decreases.

To calculate how mean study variables change between years, percent change was calculated (current year's mean - last year's mean/last year's mean). For variables that are percents, like return on equity (ROE percent), absolute percent change (2002 ROE - 2001 ROE) was used.

Two criteria must have been met for a firm to have been included in this study. First, a firm must generate at least 20 percent of total annual sales from the sale of pulp, paper, and/or packaging products, and, second, it must be publicly traded. All (i.e., census) North American publicly traded paper firms thus comprised the "sample;" for convenience, table 2 presents sample firms and the products they manufacture. The paper industry has undergone considerable consolidation in the past decade. Table 3 reports that in 1997 there were 19 Canadian paper firms, as compared to eight in 2002, and in 1997 there were 40 U.S. firms, as compared to 25 in 2002. In sum, consolidated has decreased by half the number of paper firms in North America, 58 percent fewer in Canada and 38 percent fewer in the U.S. in the time period studied. For consistency and to avoid distortions, only those firms that existed over the entire five year period are analyzed in this study.

## Study Findings

### Revenues

The first variable analyzed is total annual revenues (table 4). This refers to the total revenues received for all products sold after discounts, returns, allowances, and intersegment revenues were subtracted from gross revenues. Examining revenues provides insights on firm size, market share, competitive position, and overall growth patterns over time. Recall that Canadian revenues are converted to U.S. dollars for ease of comparison.

Total industry paper revenues for U.S. paper firms (\$101 billion in 2002) historically are tenfold those in Canada (\$11 billion in 2002), so the longitudinal change in annual revenues since 1997 is similar in Canada and the U.S. Firms in both countries have experienced only modest growth in the revenues. In Canada, annual revenues increased 11 percent during these six years, less than two percent growth on an annualized basis. Similarly, U.S. annual revenues increased only eight percent, slightly more than one percent per year. It is well known that the industry worldwide has suffered from weak prices

due to an oversupply of products and associated competitive prices. Additionally, paper and wood (e.g., building materials) products tend to be unbranded and commodity-like, which also contributed to lower prices overall. So while production and the number of products sold may have increased in Canada and the U.S., revenue growth was small.

Given the modest/flat growth in annual revenues, one would expect that mean revenues for the industry would be modest as well. However, in both countries mean annual revenues have increased dramatically, up 41 percent in Canada, to almost \$2 billion in 2002, and 55 percent in the U.S., to almost \$7 billion. However, this was not the result of dramatic increases in annual revenues but rather from the substantial industry consolidation (see previous section and table 3) that has occurred in North America during the timeframe of this longitudinal analysis. In Canada, there were 19 publicly traded paper firms in 1997, compared to only eight today, while in the U.S. the number of firms has decreased to 25 in 2002 from 40 in 1997. Thus, all things equal, the roughly equivalent amount of annual revenues have accrued to fewer paper firms, thus raising the industry mean.

### Business Abroad

Foreign revenues are those that arise from exports and/or overseas production and revenues. Participating in international markets benefits forest products firms in several ways: Selling abroad lowers reliance on domestic markets and associated business cycles; increases business growth opportunities through new market development; and lowers production costs through increased economies of scale and scope, to name a few.

While annual sales performance trends are similar in both countries, foreign business operations differed widely. In Canada, foreign sales have increased threefold, as compared to those in the U.S. Canadian sales abroad have increased from 54 percent (1997) to 66 percent (2002) of total annual sales (foreign and domestic combined), to almost \$10 billion in 2002. In the U.S., growth in foreign sales has been modest, increasing from 25 percent to 28 percent of total annual sales, to \$45 billion in 2002 (table 4). For some time, Canada has been the world's largest exporter of forest products, and there appears to be a concerted effort to grow sales abroad. Pragmatically, Canadian firms are more dependent on business abroad as it produces twice as many tons of paper products than the country consumes domestically (46 million tons versus 23 million tons in 2002) (Paun, et al. 2004). The U.S.,

which consumes 25 percent of all paper products in the world, produces less paper than it consumed, with the demand deficit being fulfilled with imported products (135 million tons versus 142 million tons in 2002). This may provide an explanation for why foreign sales growth has been more conservative in the U.S. Interestingly, while Canadian industry total sales are only a tenth of their U.S. counterparts, Canadian paper firms earn more foreign sales, on average, \$1.2 billion, as compared to U.S. firms that averaged less, \$1.1 billion.

### ***Investment Intensity***

Capital investments, sometimes called capital expenditures, refers to purchases of land, property, equipment, technological improvements, and facilities along with improvements in manufacturing, administration, services, or other projects expected to expand capacity and revenues. The acquisition of an entire firm and mergers between firms are not considered capital expenditures. In this study, paper capital expenditures, as compared to total capital expenditures, were investigated.

While global consumption and production of paper steadily increases worldwide, the longitudinal trend under examination in this study shows a slowing in the rate of investment in both the U.S. and Canada, slightly more so in the latter (table 5). This is not surprising because the chronic oversupply of paper-related products has led to undesired price competition and lower revenues, as discussed in the previous section. Decreases in capital expenditures might also indicate a more cautious mindset toward future investments, lack of venture projects due to an uncertain industry and/or economy, and unwillingness to increase borrowings which might already be higher than preferred due to recent mergers and acquisitions. Industry experts have advised the poorly performing industry to become more competitive through increasing existing operational efficiency and curtailing capital investments that would further expand productive capacity, and it seems that Canadian and U.S. firms are strategically exercising restraint. Lastly, capital improvements in both countries has focused less on new facilities and more on environmental compliance and upgrading existing equipment for maximizing efficiencies.

In terms of the total industry capital expenditures, investments declined 43 percent in Canada and 40 percent in the U.S. during the 1997-2002 timeframe, to \$498 million and \$5 billion, respectively. Firms in both countries are dissimilar in magnitude, with U.S. firms far outspending Canadian firms, on average, more than five times.

However, on average, U.S. firms are decreasing capital expenditures at a more accelerated rate, 29 percent less, while Canadian firms averaged about the same over the same time period.

### ***Debt-to-Equity***

When the return on an asset (e.g., plant, equipment) is expected to exceed its cost, firms justify acquiring debt to obtain such an asset. The debt-to-equity (D/E) ratio measures a firm's risk or indebtedness, by comparing total liabilities to total shareholder's equity. Used by creditors and investors, debt-to-equity reflects the degree to which shareholders' equity has been leveraged. A higher debt-to-equity, all other things equal, represents greater risk to creditors and investors because highly leveraged firms must use cash flows to pay for debt interest and principal payments, and this limits prospects for growing the business and reacting to competition. On the other hand, too little debt may result in not maximizing the full potential of a business. Debt to equity that ranges from one (less leveraged) to four is acceptable as a higher debt-to-equity puts a firm at more risk of bankruptcy, but most lenders have credit guidelines that limit debt-to-equity for unknown, smaller firms at about to 2:1 or less (Small Business Administration). However, in capital intensive industries, like the forest products industry, it is expected that debt-to-equity will be higher.

The U.S. and Canadian paper industries have become more leveraged over the years. In Canada, the ratio of debt-to-equity has increased more, 33 percent, from 1.5 in 1997 to 2.0 in 2002 (table 6). In the U.S., leverage rose less, by 21 percent, but to a higher level (from 2.3 in 1997 to 2.9 in 2002). Most likely, this relative increase in debt-to-equity is because large firms tend to have been purchasers, and, all things equal, the acquisition of another firm requires more than cash. Funds must be borrowed (i.e., debt increased) and/or new equity raised through issuing new common shares (i.e., decreasing equity), both of which raise debt-to-equity ratios.

United States and Canadian firms differ in their propensity toward risk. This study shows that from 1997 through 2002, U.S. firms have been less risk adverse, if it is agreed that higher amounts of debt, relative to shareholders' equity, are a proxy for risk, than Canadian paper firms. In the last year analyzed, and fairly consistently throughout the timeframe of the study, U.S. paper firms were a third more leveraged than Canadian firms, with debt-to-equity ratios of 2.9 and 2.0, respectively.

### ***Return on Equity***

Return on equity (ROE) assesses the performance of a company's management in terms of profitability and asset management. More specifically, return on shareholders' equity is the ratio of net income earned relative to average shareholders' equity. Shareholders use return on equity to measure the return yielded by their investment and enables them to compare the profitability of one firm with others and various financial benchmarks (i.e., previous years).

Table 7 reports return on equity performance from 1997 through 2002. More than any other study variable, Canada and U.S. share little in common when performance. On average, U.S. paper firms have experienced an erosion in return on equity, done almost a third, to 3.3 percent in 2002 from 10.1 percent in 1997. Conversely, Canadian paper firms have increased profitability fourfold, to 6.2 percent in 2002 from 1.5 percent in 1997. This could be due to a number of things and may be correlated with Canadian producers expanding foreign business, achieving greater operational efficiencies, supply chain practices, ratio of paper to wood products sold, etc.

### **Summary Remarks**

This analysis compared a census of publicly traded U.S. and Canadian forest products firms on five business variables (revenues, foreign business, investments in capital, leverage or risk assessment, and profitability) over the period of 1997-2002. Both commonalities and differences emerged.

#### ***Convergent trends include:***

- Maturing of the forest products industry in Canada and U.S., only modest growth in revenues since 1997;
- Although individual firm annual revenues increased dramatically, up 41 percent in Canada and 55 percent in the U.S., it is due less to revenue growth and more to industry consolidation (revenues distributed among fewer firms, thus raising the industry mean);
- Global consumption and production of paper has increased worldwide, but Canada and the U.S. are slowing capital spending, a strategic response to chronic oversupply and associated declining prices;
- Recently, capital improvements have been less for new facilities and more for environmental compliance and

upgrading existing equipment to maximize efficiencies;

- Firms in both countries became more leveraged over the years. In Canada, debt-to-equity increased from 1.5, in 1997, to 2.0, in 2002, and in the U.S. from 2.3 to 2.9. Most likely this is a result of costs associated with industry consolidation through acquisitions. Divergent trends include:
- Canada produces twice as much paper-related products as it consumes while the U.S. consumes more than it produces;
- Canada depends more on foreign revenues (66 percent foreign, 44 percent domestic) while U.S. relies more on domestic revenues (28 percent foreign, 78 percent domestic);
- Businesses in both countries make and sell products abroad in more than 50 countries; however, Canadian foreign sales have increased more dramatically, to 66 percent of total revenues in 2002 from 54 percent in 1997 while U.S. growth has been modest, increasing to 28 percent in 2002 from 25 percent in 1997;
- Canadian firms earn more foreign revenues, on average \$1.2 billion in 2002, as compared to U.S. firms (\$1.1 billion) even though U.S. total revenues are ten times more;
- Firms in both countries differ in the magnitude of their capital expenditures, with U.S. firms investing five times more, \$565 million on average in 2002, than Canadian firms; however, U.S. firms are decreasing capital expenditures at more accelerated rate, on average 29 percent less;
- Firms in the U.S. appear less risk adverse and are a third more leveraged than Canadian firms, with debt-to-equity ratios of 2.9 and 2.0, respectively;
- Canadian firms report higher profitability. Average ROE in the U.S. has eroded by almost a third, to 3.3 percent in 2002 from 10.1 percent in 1997. Conversely, Canadian paper firms have increased profitability fourfold, to 6.2 percent in 2002 from 1.5 percent in 1997.

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*Divergence, Conflict and Dispute  
Resolution in an Integrated Environment:  
An Examination of the Canada–U.S.  
Softwood Lumber Case*

Cecilia Lei

**Introduction**

Recent bouts of regional economic integration across the world have intensified international economic cooperation on a scale unseen before. Examples include the African Economic Community, the Mercosur in South America, the Association of Southeast Asian Nations and the European Union, to name a few. Canada and the United States have also succumbed to this integration fever and created in 1989 a free trade area by virtue of the Canada-U.S. Free Trade Agreement (FTA). This area was extended in 1994 by the North American Free Trade Agreement (NAFTA) to include Mexico, the remaining North American country, into the folds of the integration partnership.

Given that NAFTA created one of the largest free trade zones in the world, it is surprising that there remains to date two voids in North American integration literature. The first is the disproportionate lack of attention paid to analysing North American integration using integration theories. In contrast with the European Community, whose various aspects of integration have spawned a proliferation of academic discussion on integration theories, the lack of research in the North American context has hindered the understanding of the reality of integration in this continent.

The second gap in current studies concerns the place of conflicts in understanding integration. Theoretically, where there is integration, enhanced cooperation and smoother trade flow should be accompanied by decreased friction between member states. In the case of Canada and the U.S., this is true to a large extent. As Canada's largest trading partner, the U.S. accounted for approximately 82.5 percent of Canada's exports and 70.1 percent of Canada's imports in 2003.<sup>1</sup> In a similar vein, Canada was the top ranking trading partner for U.S. imports and exports from 1984 to 2002.<sup>2</sup> A glaring exception to this generally harmonious trading relationship is the softwood lumber dispute, well-recognised as the most significant trade dispute between the two countries in terms of duration, trade volume, and complexity. Unfortunately, North American integration studies that focus on conflicts are scant. That trade conflicts are not examined extensively in integration studies is perplexing, given that they are often a good barometer of how well integration is working and can pinpoint the deficiencies in the integrated framework.

The present article attempts to fill these voids by extracting from the softwood lumber dispute key developments that can shed light on the integration process between Canada and the U.S. The dispute boasts 23 years

of longevity, which spans a period from pre-Canada-U.S. FTA to post-NAFTA. In this respect, the softwood lumber dispute offers a rare chance to examine a consistently sore spot between the two trading partners against a backdrop of an evolving integration relationship. Borrowing from integration theories, the interactions of actors and mechanisms accessed during the dispute are used as factors of analysis. It is demonstrated that throughout the history of the dispute, actions taken and processes followed by Canadian players are better explained by the multi-level governance theory of integration. This contrasts with U.S. actors' initial approach, which is better captured by the intergovernmentalist theory. However, after the two countries implemented formal integration frameworks, multi-level governance theory became better at explaining the genealogy of events. Under the integration frameworks, dispute resolution channels additional to the traditional state-to-state negotiations were created. That, in essence, opened the previously state-dominated dispute resolution arena to non-state actors. Correspondingly, U.S. subnational actors expanded their lobbying efforts beyond the sphere of domestic politics, and the level of activity involving Canadian and U.S. actors at the supranational level increased. U.S. actors also began to form transnational alliances with other subnational actors. The convergence of approach between Canadian and U.S. actors has consequently made multi-level governance the choice integration theory for explaining recent developments in the softwood lumber dispute. While this work does not claim to be a thorough test of this hypothesis, it is hoped that by mapping trends evident in the dispute with integration theories, this analysis will contribute to the understanding of Canada-U.S. integration and, more generally, provide policy makers with insights on the variables that should be considered when managing relationships between integration partners.

This paper begins by providing a brief outline of the intergovernmentalist and multi-level governance theories of integration. The subsequent section describes the softwood lumber dispute history, paying particular attention to the role of actors and dispute resolution processes. It also highlights developments in the dispute history that demonstrate specific aspects of the integration theories considered. The final section summarises the observations and considers implications of a multi-level governance approach to integration in North America.

## **Integration Theories**

In the past half century, a myriad of theories have been proposed to describe and predict integration. These theories may be laid out on a linear spectrum anchored by neofunctionalism on one end and intergovernmentalism on the other.<sup>3</sup> For the purposes of this article, only the central features of intergovernmentalism and multi-level governance are explored.

### ***Intergovernmentalism***

Intergovernmentalism, as the name suggests, holds that nation states and national governments are the central actors in integration.<sup>4</sup> According to intergovernmentalists, integration prospers when state interests converge, but it stalls or reverses direction when these interests diverge.<sup>5</sup> Through the lens of intergovernmentalists, the primary means through which integration is carried out is interstate bargaining. Nation states are interested in integration if it advances or better serves their national preferences. Hence, states devolve control to supranational institutions only if their policy goals are achieved. The result is what is often referred to as “lowest common denominator” bargaining, whereby the extent of integration hinges on the state with the least desire to integrate.<sup>6</sup>

As to what drives national preferences, intergovernmentalists generally fall into two camps. Traditional intergovernmentalism sees national preferences as defined by interstate relations and motivations. On the other hand, liberal intergovernmentalists, such as Andrew Moravcsik, attribute the national preference formation to domestic sources.<sup>7</sup> He claims, “An understanding of domestic politics is a precondition for, not a supplement to, the analysis of the strategic interaction among states.”<sup>8</sup> According to Moravcsik, domestic actors can indirectly influence the integration process by lobbying their national governments through political means. However, they are only influential to the extent that they affect national government interests and preference formation.<sup>9</sup>

### ***Multi-level Governance***

Multilevel governance is an integration theory that acknowledges the nation state as a crucial actor in integration. Gary Marks notes, for example, that “high” politics such as the signing of treaties “continues to be the preserve of national executives.”<sup>10</sup> However, unlike intergovernmentalists, multi-level governance theorists call attention to “the increasing importance of subnational

levels of decision making and their myriad connections with other levels.”<sup>11</sup> Marks summarises integration as “a system of continuous negotiation among nested governments at several territorial tiers—supranational, national, regional, and local—as the result of a broad process of institutional creation and decisional reallocation that has pulled some previously centralized functions of the state up to the supranational level and some down to the local or regional level.”<sup>12</sup>

Another distinguishing feature of the multi-level governance theory is the assumption that political arenas are interconnected rather than nested within states.<sup>13</sup> The stress is on “a set of overarching, multi-level policy networks” and a variable political control structure across policy areas.<sup>14</sup> An examination of relevant actors to integration must, therefore, include transnational associations.

The multi-level governance theory holds that supranational institutions set only the policy framework. Hence, there is increased opportunity for regional and local actors to get involved in the integration process by participating in problem definition activities. That is especially relevant when the policy of supranational institutions affects regional and local actors such as the private sector. Moreover, influence between any two entities is mutual, and the degree of influence of each interaction is dependent on the role and power of the respective entities involved.<sup>15</sup>

Keeping in mind these two integration theories, attention is now turned to the softwood lumber dispute, whose development can assist in determining the integration approach that can best account for the genealogy of events and relationships.

### History of the Softwood Lumber Dispute

Although conflicts over lumber trade between Canada and the U.S. had antecedents dating back to the turn of the century, it was not until the early 1980s that it reached such new heights that it has become the most significant bilateral trade dispute between the two countries in terms of duration and trade volume. The following is a brief description of the twenty-two-year-old saga which included four episodes, referred to respectively as Lumber I, II, III and IV. Since the goal is to provide sufficient details for the subsequent analysis, instead of presenting a thorough account of the conflict, attention is focussed on the interactions of actors and institutions and dispute resolution processes.<sup>16</sup>

### *Lumber I (1982–1983)*

Lumber I was rooted in U.S. sawmillers’ resentment over the increase in Canadian mills’ share of the U.S. softwood lumber market despite the recession. The 10 percent increase from 1975 to 1978 was attributed to a falling Canadian dollar, improvements in technology and Canadian stumpage prices<sup>17</sup> on public lands, which, unlike those in the US, reflected changing product values.<sup>18</sup> The last aspect is the most contentious point, given that 94 percent of forest lands in Canada are publicly owned<sup>19</sup> compared to the U.S. where only approximately 30 percent of timber lands are under public ownership.<sup>20</sup> Focussing on this issue, the Northwest Independent Forest Manufacturers (NIFM), a small association of independent sawmillers in the U.S. Pacific Northwest, published a report in the summer of 1981 alleging that unfair Canadian trade practices, specifically government subsidisation of stumpage, was the second most important cause of the high level of unemployment in the Pacific Northwest forest industry.<sup>21</sup>

Following NIFM’s call on the U.S. Government to inquire into the matter and impose a tariff on Canadian lumber imports, government representatives in the State of Oregon took actions to investigate the allegation. At one Oregon Senator’s urging, the U.S. Senate Finance Committee directed the International Trade Commission (ITC), an independent U.S. government agency, to conduct an investigation on the factors affecting the competitiveness of U.S. producers of softwood lumber.

Meanwhile, NIFM expanded its base to form the Coalition for Fair Canadian Lumber Imports (CFCLI). In October 1982, the CFCLI officially filed a petition with the U.S. Department of Commerce (DOC) for a countervailing duty investigation of softwood lumber from Canada. It alleged that Canadian stumpage was artificially low and therefore conferred a subsidy to the Canadian lumber industry. On the other side of the border, the Canadian Softwood Lumber Committee (CSLC), a coalition of lumber manufacturing associations from across Canada, took the lead role in preparing the legal response. It sought legal counsel in Washington, D.C. even before the petition was filed, and it commissioned a few studies in anticipation of the need to defend Canadian stumpage policies.<sup>22</sup> The federal and provincial governments and industry eventually joined the CSLC to coordinate the Canadian response. Eager to defend their positions, forestry ministers from the provinces of British Columbia, Ontario and Québec also traveled to Washington, D.C. in February 1983 to voice their concerns with the U.S. Secretary of Commerce Malcolm Baldrige.<sup>23</sup>

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In March 1983, the ITA issued a preliminary negative determination because it found that stumpage rights were not specific and were not provided at preferential rates.<sup>24</sup> The CFCLI subsequently appealed this decision to the U.S. Court of International Trade. After hearing motions from the U.S. Justice Department representing the DOC and the CSLC, the Court dismissed the appeal.

In May 1983, seventeen months after the filing of the petition, ITA upheld its preliminary decision and found that Canadian stumpage programs did not constitute a subsidy. As such, the ITC did not need to determine on the injury test. The ITA's final determination marked the conclusion of Lumber I.

It is clear that Lumber I was sparked by regional actors, namely, sawmillers in the U.S. Pacific Northwest. Noteworthy is the fact that, even after it had garnered the support at the state level, actions were only taken to address this regional actor's complaint after it had reached the federal government. That is consistent with the predictions of intergovernmentalism, whereby the national government is the sole manager of external trade relations, and domestic groups can resort to lobbying the national government only to advance its interests. That is in sharp contrast to the Canadian side which saw a sawmilling association taking the lead role in responding to the dispute. Also significant is the fact that three provincial forestry ministers directly called on the U.S. secretary of Commerce. These developments, as well as the smaller role played by the Canadian federal government compared to its U.S. counterpart, are better explained by the multi-level governance theory of integration.

### *Lumber II (1986)*

The U.S. lumber industry's discontent with the ITA ruling in Lumber I was further fuelled by the Canadian industry's continued increased market share in the U.S. The availability of lumber supply from Canada was attributed by the U.S. industry as the cause for preventing the increase in lumber prices expected from increased demand.<sup>25</sup> The dissatisfaction over their northern neighbour's market strength began to gain wider support as the CFCLI metamorphosed into the Coalition for Fair Lumber Imports (CFLI), growing "from a membership that represented approximately 20 percent of the American softwood lumber production to a membership that was representative of 70 percent of production," including members companies across the country beyond the Pacific Northwest.<sup>26</sup>

Three specific developments in this period encouraged the U.S. lumber industry to re-open the softwood lumber

dispute. First, Canada formally requested in September 1985 for the negotiation of a free trade agreement with the U.S., and the U.S. lumber industry saw this as an opportunity to bargain for its interests. There were indications that in exchange for the fast-track negotiating authority for President Ronald Reagan, the U.S. Administration made a commitment to Congress members that the lumber issue would be resolved.<sup>27</sup> Correspondence from members of Congress urged the administration to address this complaint, and some of them threatened legislative consequences.<sup>28</sup>

Second, the ITA changed its interpretation of specificity and preferentiality in *Cabot Corp. v The United States*.<sup>29</sup> The altered legal analysis provided justification for the CFLI to file another countervailing duty petition even though Canadian lumber practices had remained the same. Third, some of the same Pacific Northwest players who initiated Lumber I succeeded in getting the ITC to impose a 35 percent import tax on Canadian Red Cedar shingles and shakes. They were thus optimistic that their softwood lumber case would fall on sympathetic ears.

The Canadian and U.S. federal governments held informal discussions on the issue of softwood lumber, but the two sides could not agree on whether a problem existed, much less whether a solution could be found. On 19 May, 1986, the U.S. softwood lumber industry petitioned again for a countervailing duty investigation based on new evidence of subsidies and the recent changes in U.S. trade law. Apsey and Thomas observed that the case was strategically timed such that Commerce would have to make its preliminary determination "just before the mid-term congressional election where key Republican seats were at stake."<sup>30</sup> Convinced that the situation had not changed since the ITA's 1983 final negative determination, Canada requested consultations under the 1979 General Agreement on Trade and Tariffs (GATT) Subsidies Code.<sup>31</sup> After consultations failed to resolve the dispute, Canada requested the establishment of a GATT panel to examine what it considered to be trade harassment.<sup>32</sup>

In this episode of the dispute, the provincial governments became significantly more active. For example, the B.C. Minister of Forests Jack Kempf and his deputy Bob Flitton held secret talks with Gus Kuehne, a representative from the CFLI. An alliance was established between the B.C. government and the CFLI when "Kempf made it plain to the coalition that the B.C. government wanted to take more out of the industry," which would be possible if a Canadian export tax was levied to settle the dispute.<sup>33</sup> That was supported by B.C. Premier William Vander Zalm, and Jack Kempf's announcement "to look at and

revise forest policy and stumpage pricing in the province” because “the province wasn’t receiving sufficient revenue from the forest”.<sup>34</sup> The B.C. opposition New Democratic Party also criticised the low stumpage rates.<sup>35</sup> The CFLI took advantage of this convergence of opinions and raised these Canadian criticisms in Congress. However, the Canadian position was not uniform throughout the country, as New Brunswick independently argued that it should not be included in the petition because it had just raised stumpage.

On 30 September 1986, under pressure from British Columbia and Québec, federal Trade Minister Pat Carney made a “one-time,” non-negotiable offer to have the key provinces increase their stumpage rates by approximately 10 percent, but this offer was not accepted on the U.S. side. Realising that it could not afford to stand by its one-time only offer, the Canadian federal government continued negotiations with the U.S. federal government. Noteworthy was that while these negotiation sessions permitted attendance only by representatives of the two federal governments, Canadian and U.S. subnational actors were regularly briefed and consulted between negotiation sessions.

On 30 December, seven months after the counter-vailing duty petition was filed, an agreement was finally reached. Kuehne claimed that this resolution would not have been possible without Kempf.<sup>36</sup> Under the Memorandum of Understanding (MOU), the Canadian government would voluntarily impose a temporary export tax of 15 percent on softwood lumber entering the U.S. market from Canada. In exchange, the CFLI would withdraw the petition and the DOC would issue a termination of the investigation accordingly. Because the dispute had reached a resolution, the GATT panel was terminated.

As in Lumber I, the general approaches of Canada and the U.S. were still best explained by multi-level governance and intergovernmentalism respectively. Canadian subnational actors continued to seek avenues besides lobbying the federal government to resolve the dispute. This approach best suited the provinces, which were more concerned to protect their regional interests than to advance a united national front. Examples include the B.C. government’s secret alliance with the CFLI and New Brunswick’s appeal for separate treatment. However, the Canadian federal government continued to play a dominant role in what Marks called “high” politics. It sought for the first time in the history of this dispute assistance from the GATT panel, a supranational body that could only be invoked by a signatory to the GATT, not a private party. Moreover, although industries on both sides were regu-

larly consulted in the government-to-government negotiations, admittance was only privy to national government representatives, in part because of anti-trust laws.

In a similar vein, consistent with the predictions of the intergovernmentalist theory, the U.S. industry focussed its energy in lobbying its government. Moravcsik’s liberal intergovernmentalism, which sees national preferences defined by economics and domestic politics, helps explain why the U.S. government resorted to protectionism for an industry even as it sought a free trade agreement with Canada. In order to attain its goal of obtaining the fast-track authority from Congress members and to secure its electoral success, it had to demonstrate that it was committed to addressing the U.S. industry’s interests. On the other hand, that it pursued negotiations with the Canadian federal government instead of relying on investigations by the ITA and ITC suggests it placed importance on inter-governmental relations, a development forecast by traditional intergovernmentalism.

However, some new developments on the U.S. side are better accounted for by multi-level governance. For example, although the CFLI continued to spend most of its efforts on lobbying the national government, the use of the criticisms voiced in B.C. to advance its position at home, as well as its alliance with the B.C. government, suggests that the CFLI was beginning to seek like-minded partners beyond the U.S. border. That confirms the multi-level governance prediction of a growth of subnational actors’ connections with other levels. As seen in subsequent episodes of the dispute, although an explanation of its approach was still best grounded in intergovernmentalism in Lumber II, multi-level governance was beginning to emerge as a contending theory for understanding the developments in the conflict.

### *Lumber III (1991–1996)*

As lumber prices fell at the end of 1991, pressure from the B.C. government and the forest industry for the termination of the MOU began to escalate because they were frustrated with the province’s inability to decrease stumpage to reflect the market situation at the time. Confident that the elimination and reduction of the export tax on B.C. and Québec timber respectively signified changes to their forest management policy that were acceptable to the U.S. as replacement charges for the export tax and convinced that the FTA dispute resolution process would protect their interests, on 3 September 1991, B.C. and Québec succeeded in persuading the Canadian federal

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government to exercise its contractual right to terminate the MOU.

Immediately, congressional representatives lobbied the U.S. government by threatening legislation if the Administration does not react to the termination. On 4 October 1991, the DOC announced that it would self-initiate a countervailing duty investigation on all Canadian provinces and territories except the Atlantic Provinces.<sup>37</sup> The DOC also imposed bonding requirements as interim measures.

The first reaction of the Canadian federal government was to appeal to supranational bodies. Following GATT procedures, it sought consultations four days after the DOC's announcement, and, failing to reach a mutually acceptable solution, it requested the establishment of a GATT dispute settlement panel to examine the bonding requirements, as well as the legitimacy to the DOC's self-initiation.

On 23 October 1991, the DOC initiated the case. On 23 December 1991, the ITA formally included in its countervailing investigation log export restrictions after it was provided with evidence from the CFLI claiming that provincial log export restrictions conferred a subsidy on softwood lumber as well.

The Canadian effort to diffuse the dispute occurred on several fronts. For example, the federal government "contacted their political and bureaucratic counterparts in the U.S. requesting that the case be dropped."<sup>38</sup> In November 1991, the B.C. government "filed a brief with the [U.S. Trade Representative] protesting the U.S. actions."<sup>39</sup> Federal opposition Members of Parliament also went to Washington to meet with the chair of the CFLI in April 1992.<sup>40</sup> However, the Canadian front was not entirely united. For example, in October 1991, the Maritime Lumber Bureau, which represented lumber producers in the Maritimes, wrote jointly with the CFLI to request an exemption of the Maritime industry from the investigation. Its request was subsequently granted. The Québec government, without the support of the Canadian federal government, also requested the DOC to apply a province-specific rate in the final determination.<sup>41</sup> This request was denied.

Lumber III saw a significant growth in cross-border alliances or attempts at alliances. The B.C. government, with the understanding that the log export restriction allegation originated from the Southern U.S., "attempted to create an alliance with parties in the Pacific Northwest to pressure the ITA to drop the [log] export restrictions component of the case."<sup>42</sup> The B.C. premier Mike Harcourt visited Washington State Governor Booth Gardner, and they jointly issued a press release condemning the log export

restrictions allegation.<sup>43</sup> For the first time in the dispute, the CFLI joined British Columbia environmental groups in a lobbying campaign directed towards Congress and the public. For example, Congressman Ron Wyden cited the Western Canada Wilderness Committee and B.C. Sierra Club as supporting the argument that "there was a direct relationship between this long-standing, heavy subsidization of Canadian stumpage and poor forest practices in British Columbia."<sup>44</sup> At the same time, other U.S. lobby groups, including the U.S. National Lumber and Building Material Dealers Association and the U.S. National Association of Home Builders, began to lobby for the interests of the home building industry and home buyers. These two groups had significant interactions with the Canadian industry and government representatives.<sup>45</sup>

On 28 May 1992, the DOC issued a final affirmative determination on subsidisation. On 15 July the ITC found by a 4-2 vote a final affirmative determination on injury. Canada again appealed to supranational bodies by filing challenges against the final determinations of subsidy and injury under Chapter 19 of the Canada-U.S. Free Trade Agreement (FTA). The FTA binational review panels were charged to rule on whether the U.S. has properly applied its own domestic law on countervail duties. Upon the convening of a binational review panel, the CFLI filed a motion requesting the panel be dismissed because it believed that since softwood lumber was excluded from the FTA, the panel had no jurisdiction.<sup>46</sup> This motion was denied.

In December 1992, the GATT panel ruled in a preliminary decision that the U.S. was justified in self-initiating the investigation, but that its demand for bonding requirement was inappropriate. This decision was made final in February 1993 and approved in October 1993. Canada delayed acceptance of this decision because it did not want to create uncertainties for the process, and the U.S. delayed acceptance because it objected to returning the bonds.<sup>47</sup>

On 6 May 1993, the FTA panel ruled in favour of Canada, stating that there was insufficient evidence of Canadian subsidy by stumpage or log export restrictions. The panel remanded the determination back to the ITA for further consideration. The ITA subsequently recalculated and again reached an affirmative determination. Once more the FTA panel remanded the determination, at which point the ITA finally issued a negative determination of subsidy.

On 6 April 1994, under pressure from the CFLI and its congressional supporters, the U.S. Trade Representative appealed the decision of the second FTA panel on subsidy to an Extraordinary Challenge Committee under the FTA. The charge was that the two Canadian FTA panelists had a

conflict of interest. On August 3, 1994, the Extraordinary Challenge Committee found 2-1 in favour of Canada, with the dissent from the American panelist. The DOC finally accepted the panel finding, terminated the countervailing duty order and refunded the bonds.

However, the CFLI was still unsatisfied with the outcome. Hence, on 13 September 1994, the CFLI filed a challenge to the constitutionality of the softwood lumber decision and the FTA process. Apsey and Thomas pointed out that this challenge was met with resistance from the U.S. Administration it “questioned the President’s executive powers and raised important issues of principle that the Justice Department would defend vigorously.”<sup>48</sup> On 25 October, the U.S. government “confidentially approached Canada ... to enter into consultations on softwood lumber exports.”<sup>49</sup> Industries on both sides were consulted throughout the process. The process culminated on 29 May 1996 in the Canada-U.S. Softwood Lumber Agreement (SLA), which provided Canadian exporters with a guarantee against U.S. trade actions for five years. In return, a fee was established on softwood imports from Canada exceeding a quota. Manitoba, Saskatchewan and the Atlantic provinces were exempt from this agreement. Four years and six months after the DOC’s self-initiation of the case, Lumber III concluded.

As in the previous two episodes, Lumber III saw some similar tactics observed in Lumber II. On the Canadian side, actors still pursued a multitude of ways at different levels to end the dispute. The federal government continued to dominate in the domain of “high” politics. This domination included the appeals to the FTA and GATT panels and its participation in the actual binational negotiations to end the dispute. Subnational actors persisted in appealing directly to the U.S. federal government, but they also formed alliances with interest groups across the border. Examples include those between the B.C. government and American parties in the Pacific Northwest and between the B.C. Premier Harcourt and Washington State Governor Gardner. By accessing channels that bypass the Canadian federal government, Canadian subnational actors undermined the predictions of intergovernmentalism, which assumes that national government-to-national government interaction is the only legitimate and feasible means for managing and resolving conflicts. However, given that Canadian subnational actors sustained their lobbying effort toward the Canadian federal government, their actions did not signify disregard for the authority and utility of national governments. Instead, they were simply maximising their chances for success by exercising all the options and avenues available to them. Hence, multi-level

governance continues to be a better theory at explaining the subnational actors’ management of myriad relationships to influence the outcome of the dispute.

On the U.S. side, actions, such as the industry’s sustained lobby to the U.S. federal government and the industry’s challenge of the constitutionality of the FTA process after the ITA negative determination, continued to render intergovernmentalism useful in explaining some of the strategies on the U.S.’s side. However, three significant developments demonstrate more convincingly that U.S. efforts to resolve the softwood lumber dispute could not be explained purely by intergovernmentalism alone. First, there were increased cross-border links between groups from different policy communities. The CFLI shifted from solely relying on the U.S. federal government to seeking support from Canadian environmental groups such as the Western Canada Wilderness Committee and B.C. Sierra Club. The support from Canadian actors strengthened the CFLI’s position with the U.S. federal government. It also accentuated a fissure on the Canadian side and forced the Canadian government to answer to additional allegations of environment irresponsibility, both of which were allegations meant to pressure further the Canadian federal government to settle the conflict in the CFLI’s favour. The U.S. National Lumber and Building Material Dealers Association and the U.S. National Association of Home Builders, two consumer groups that had relatively little political pull compared to the CFLI, also associated with Canadian industry and government representatives. Unlike intergovernmentalism, multi-level governance can account for these actors’ attempts to influence entities other than their own federal governments. The inter-connectedness of these groups demonstrate what multi-level governance predicted, namely, that political arenas are interconnected rather than nested within states.

The second significant development was the U.S. federal government’s willingness to receive directly and consider individual Canadian subnational requests from provincial governments. Intergovernmentalism fails again to explain that because, based on its assumptions that national interests are either driven by interstate relations and motivations or economics and domestic sources, it predicts that the only actors whose requests the U.S. federal government would seriously entertain are its Canadian counterpart and U.S. domestic actors. Multi-level governance, on the other hand, is better at explaining the U.S. federal government’s actions because it proposes that interactions may occur across different levels and that the degree of influence of the each actor’s interaction is dependent on the role and power of the other actors involved.

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The third important development was U.S. actors' increased interactions with supranational bodies. Under the Canada-U.S. FTA, Chapter 19 review panels can review and make binding decisions on members' final anti-dumping and countervailing duty determinations, and members must respond to the panel's suggestions when their determinations are remanded. Because the Canadian federal government appealed to this FTA dispute resolution process, and because the review panel remanded the U.S.'s final determination, the U.S. federal government had no choice but to answer to the demands of this supranational body. The loss of control over how it addressed the Canadian actors' defence exemplified devolution of previously state-centric power to the supranational level. That cannot be explained using the intergovernmentalist lens of national interests. Instead, the multi-level governance theory is more suited to account for these developments because it predicts that as integration deepens, the power of national governments should decrease proportionally to an increase at the subnational and supranational levels.

***Lumber IV (29 September 2001–present)***

Once the SLA expired, the CFLI, along with several other private parties, filed on 2 April 2001, countervailing and anti-dumping duty petitions on stumpage and log export restrictions with the U.S. government. The Canadian government held consultations with the U.S. government, but its plea to the latter to deny an investigation was not heeded. On 23 April, the U.S. government launched a countervailing investigation.

On 22 March, the DOC issued an affirmative final countervailing duty determination and, given that it did not find a surge of softwood lumber from Canada since the countervailing petition was filed, a negative critical circumstances determination. Twenty companies and the Atlantic Provinces were exempt from the countervailing duty. It also found an affirmative final dumping determination on the same day. On 2 May, the ITC ruled 4-0 that the U.S. lumber industry was threatened with material injury.

The two federal governments had much contact during Lumber IV, which is the longest episode in the history of the dispute. Between February and March 2002, the Canadian and the U.S. federal governments engaged in discussions but failed to resolve the dispute. In June, the DOC published a draft policy bulletin, which outlined changes to provincial forest policies that would revoke the countervailing duty. Unfortunately, the final policy bulletin has still not been released at the time of writing. As such,

changes in provincial forest policies are not guaranteed to obtain reprieve from countervailing duty investigations. In July 2003, the Canadian federal government submitted to the DOC a proposal for an interim agreement while long-term policies were being implemented according to the draft policy bulletin. This interim agreement would see a set quota of Canadian softwood lumber entering the U.S. However, the negotiations stalled in late July when the CFLI imposed a new set of conditions.

The establishment of cross-border links remains an important strategy in Lumber IV. The U.S. National Lumber and Building Material Dealers Association and the U.S. National Association of Home Builders continue to interact with Canadian industry representatives and provincial governments while lobbying Congress against trade protectionism. On the other hand, First Nations in Canada have joined U.S. environmental groups in criticising Canadian forest practices by submitting subsidy allegations in May 2001.<sup>50</sup> Another significant coalition exists by virtue of transnational companies that have operations on both sides of the border. However, since the different arms of the same parent company sometimes support opposite sides, it is difficult to determine at this point if transnational companies will be of assistance to resolving the dispute.

After U.S. final determinations of subsidy and dumping, Canada appealed to two supranational bodies for review. To the World Trade Organization (WTO), the Canadian federal government challenged the preliminary determination of subsidy, final determination of subsidy, final determination of dumping, and final determination of the threat of injury. To NAFTA, the federal government, along with six provincial governments, two territorial governments, and four regional lumber associations, on 2 April 2002 formally requested a NAFTA panel review of the U.S. final determination of subsidy.

The approaches of the two sides have so far remained very similar to those pursued in Lumber III. However, two new developments in Lumber IV have arguably strengthened the position of multi-level governance as the choice theory for explaining Canadian behaviour. First, since an anti-dumping investigation concerns the pricing practices of individual firms, for the first time in the history of the softwood lumber dispute, subnational actors were afforded the chance to appeal to supranational bodies. Subsequently, on 22 May, a pan-Canadian lumber association and subsequently three regional lumber associations requested a panel review of the final determination of injury. The U.S. final determination of dumping was likewise appealed to a NAFTA panel by three lumber companies. Hence,

U.S.'s inclusion of the anti-dumping investigation has effectively opened a direct interaction channel between the Canadian industry and the NAFTA panel, thus shifting some appeal power previously centralised in the national government level down to the subnational level.

The second new development in Lumber IV is the fresh approach pursued by subnational governments. The B.C. government has announced independently of other provinces major forest policy changes to make its lumber market more transparent and market-oriented and to encourage a more competitive industry.<sup>51</sup> It has also begun an implementation process. That was partly due to the dissatisfaction with the dispute resolution approach at the supranational level, which sees long and expensive processes, outcomes that are ultimately determined by U.S. laws, and the inability to prevent recurrence of the dispute. The negotiation approach is likewise viewed as imperfect, as past negotiated settlements have been expensive and have restricted the industry's and the provincial governments' freedom. The move to implement individual policy changes that would exempt an individual province from the countervailing duty indicate a bolder provincial government that is willing to bypass the processes at the national and supranational levels to gain immunity from the conflict. That is again consistent with the predictions of multi-level governance, which sees a subnational actor participating in problem definition activities by proposing the solution that can best advance its interests.

### Conclusion

This paper highlighted selective events in the Canada-U.S. softwood lumber dispute in an effort to chronicle the development of the two countries' approaches to conflicts as they deepened the integration of the two nations. It was found that the attitude and tactics of Canadian actors throughout the twenty-two-year-old saga is best understood using the multi-level governance theory. Since the beginning of the dispute, Canadian actors have embraced access to a myriad channels to protect their interests, often resulting in efforts on several fronts across different levels at the same time. Hence, it was not unusual to observe Canadian subnational actors lobbying the Canadian federal government at the same time as they sought private meetings with the U.S. federal government and formed alliances with policy groups across the border. In contrast, initial actions on the U.S. side were best understood using the intergovernmentalist theory. U.S. subnational actors such as the lumber industry and state governments continually place their efforts on lobbying the U.S. federal

government. However, the advent of formal integration frameworks between Canada and the U.S. saw U.S. actors diversifying their strategies, signifying a convergence of approach to that of the Canadian actors. That is hardly surprising, given that these frameworks created legitimate supranational bodies with which U.S. actors are compelled to interact. The result is a power diminishment of U.S. federal agencies such as the ITA, which, at the very least, had to demonstrate to a foreign body its rationale and procedure for final determinations of subsidy and dumping and respond to the foreign body's judgment. The provision of binational review panels has effectively given the Canadian side a dispute resolution alternative besides government-to-government negotiations. The shift in the resulting power dynamics is accompanied by another trend—the increased coalition-building across the border. Interestingly, while the U.S. lumber industry formed loose coalitions with Canadian environmental groups and First Nations, the Canadian lumber industry and provincial governments have also found allies in two previously politically quiet groups in the U.S.—the U.S. National Lumber and Building Material Dealers Association and the U.S. National Association of Home Builders. The emergence of small interest groups in the midst of influential lobby groups is again best explained through the lens of multi-level governance, where power pulled away from the centre or national government created room for participation by supranational and local actors.

Examined through the multi-level governance theory, conflict and policy analysts will do well to appreciate factors that might not have played a significant role in the resolution of the softwood lumber dispute. These factors include the processes at the supranational level and the subnational alliances that form across national boundaries. On the supranational front, one shortcoming of the NAFTA binational panel is that it is limited to upholding the agency's decision or remanding it for action not inconsistent with the panel's decision. In other words, the panel is prohibited from imposing its own finding, an imposition that significantly curbs its dispute settlement power.<sup>52</sup> Moreover, since the binational panel removes to a certain extent the jurisdiction of the domestic courts, "the concern over binational panels and the [Extraordinary Challenge Committee] has reached the point of constitutional scrutiny. This is best demonstrated in Judge Wilkey's scathing dissent in the 1994 ECC decision in Lumber III. Since then, the NAFTA dispute resolution mechanism has been altered to alleviate some of the constitutional concerns described by Judge Wilkey, but the issue remains alive."<sup>53</sup>

As to the transnational alliances and increased autonomous activities by regional and local actors, policy makers need to ensure that these groups are involved in the discussions of the dispute. Devising ways to facilitate the participation of non-state actors in negotiation and problem-solving processes would be crucial to the success of a truly durable solution and, ultimately, a healthy working relationship between the two trading partners.

## Notes

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PART IV  
CROSS-BORDER (IN)SECURITIES

Cuba, Borderlands, Capital, Defence, and Immigration



# *True Friendship is Never Serene: Shifting Canadian Perceptions of Unilateral American Action in the 1960s*

Adam J. Green

How did Canadian opinion of the United States change so drastically in only five short years? How did so many Canadians move from applauding unilateral American action abroad to condemning it? In 1962, at the outset of the Cuban Missile Crisis, an editorial in the *Ottawa Journal* echoed many Canadian opinions when it wrote “*Well we might be understanding of the Americans. Their danger is our danger, their fears our fears and we are bound to them by formal alliance and old association.*”<sup>1</sup> Less than five years later, in the cross-town *Ottawa Citizen*, a speech by Privy Council president Walter Gordon lambasting U.S. involvement in Vietnam prompted editorialists to write “*Instead, [this involvement] constitutes unilateral intervention by the United States in a civil war that should be none of its business. That is the essential issue.*”<sup>2</sup> In that short period of time, many Canadians realized that their alliance with the United States was a double-edged sword, protecting them when Canadians were in danger, but obligating their support even when they believed they were not. In 1962, some Canadians were calling for a re-appraisal of Canada’s post-war alliance with the United States; by 1967 that call had become impossible to ignore.

This essay examines the public discussion prompted by two distinct occasions in the 1960s: the 1962 Cuban Missile Crisis, and the 1967 anti-American speech given by Cabinet Minister and de facto leader of the leftist wing of the Liberal Party, Walter Gordon. Using the textual content and editorial cartoons of twenty different English- and French-language newspapers in four Canadian cities,

Halifax, Québec City, Ottawa, and Vancouver, I examine the shift in public opinion from a fairly, though not exclusively, positive portrayal of American military action abroad to a broadly negative one. In the intervening years, Canadians had not only become much more critical of Americans, but much less tolerant of their government’s position towards the United States.

## **“A Pigmy among the Giants”: Canada and the Cuban Missile Crisis**

The Cuban Missile Crisis of 1962, often considered as the closest the two sides in the cold war ever came to a hot one,<sup>3</sup> produced two opposing viewpoints in the Canadian press; those groups, generally on the political right, who interpreted the situation as evidence of a need to draw closer to the U.S., and those groups, generally on the political left, who saw the outright rejection of nuclear weapons, at least in Canada and at best in all countries, as the only guarantor of a lasting peace. More remarkably, most Canadian newspapers adopted neither position. While many expressed cautious and qualified support for Kennedy’s actions, in most papers, the Cuban Missile Crisis was treated as a political conundrum, an experience which, while disconcerting, was mostly a call to review and perhaps rethink Canada’s foreign policies, with special attention to those dealing with the United States. While enthusiasm for the U.S. in these papers was not abundant, there were few who questioned the unilateral nature of

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the American action, and even fewer which encouraged sustained questioning of American motives.

Although there are a number of minor discussions which developed over the course of October, November, and December of 1962, there were five general themes that emerged in the textual content of most papers:

1. It seemed that in general, most Canadian papers were not especially for or especially against the American blockade of Cuba. Notable exceptions included the *Vancouver Province* and the *Ottawa Journal*, which came out almost dogmatically in favour of American actions, and on the other side, the *Québec Chronicle-Telegraph* and Vancouver's *Pacific Tribune*, which found almost nothing admirable in U.S. decision-making
2. Region (i.e. Halifax, Québec City, Ottawa, and Vancouver) did not surface as a salient difference in newspaper coverage. To some limited degree, there may have been a significant difference between a handful of "conservative" papers and some "liberal" papers.
3. There emerged a limited set of reasons for supporting American unilateral action, most of which centred on a strong disdain for appeasement and the battle against Communism. In like fashion, there was a larger but still finite range of oppositional reasoning about the blockade, most vocally because of an expressed desire to avoid nuclear war, but also because of the suspicion of unreliable or irrational American motives.
4. Most papers were fairly reluctant to judge Prime Minister Diefenbaker's notorious first reaction—to call for an eight-nation inspection of Cuba to determine conclusively that the suspected weapons were present—but among those who chose to register an opinion, almost all were supportive of his suggestions.
5. Overall, with the exception of the French-language papers which seemed much more apt to employ the term "americaines" or "Etats-Unis" when referring to motives and actions than the English-language press, the tendency was to refer to President Kennedy as the architect of American involvement in the Crisis, most often as a conscious distinction from both "the United States" and the American public as a whole.

Once the Crisis erupted, and although most newspapers would feature developments around Cuba as their lead story for almost a week, the articles, editorials, and even letters to the editor appearing in at least ten of the newspapers under review stated what could be termed "cautious" support of the American blockade. Typical of such views was an *Ottawa Citizen* editorial printed on 23 October which credited Kennedy's courage and chastised Russia for lying to the world community, but suggested that the blockade was wrong because of the dangerous precedent it might set, because of the lack of consultation Washington offered to its allies, and because a unilateral blockade risked a loss of "moral authority" on which the U.S. could appeal to nations not allied to either side of the cold war.<sup>4</sup> A poll carried out by the *Vancouver Sun* just as the Crisis broke reported that two-thirds felt that Kennedy had no choice but to act on Cuba in order to ensure that it didn't turn into a nuclear arsenal that could menace the United States.<sup>5</sup>

Serving as bookends to this spirit of moderating opinion were two Halifax-based papers, the *Dalhousie Gazette* and the *Dartmouth Free Press*. Although serving geographically similar communities, the papers represented the edge of Canadian cautiousness about endorsing completely one set of pronouncements or another. For its part, the *Free Press* placed most of the blame for the U.S.-U.S.S.R. showdown on Khrushchev, a dictator who was said to be testing the limits of his power, instead of on the U.S., who would not have selected an issue which could potential kick up a whirlwind of domestic turmoil.<sup>6</sup> Moreover, the editors used the Crisis as a call for Canada to seek closer relations with the United States.<sup>7</sup> Conversely, although the *Dalhousie Gazette* came out leaning against the blockade: presented an image of America's leaders as obsessed with "doing something" about Cuba, and moreover sympathized with the need for Cuba to accept more arms shipment from the Soviet Union given the seeming immanence of another U.S. attack, it consciously refrained from blaming the American public as a whole. Indeed, it drew a clear distinction between the public itself and those in a state of war-mongering by stating that "*Under these conditions* it is no wonder that the American public is gripped with hysteria" (emphasis mine). The general appeal made by the *Gazette* was for the U.S. to avoid a Hungary-like scenario and not launch a full-scale invasion of Cuba which would not be supported by the majority of its people.<sup>8</sup>

The gap of interpretation between the *Dalhousie Gazette*, which leaned away from supporting the blockade, and the *Dartmouth Free Press*, which leaned towards sup-

porting it, indicates that regionalism was not a factor in creating differences in opinion in 1962. Highlighting the possibility of a different kind of split, however, are the four distinct exceptions to the otherwise national tendency towards cautiousness. At one end of the spectrum of opinion lay the *Vancouver Province* and the *Ottawa Journal*. Both of these papers, especially the *Journal*, were considered to fall into the “conservative” camp, shedding some light perhaps on their tendency to offer unqualified support of Kennedy’s military actions.

The *Journal* suggested that “Most Canadians have sympathy for the extreme decision made by President Kennedy,”<sup>9</sup> while the *Province* editors wrote that the U.S. needed to “take a stand against those things that threaten them, no matter what went before. To do otherwise is to invite further threats and impositions that can have only one end—capitulation and defeat.”<sup>10</sup> This interpretation of reality was reflected by the *Journal’s* cartoons, which portrayed an aggressive, selfish, and dishonest Soviet Union. These cartoons are interesting in that they presented a very cold portrayal of the Soviets, be it via the expressionless collector of weapons who stares at a disfigured Castro or the archetypal, slippery salesman. In both, there is no feeling of remorse or even recognition of all the trouble the Russians have created; they instead are presented as almost without personality of any kind.

A pro-American perspective also appears in the editorial cartoons of the *Vancouver Province*, which featured a number of sketches portraying the U.S. as vulnerable. In one cartoon, the symbol selected for the U.S. was a group of Puritans, an almost odd harking back to the founding fathers of the American system, but also meant to draw a parallel to the “witch-hunts” of old. In a way, the cartoon lends a certain credence to the chasing of “shadowy” demons, a not-so-veiled connection to those in the United States who lived in constant fear of the “commie under every bed.” Given that Castro really was backed by the U.S.S.R., and that he is the one we can see (his shadow is revealed only when “illuminated” by the Puritans’ lamp), there is almost tacit supports for the communist “witch-hunts” which still existed in the United States.

More importantly, the *Journal*, in particular, calls for Canadians to bury their anti-American tendencies and focus on the battle at hand: “It is high time, we submit, that a lot of people in the Western world, including some people in Canada, began identifying the enemy—began realizing the true source of their danger, and also *the true source of their salvation*. No hour, this, for petty nationalistic vanities and juvenile jealousy”<sup>11</sup> (emphasis mine).

At the other end of the spectrum, however, were the unique stands of the *Québec Chronicle-Telegraph* and Vancouver’s *Pacific Tribune*, the latter of which was likely the most left-wing paper in Canada at the time. These newspapers saw a problem in the American motives, presented the blockade as unilateral and rash, and pushed peace as the most important goal to be attained. Early on, the *Chronicle-Telegraph* called for the triumph of reason in the Canadian government, acknowledging that “Undoubtedly in this brewing war, Canada will be forced into it alongside the United States” but pleading that “before the long arm of patriotism seals off objective vision completely, it is well to record that the United States has no monopoly on reason. The United States must bear the blame with the Soviet Union for the unhappy state of affairs into which mankind has fallen.”<sup>12</sup>

The charge of unilateral aggression was most strongly felt in the pages of the *Pacific Tribune* which charged Kennedy with lying outright, with considering the plight of the Cubans as insignificant in the fight against Russia, and with adopting a “shoot first, ask questions later” approach. The major problem with such an attitude, of course, was that the United States was going to drag the world into war, and specifically, would drag Canada directly into the fray. As an ominous sign of things to come, the *Tribune* wrote: “So—the lesson of the Cuba crisis is that it revealed as in a lightning flash to millions of Canadians that we are in great danger from the USA not from Cuba or the Soviet Union as the cold war boys would have us believe. It was Cuba yesterday; it might be Berlin tomorrow or some other Latin-American country which takes a stand not to the liking of Mr. Kennedy. Or, if Canada starts trying to free itself from U.S. domination, it could well be Canada’s turn to come under the Yankee gun.”<sup>13</sup>

The *Tribune’s* cartoons echoed this viewpoint to a large extent, presenting a host of anti-American caricatures. What is interesting about the *Tribune* is that although we cannot discount its particular bias (i.e. that it considers itself the voice of communism in Canada), its brand of anti-Americanism (concern over U.S. domination of the economy, global imperialism, etc.) is a foreshadowing of the brand that the majority (at the very least) of the Canadian left would adopt by the end of the decade. As such, the U.S. appears hostile, greedy, subversive, paranoid, and even crazed; Kennedy, in his only appearance, looks simply mad.

However these views, again, were unique. While American motives were undoubtedly questioned—“There is at the moment no shred of an excuse which the rest of the world could accept and no sign of one. Cuba is not invad-

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ing anyone”<sup>14</sup>—and while the long-term consequences of the Crisis and potential for balanced blame were not lost on Canadian readers (e.g. an *Ottawa Citizen* cartoon featured a death-like nuclear cloud hovering over the world, but originating jointly in Washington and Moscow), in general, supporters of American action expressed their consent because of a perceived tie with the United States. As the *Dartmouth Free Press* wrote: “The Cuban Crisis left a big question mark over Canadian-American relations. Put bluntly the question is: Should Canada march to war if the U.S. does? The instinctive answer is No. But the answer of reason is that Canada is unlikely ever to remain outside the action if the U.S. does get involved in a war.”<sup>15</sup> In addition, many Canadians incorporated strong approval of what they perceived the Americans’ international role to be: “The U.S. has a moral obligation to defend the liberty of everyone in the world.”<sup>16</sup>

The strongest notes of caution following the Crisis came from those authors and readers who took seriously these very characteristics, Canadian ties to the U.S. and American “obligations” all over the world, and wondered whether or not this was cause for a moment of pause. This was perhaps best captured by a cartoon appearing in several papers of a poker game between Kennedy and Khrushchev, obviously meant to portray the President’s proverbial “raising of the stakes.” Slightly less noticeably are two figures hovering in the background. Behind Khrushchev stands a cigar-smoking Castro, looking on with eyes of steel waiting to see how the game plays out. Looking over Kennedy’s shoulder, however, is a buggy-eyed Diefenbaker, who seems more than a little alarmed at the move made by his benefactor. Is the cartoonist suggesting that Canada is to the U.S. what Cuba is to the U.S.S.R.? What does that make Canada – a pawn? A fair-weather friend? A potential hot spot? Were Canadians to understand that, given the President’s tactics, they may have to re-examine their faith in him.

A small handful of papers, such as the *Vancouver Province*, suggested that the dangerous position Canada was placed in during the Crisis was proof that Canada should move *closer* to the U.S. The “luxury” of national identity, wrote the editors, could not be afforded in times of danger, “nor can it be jealously treasured in times when we plan for predictable emergencies.” Canada was now faced with a choice and “should decide whether it wants to become in any foreseeable conflict another Belgium, bleeding to death with the dignity of asserted neutralism, or protecting our living space with the best weapons at our command.”<sup>17</sup> The *Vancouver Sun* put the choice facing Canadians much more simply: Canada was at a crossroads

and had to decide what it wanted to be. Would Canada be “A Free Trade Nation” or would we be “Manchuria with Hockey Players.”<sup>18</sup>

Still, a handful of newspapers perceived that the dangerous position Canada was placed in during the Crisis suggested that Canada must move *away* from the U.S. and in two particular areas: American presence in Canada, especially in the realm of nuclear weapons, must be reduced, and Canada must realize that the growing influence of non-superpowers in global politics presents an opportunity to increase Canada’s role in the international community, especially in terms of its relationship with the United States. Right across town from the *Sun* and *Province* the editors of the *Pacific Tribune* emphasized that the only solution was for Canada to rid itself of all nuclear weapons, and all U.S. bases within the country, and moreover, that Canadians needed to take steps away from American ownership, from U.S. domination of Canadian industries, to try and get out of the way of the “Yankee gun.”<sup>19</sup>

While the *Tribune* was, at least for the moment, ahead of its time, even for the country’s left-leaning journals, and although most papers and their readers were not prepared to treat their relationship with the United States with such panic, some were still ready to take steps away from the United States, even if they were baby steps. The *Ottawa Citizen* suggested in “A lesson from the crisis” that whereas its commitment to the U.S. was never in question, Canadians could no longer simply say “aye, ready, aye” whenever the U.S. called them to attention; Canadians needed time to make up their own minds.<sup>20</sup> Offering a more concrete suggestion, *Le Soleil* imparted that “il est de notre devoir de ne pas encourager nos allés américain a déclencher a la légère des opération militaires susceptibles de provoquer un conflit. Il appartient surtout aux Canadiens de ne pas tomber dans l’hystérie anticubaine qui s’est emparée d’une partie de l’opinion publique et des militaires américains.”<sup>21</sup>

*The Fulcrum*, the student newspaper of the University of Ottawa, challenged its readers to rethink Canada’s place in the world. The Crisis had taught Canadians that they could no longer expect the U.S. simply to fight communism *for* them, but that they must be committed to that fight, whatever that meant.<sup>22</sup> By 1967, it was clear that many Canadians were not willing to accept that deal.

**The “Gordonian Knot”:  
A Call for Change in the Can–Am Relationship**

At the Sixth Arts and Management Conference of Professional Women in Toronto, Ontario, Walter Gordon, then

finance minister and longtime friend to Prime Minister Lester Pearson, spoke out against American involvement in Vietnam. In making this speech, Gordon went well beyond the position of Canada's Liberal government who were committed to pressing the Americans to cease the expansion of the conflict, but through the framework of a partnership which included political support for military action. Instead of favouring "quiet diplomacy" to find a peaceful solution to the conflict, Gordon, who was never completely comfortable or committed to following Liberal party politics the way it had been practiced and institutionalized, broke the unwritten code of "cabinet solidarity" and stated, "The U.S., for its part, has become enmeshed in a bloody civil war in Vietnam which cannot be justified on either moral or strategic grounds."<sup>23</sup> Moreover, he suggested that Canadians, including his own government peers, had to stop the American bombing, or else we "must be prepared to share the responsibility of those whose policies and actions are destroying a poor but determined people."<sup>24</sup>

Gordon's speech ignited a symbolic, if short-lived, controversy within the Liberal cabinet, peaking when rumour circulated that the Prime Minister would ask for Gordon's resignation, which Gordon himself acknowledged as a distinct possibility.<sup>25</sup> At some level, the discussion in the newspapers on Walter Gordon's speech centered on the element of his breach of cabinet solidarity: a minister was not, by Canadian tradition, supposed publicly to contradict a policy that had already been decided by cabinet. Such attention was hardly unexpected, given that it was the main preoccupation of both the governing Liberals and the opposition Tories when the story broke. However, a substantial number of Canadians, regardless of their opinions of Gordon's actions, concentrated on the content of the speech rather than its implications for Parliamentary democracy.

For these Canadians, Gordon's speech offered an occasion to link two emerging trends: the increasingly vocal objection to America's war in Vietnam and the swelling public call for increased independence from the United States politically, economically, and socially. The conversation engendered around Gordon's speech allowed an explosion of commentary from the expanding segment of the public who had simply grown tired of the government's unwillingness to distinguish itself from the United States on the world stage, cold war or not. In this way, the public discussion surrounding Gordon's speech was emblematic of a more general shift in the boundaries of many Canadians' conception of where their relationship with the

United States was, and where it should instead be going, and why.

According to several authors who have written on Gordon, and based on Gordon's own observations, the main reason why the potential for a long and divisive battle was never realized was that the public, expressing itself especially via a letter-writing campaign to Gordon's office, seemed almost overwhelmingly to support his views.<sup>26</sup> What disturbed many Canadians "was the horror of the war in Vietnam, and they responded with relief when someone in a position of seniority protested against it in language everyone could understand."<sup>27</sup> According to Gordon, his office received an excess of twelve hundred letters in the days following the speech, almost all of which were in staunch agreement with the positions and suggestions he outlined in his speech.<sup>28</sup> "This was an extraordinary amount of mail and an extraordinarily high degree of support for any cabinet minister to receive on any single issue."<sup>29</sup> Serving as a veritable mouthpiece for frustrated Canadians, Gordon, "an icon to those who wanted to resist the increasing influence exercised by the United States over Canada,"<sup>30</sup> had forced the government of his day to deal with mounting pressure to bring about *decisive change* in Canada's relationship with the United States.

Generally, the newspaper coverage followed a linear pattern: those which were more favourable towards American involvement in Vietnam were unfavourable towards Gordon's speech. However, that is not to imply that there was conversely a direct link between those who opposed the war and those who endorsed Gordon's views. In almost all cases, the critical factor which determined whether or not a paper that rejected the war would support Gordon would stem from whether they saw his speech primarily as a breach in cabinet solidarity, or if they set aside that aspect and concentrated on his message. In other words, every paper that interpreted Gordon's speech primarily as a breach of cabinet solidarity rejected it, regardless of its stance on the war itself.

Nonetheless, most, but definitely not all, of the papers reviewed came out against U.S. involvement in the Vietnam War. This rejection of America's campaign in Southeast Asia ranged from the lightly disenchanted to the heavily critical. Those on the light end of the scale, such as Québec City's *L'Action*, pointed out the contradiction of supplying materials for arms while sitting on the international commission meant to evaluate the conflict,<sup>31</sup> or the *Vancouver Province* which called Vietnam "a confused and illogical struggle."<sup>32</sup> Those who came out strongly against Vietnam, though, pulled no punches, stating that "Canadians can—indeed must—voice their deep concern that

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the Federal Government seems to be backing this foolish, utterly impossible adventure<sup>33</sup> or that Canadians, when they get the chance, must “add their voices to the millions in the U.S. and around the world to demand an end to the cruel, unjust, and immoral war waged by the U.S. in Vietnam.”<sup>34</sup> Added to such revulsion was the real danger which the American presence in Vietnam could lead to, namely the possible creation of a virtually permanent state of war with China, the potential for making a cold war thaw impossible, instead setting it in stone as permanent, which in turn could potentially cause a break in the Atlantic coalition and collective security in the West.<sup>35</sup>

Nevertheless, two papers in particular, *Le Soleil* and Halifax’s *Suburban Mirror*, were very much in favour of American involvement in Vietnam. No view of the conflict could have been more favourable towards the U.S. than that of *Le Soleil*, which unilaterally blamed North Vietnam for the diplomatic impasse. “Tant que le gouvernement du Nord-Vietnam continuera à interpreter “l’agression” au Vietnam dans des termes qui lui seront favorables, il sera difficile d’exiger une réciprocité des compromise indispensable à l’établissement de la négociation.” As a result, “[d]ès lors la voix des armes se-la seule a se faire entendre.”<sup>36</sup> *Le Soleil* also charged that the CBC, especially the broadcast of “Seven Days” had adopted a position “absolument partiale, remplie de préjugés et hypercritique à l’endroit des Américains dans cette guerre.”<sup>37</sup>

In its pages, *Mirror* columnists railed against anti-War protesters, accusing marchers who demonstrated in front of the American embassy in Halifax “rather disgusting, no matter how well-intentioned [this demonstration] may have been”<sup>38</sup> and reminded readers that the communist regime in the Soviet Union had committed a great number of atrocities in the early cold war, warning them with a quotation from Vincent Massey who once said the definition of a sentimentalist was “one whose heart is so warm it has melted his backbone.”<sup>39</sup>

Such recollections of Communist flaws blurred lines and impeded the ability of some to declare their support for one side or the other, leading a handful of papers down the dual path of not wholly embracing American action on the one hand, but not wholly rejecting it either. This attitude that the conflict in Vietnam was simply more complicated than deciding who was right and wrong was reflected in a letter sent to *B.C. Catholic*. Roy Darcus, its author, criticized a columnist who had written that, whereas he objected to the war, he was nonetheless against “allow[ing] aggressors to take over the earth by brute force.”<sup>40</sup> Darcus wrote that the conflict was precisely so complicated because it was difficult to sort out who exactly

the “aggressor” was. Moreover, he noted that even objections to the war were more complicated because “pacifists do not condemn the modern Vietnam war, but modern war itself.”<sup>41</sup> The *Ottawa Journal* further complicated matters by noting that “Americans will rally around their men in battle,” but that this did not mean that “the majority of Americans want [the war] ended at any price.”<sup>42</sup> A substantial resistance to the war existed in the U.S., but so did a groundswell of support.

Gordon’s 13 May speech, however, brought this debate to a head. Following some brief coverage of the attempts by opposition leader John Diefenbaker and a host of Conservatives (especially those candidates hopeful for the upcoming leadership review) to gain some measure of political advantage over the Liberals<sup>43</sup> and the charge by officials close to cabinet that Gordon was attempting a “thinly disguised power play to change government policy,”<sup>44</sup> commentary refocused on whether Canadians perceived Gordon’s speech primarily as a breach of cabinet solidarity or as a cry for a fundamental shift in Canadian policy towards the U.S., a cry “shared by many in the government and many of the people in Canada.”<sup>45</sup>

The question of the seriousness surrounding a breach of Cabinet solidarity was dealt with by the *Almonte Gazette*, the *Halifax Chronicle-Herald*, the *Ottawa Journal*, *Le Soleil*, and to a great extent, the *Québec Chronicle-Telegraph* and *L’Action*. However, very few papers expressed anger and disappointment with Gordon because of his views on the United States. *Le Soleil* was almost alone in stating: “Or, la déclaration de Gordon ne peut que blesser violemment les Etats-Unis. Somme toute, le ministre a fait un tort irréparable à la cause de la paix elle-même.”<sup>46</sup> Instead, for many of these newspapers, the breach was the issue: “Let’s be clear here: the point at issue is not whether Gordon’s views about American foreign policy are right or wrong.”<sup>47</sup> The solution was simple: if Gordon wished publicly to criticize government policy, he should quit cabinet and become a back-bencher. “Individual Cabinet members, who as a matter of principle feel that they cannot go along with general Cabinet policy, have recourse to an alternative – they can resign as ministers. Therein lies Mr. Gordon’s course,”<sup>48</sup> wrote the *Almonte Gazette*. “Rather than changing the ‘system’ to suit Mr. Gordon, we respectfully submit that Prime Minister Pearson might find it more profitable all around to ‘change’ Mr. Gordon.”<sup>49</sup>

One of the best portrayals of these sentiments came from the *Vancouver Sun* (which agreed with Gordon’s message but not with his breach of cabinet solidarity), when they ran a cartoon portraying Gordon as beginning his speech “Speaking as an ordinary Canadian...” while

standing in front of door which clearly reads *The Privy Council – Government of Canada – Honourable Walter Gordon President*. This implication that Gordon cannot speak as an “ordinary Canadian” because he is not one is compounded by the presence of a bust of Lester Pearson just behind him and by a plaque on the wall which reads *Honourable Walter Gordon, Member of Her Majesty’s Cabinet*. As an extra shot at Gordon’s motives, he is speaking directly to a group from the media.

Many newspapers, however, headed in the direction of the *Québec Chronicle-Telegraph*, which wrote on 19 May that Gordon’s breach was not the end of the story but the beginning. “Officially, the Gordon incident is closed. But the mere fact that a cabinet minister felt impelled to contradict publicly government policy raises some interesting speculation.”<sup>50</sup> Likewise, the *Ottawa Citizen* summed it up thus: “Those who would crucify Mr. Gordon are attaching far more significance to the maintenance of cabinet solidarity and diplomatic protocol than to the prime problem of existence. Judgments of belief, of war or peace are everybody’s business.”<sup>51</sup> It is on this path that we discover one of the fundamental undercurrents of the Gordon event: Walter Gordon may have broken with his party’s official policy, but many Canadians either did not understand the policy, did not agree with it, or were simply unsatisfied of where it left Canada in relation to the United States. “According to the prime minister, this country’s policy on Vietnam has been made clear to cabinet. Yet it is apparent that it is only clear in the minds of Mr. Pearson and External Affairs Minister Paul Martin.”<sup>52</sup>

### A “splendidly and forthrightly ambiguous” Policy

What had been conceived in Ottawa was a stance neither to “publicly condemn nor publicly proclaim”<sup>53</sup> American involvement in Vietnam, but to offer “general support for the American position while deploring escalation.”<sup>54</sup> That was the essence of quiet diplomacy; the problem was, many Canadians were beginning to doubt its effectiveness. “In the Throne Speech debate the other day, Prime Minister Pearson defended quiet diplomacy. But it has obviously failed to bring peace” wrote the *Ottawa Citizen*. The Canadian position of trying to get the U.S. to stop “has been stated publicly, and presumably even more forthrightly in private discussions. . . . Yet it seems to have had no effect. Nor has it swayed Hanoi.” Thus, “Instead of simply expressing its concern perhaps the time has come to deplore openly the actions of both sides.”<sup>55</sup>

Indeed, rather than concluding as did *Le Soleil* that Hanoi would interpret Gordon’s differences of opinion as

a sign of weak commitment to the war, *L’Action* concluded that it was Canada’s ambiguous and timid position which caused all of its peace proposals to be rejected by Hanoi. According to *L’Action*, this problem of timidity had gotten so bad that Martin, Canada’s spokesman on international affairs, simply refused to openly comment on Vietnam. “Cela est inconcevable; en effet, à une époque où le principal problème international est celui de Vietnam, notre ministre des Affaires extérieures ne parle même pas de l’attitude du Canada devant ce problème dans un discours sur les nouvelles dimensions de la politique étrangère du pays.”<sup>56</sup> A cynical view of this aggravation appears in a *L’Action* cartoon that probably best represents the frustrations and opinions of many Canadians’ concerning how their government was handling Canada’s involvement in the war. In that cartoon, a set of journalists ask the prime minister a direct question: “Le Canada prendra-t-il position, au sujet de la guerre au Vietnam?” The asking of this question, coming almost two weeks after Gordon made his speech, suggests that the cartoonist believes Pearson had not yet taken a position, at least not explicitly enough to avoid the question being asked. The P.M.’s response reflects the cynical, if not disappointed view of many Canadians. “Quelle guerre?” answers Pearson.

Thus, papers like the *Ottawa Citizen*, the *Dartmouth Free Press*, the *Pacific Tribune*, the *Vancouver Sun*, and the *Vancouver Citizen*, concluded that a new point of view was needed. One letter to the editor read: “Since Canada’s ‘quiet diplomacy’ has so obviously been a ‘quiet failure’ the time has come for plain speech such as Mr. Gordon’s. President Johnson’s escalator is carrying mankind towards eternity and Canada must now quite plainly and clearly add its voice to those who say ‘Stop!’”<sup>57</sup> The *Ottawa Citizen* added, “The whole argument for quiet diplomacy rests on the premise that it is more likely to get results than any noisy posturing. When that premise proves faulty in any given international case, the argument is undermined.”<sup>58</sup> This impression of “stalled progress” was portrayed in another *Ottawa Citizen* cartoon where Paul Martin explains to UN Secretary General U Thant that he is fully aware the Vietnam peace process is essentially static. That is represented by a broken-down automobile and a dove of peace which, sitting as a hood ornament, had literally been shot and is basically dead. Martin proceeds to explain to U Thant that Canada’s latest set of peace proposals “may not do it, but it keeps us [i.e. Canada] busy.”

At its centre, Gordon’s speech touched a nerve with many in the Canadian public because it broke through all of the diplomatic barriers and highlighted a growing frustration. In all its attempts “carefully [to] refrain [...]

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from branding the U.S. as the troublemaker” Canada’s official stand had become “splendidly and forthrightly ambiguous.”<sup>59</sup> That was no longer acceptable, given the repugnance of many Canadians to the conflict in Vietnam. “For all of its anxiety to contribute to the ending of the [Vietnam] conflict, the Canadian government until now has never questioned the morality of the United States government. That is why it must clarify its reaction to the shattering statement made by a man of Gordon’s rank.”<sup>60</sup>

“From the moral standpoint one of the most disturbing elements in the Vietnamese war is the loss of American self-respect.... We will share in this shame ... as a nation, we do little to check the drift of the American nation into moral self-destruction.”<sup>61</sup> This deteriorating impression is reflected in a pair of exceedingly dark cartoons which depict a U.S. President who is attempting not only to brainwash his dissenting public, but is at heart a mere puppet of the American military. The message in such images clearly point to a belief that Vietnam is taking on some dark overtones and may be proceeding unimpeded by anyone. This morally ambiguous path down which many perceived the Americans as heading resonated particularly strongly in religious newspapers, as well as those of the university presses. As an example, one well-publicized speech made by a United Church minister had him calling Pearson “a puppy dog on President Johnson’s leash,” pronouncing that Canadians “can’t be on the side of the Americans who are bombing the hell out of those poor people.”<sup>62</sup>

What the university papers, religious papers, and several independent dailies and weeklies helped reveal was that many Canadians were unsatisfied with the constraints of their government’s official position, one which adhered to an increasingly obsolete prism of cold war North American diplomacy and was unable to express the dwindling opinion which many Canadians held of Americans. As the *Dartmouth Free Press* stated in the wake of his speech, Gordon “believes that Canada’s foreign posture must begin to reflect the reality of our—and humanity’s—self interest, and not merely the inertia of perpetuating a policy because it is less trouble to do so than to launch new initiatives.”<sup>63</sup> Within a few months, the Liberal government would indeed come out publicly against the American campaign in Vietnam.

### Conclusion

The complications, if not the differences, which to a great extent characterized the later 1960s as opposed to the early 1960s were crystallized in an *Ottawa Journal* cartoon published 1 May 1967, set at the year’s seminal event, Expo

’67. In the image, a vendor is selling signs, balloons, and other assorted paraphernalia to tourists entering the Expo site. Having put aside (?) his “Russky Go Home” signs and his Can-Am combination flags, the vendor now holds “Yankee Go Home” and “Boycott Vietnam” signs. Rather than embracing the friendly, welcoming atmosphere that “Man and His World” was intended to foster, the vendor is instead capitalizing on the increased animosity, anger, and disappointment that many Canadians felt towards the United States. In 1962, the unilateral actions of the United States prompted the *Ottawa Journal* to write “As President Kennedy spoke last night thoughts went back to the years before World War II when Hitler made threats and the Free Nations yielded, hoping each demand would be the last.”<sup>64</sup> In 1967, the *Vancouver Province* printed Tommy Douglas’s warning that “Johnson is shooting craps with the survival of the human race by escalating the war in Vietnam.”<sup>65</sup>

Perhaps the *Dartmouth Free Press* most accurately captured the frustration of many Canadians who in 1967 felt caught in the Cold War alliance: “What appears to be the case is that Canadians are imbued with a fatalistic acceptance. We respond only to crises of the order of Soviet missiles in Cuba. To anything less we stay indifferent. There is an acceptance of the nuclear sword of Damocles dangling over our collective heads. We’ve learned to live with potential disaster, just as we’ve learned to live with the automobile. It seems ‘normal’ living under the threat that civilization may be destroyed. Not just one civilization, all of them.”<sup>66</sup>

In 1962, when Russia seemed directly to challenge the very security of North America, many Canadians were glad that they were so closely allied to the U.S., sharing the common defense networks of NORAD and NATO and shifting a great amount of their trade and economic links in that direction. However, as the axiom so often goes, “you live by the sword, you die by the sword.” In 1967, as a result of the same alliance, Canada was drawn into the Vietnam conflict, prompting many of those same Canadians to object to being so closely allied with the U.S. “From a strictly juridical point of view, Canada is treaty bound to go along with the United States in most of its defense postures. And if Washington says crushing half-starved Asian guerrillas is necessary for the defense of the western hemisphere, why Ottawa will have to go along with that.”<sup>67</sup>

It was this realization of what an alliance with the U.S. could mean, seen through the prism of deteriorating opinions of the U.S. in the light of their race riots, domestic turmoil and especially the Asian wars of the mid 1960s, which prompted Canadians to demand that their

government re-evaluate its ties to the U.S. and ultimately to consider alternatives. It is in such conditions that the anti-Americanism and the English-Canadian nationalism of the late 1960s and 1970s would flourish; it is in such a mindset that many Canadians would welcome American draft dodgers, campaign against the “Americanization” of Canadian universities and develop the “Third Option” policy initiatives to decrease dependence on the United States. Canadians’ opinions of Americans had certainly changed.

## Notes

- 1 *Ottawa Journal*, 23 October 1962, p.6.
- 2 *Ottawa Citizen*, 16 May 1967, p.6.
- 3 For some excellent reviews of the Crisis, please see White, Mark J. 1997. *Missiles in Cuba: Kennedy, Khrushchev, Castro, and the 1962 Crisis*. Chicago: Ivan R. Dee; Frankel, Max. 2004. *High noon in the Cold War: Kennedy, Khrushchev, and the Cuban missile Crisis*. New York: Ballantine Books; Kennedy, Robert F. 1969. *Thirteen Days: A Memoir of the Cuban Missile Crisis*. New York: W. W. Norton & Company, Inc.; Nathan, James A. 2001. *Anatomy of the Cuban Missile Crisis*. Westport, Conn: Greenwood Press. For some insight on Canada’s role in the Crisis, please see Haydon, Commander Peter T., RCN. 1993. *The 1962 Cuban Missile Crisis: Canadian Involvement Reconsidered*. Toronto: Canadian Printco Ltd.; Nash, Knowlton. 1990. *Kennedy and Diefenbaker: Fear and Loathing Across the Undefended Border*. Toronto: McClelland & Stewart.
- 4 *Ottawa Citizen*, 23 October 1962, p.6.
- 5 *Vancouver Sun*, 23 October 1962, p.25.
- 6 *Dartmouth Free Press*, 8 November 1962, p.4.
- 7 *Ibid.*, p.1 and 8.
- 8 *Dalhousie Gazette*, 17 October 1962, p.4.
- 9 *Ottawa Journal*, 24 October 1962, p.6.
- 10 *Vancouver Province*, 23 October 1962, p.4.
- 11 *Ottawa Journal*, 20 November 1962, p.6.
- 12 *Québec Chronicle-Telegraph*, 26 October 1962, p.4.
- 13 *Pacific Tribune*.
- 14 *Ottawa Citizen*, 23 October 1962, p.7.
- 15 *Dartmouth Free Press*, 8 November 1962, p.1.
- 16 *Dalhousie Gazette*, 31 October 1962, p.7. It should also be noted here that all newspapers published views counter to the one generally favoured in their coverage of the Crisis, covering speeches, protests, and often op-ed pieces which raised counterpoints. This tendency was especially potent in the form of letters to the editor; all newspapers carried at least a small handful of well-articulated letters from their readers that disagreed, or even discredited, arguments made in the papers’ articles and editorials.
- 17 *Vancouver Province*, 9 October 1962, p.4.
- 18 *Vancouver Sun*, 2 November 1962, p.5.
- 19 *Pacific Tribune*, 30 November 1962, p.16.
- 20 *Ottawa Citizen*, 7 November 1962, p.6.
- 21 *Le Soleil*, 25 October 1962, p.4.
- 22 *The Fulcrum*, 15 November 1962, p.6.
- 23 Gordon, Walter. 1977. *A Political Memoir*. Toronto: McClelland and Stewart Limited. P. 366.
- 24 Smith, Denis. 1973. *Gentle Patriot: A Political Biography of Walter Gordon*. Edmonton: Hurtig Publishers. P. 323.
- 25 Smith 1973:324.
- 26 This support from the public is discussed and reflected upon in Smith 1973: 324; Granatstein, J.L. 1996. *Yankee Go Home?: Canadians and Anti-Americanism*. Toronto: HarperCollins Publishers Ltd. P. 163-164; Donaghy, Greg. 2002. *Tolerant Allies: Canada & the United States, 1963-1968*. Montréal and Kingston: McGill-Queen’s University Press. P. 113-117; Gwyn, Richard. 1985. *The 49th Paradox: Canada in North America*. Toronto: McClelland and Stewart Limited. P. 71; Azzi, Stephen. 1999. *Walter Gordon and the Rise of Canadian Nationalism*. Montréal & Kingston: McGill-Queen’s University Press. P. 157.
- 27 Gordon 1977:284.
- 28 Azzi places the number at 1,081, of which “only 19 were unfavourable” (Azzi 1999:157).
- 29 Azzi 1999:157.
- 30 Granatstein 1996:168.
- 31 *L’Action*, 9 May 1967, p.4.
- 32 *Vancouver Province*, 12 May 1967, p.4.
- 33 *Vancouver Citizen*, 1 June 1967, p.2.
- 34 *Pacific Tribune*, 7 April 1967, p.1.
- 35 *Almonte Gazette*, 1 June 1967, p.2.
- 36 *Le Soleil*, 20 April 1967, p.4.
- 37 *Le Soleil*, 17 April 1967, p.14.
- 38 *Suburban Mirror*, 20 April 1967, p.2.
- 39 *Ibid.*
- 40 *B.C. Catholic*, 4 May 1967, p.5.
- 41 *B.C. Catholic*, 18 May 1967, p.5.

- 42 *Ottawa Journal*, 2 May 1967, p.6.
- 43 *Vancouver Sun*, 15 May 1967, p.1-2.
- 44 *Vancouver Sun*, 16 May 1967, p.2. The *Halifax Chronicle-Herald* even went so far as to call Gordon “the Batman of the Pearson cabinet. Nobody knows just where and when he’s going to strike next” (*Halifax Chronicle-Herald*, 22 May 1967:5).
- 45 *Vancouver Sun*, 17 May 1967, p.1.
- 46 *Le Soleil*, 17 May 1967, p.4.
- 47 *Ottawa Journal*, 16 May 1967, p.33.
- 48 *Almonte Gazette*, 25 May 1967, p.2.
- 49 *Ibid.*
- 50 *Québec Chronicle-Telegraph*, 19 May 1967, p.4.
- 51 *Ottawa Citizen*, 18 May 1967, p.6.
- 52 *Ibid.*
- 53 *Vancouver Sun*, 11 May 1967, p.1.
- 54 *Ottawa Journal*, 18 May 1967, p.2.
- 55 *Ottawa Citizen*, 12 May 1967, p.6.
- 56 *L’Action*, 24 May 1967, p.4.
- 57 *Vancouver Sun*, 20 May 1967, p.5.
- 58 *Ottawa Citizen*, 20 May 1967, p.6.
- 59 *Vancouver Province*, 17 May 1967, p.4.
- 60 *Vancouver Sun*, 16 May 1967, p.4.
- 61 *Ottawa Citizen*, 17 April 1967, p.6.
- 62 *Halifax Chronicle-Herald*, 19 May 1967, p.1.
- 63 *Dartmouth Free Press*, 25 May 1967, p.7.
- 64 *Ottawa Journal*, 23 October 1967, p.6.
- 65 *Vancouver Province*, 17 April 1967, p.2.
- 66 *Dartmouth Free Press*, 25 May 1967, p.14.
- 67 *Québec Chronicle-Telegraph*, 19 May 1967, p.4.

# *Re-Interpreting Canada's Response to Helms-Burton*

Kalowatie Deonandan

## Introduction

Historically, Canadian foreign policy towards Latin America and the Caribbean has largely been interpreted as mirroring or converging with U.S. hegemonic interests in the region. However, in its relationship with Cuba, Ottawa has seemingly diverged from this path, preferring instead, as its official policy declares, “engagement” through trade and diplomacy, rather than isolation, the decades old American strategy. Some Canada-Cuba scholars, such as John Kirk and Peter McKenna, have interpreted this as Canada having a Cuba policy largely independent of the United States (though one which waxes and wanes in terms of our cordiality with the Cubans).<sup>1</sup> Seeming to confirm this view was the Chrétien government’s actions in challenging the U.S. on the 1996 *Cuban Liberty and Democratic Solidarity Act*,<sup>2</sup> popularly known as the Helms-Burton Bill. Part of the cornucopia of American policies aimed at unseating the Castro administration, this legislation was specifically designed to increase economic pressures on the Cuban economy by penalizing foreigners, including Canadians, who conduct business with the island. Denouncing the statute as extraterritorial interference, Ottawa enacted a series of legal and diplomatic counter-measures against it in order to protect its entrepreneurial and commercial interests in Cuba.

In the eyes of many observers, the Canadian response to Helms-Burton was in line with its historical approach to the island, that is, marching to a different drummer from

than that of the United States. However, countervailing legislation against the American bill notwithstanding, it will be argued here that this interpretation is overly optimistic in terms of the independence accorded to Canadian actions towards the island. While historically there have been differences between the Canadian and U.S. approaches, there are also many points of convergence, and these have been deepening. This trend has become increasingly obvious since the late 1990s. Surprisingly too, it gained momentum under the same Canadian prime minister who officially inaugurated “constructive engagement” with the Cubans and who seemed willing to confront the Americans on Helms-Burton.

By shedding light on the growing parallelism between Ottawa’s and Washington’s approach to Havana, a more comprehensive picture of Canada’s Cuba policy emerges. Focusing only on Canada’s alleged “engagement” with the Cubans, and arguing that this therefore speaks of its autonomy from the U.S., does not explain satisfactorily the increasing contradictions and conflict evident in Canada’s dealing with the Castro government.

This analysis does not involve an historical assessment of Canada-Cuba relations; rather it concentrates primarily on the Chrétien period and after, and incorporates the historical dimension where necessary to support its claims. In terms of organization, the paper begins with an overview of the Helms-Burton legislation and Canada’s response to it. Then it proceeds to demonstrate that despite the conflict

between Canada and the U.S. over this legislation, there has been growing convergence between the two countries in terms of their actions and objectives in Cuba. This argument is made first by positing the standard framework for explaining Canadian foreign policy and then challenging it through an examination of five key themes: Canada's support for U.S. hegemony, its shared interest with the U.S. in protecting the global trading regime, its desire to defend its trading relationship with the U.S., its support for the U.S. position in the Organization of American States (OAS) *vis-à-vis* Cuba, and its commercial competition with the U.S. in Cuba.

### The Helms-Burton Legislation and the Canadian Response

The Helms-Burton legislation (so named after its architects, Republicans Senator Jesse Helms of North Carolina and Representative Dan Burton of Indiana) has as its overriding mission the collapse of the Castro government, and its *modus operandi* is the intensification of pressures on the Cuban economy and government by suffocating inflows of capital into the country. This legislation reinforces and expands the preexisting *Cuban Democracy Act of 1992*, also known as the Torricelli Bill which prohibited U.S. subsidiaries abroad from trading with Cuba.

The central provisions of the Helms-Burton bill are elaborated in four Titles, with Titles III and IV being of particular significance to U.S. trading allies, including Canada. Title III, one of the most controversial sections, aims to compensate U.S. citizens whose properties were expropriated during the revolution by penalizing those foreigners who are deemed to have profited from these confiscations. Under this measure, U.S. citizens have been accorded the right to sue for compensation, in U.S. courts, any foreigner who traffics (trades or invests) in the confiscated property. Should such a national or company have no assets in the U.S., then redress could be sought in the judicial system of the defendant's home state, for example Canada, whereby Canadian courts would be asked to enforce the ruling of the U.S. judiciary system and appropriate the defendant's holdings. The bill did accord the U.S. President the authority to waive indefinitely such suits for six month intervals, and this waiver has been granted on an on-going basis ever since.

Title IV, another controversial aspect of the bill, denies entrance into the U.S. to aliens judged to have profited from confiscated property. Exceptions are allowed only on humanitarian grounds or where third parties seek to defend themselves in U.S. courts against the suits.

Canada, along with several U.S. allies affected by Helms-Burton, have denounced the legislation as an infringement on national sovereignty, a violation of the rules of the international marketplace, and a contravention of the terms of existing trade agreements such as the *North American Free Trade Agreement* (NAFTA). The Canadian government also resorted to countervailing legislation arguing that, although Title III has been suspended on an ongoing basis, protective legislation should be on the books in case the lawsuit provisions take effect in the future.

To that end, Ottawa has incorporated amendments, consisting of "clawbacks" and "blocking orders," to the 1985 *Foreign Extraterritorial Measures Act* (FEMA). "Clawbacks" would permit Canadian companies to counter-sue in Canadian courts to recover damages awarded by U.S. court rulings, as well as to recoup legal costs incurred in both countries. Given that many American companies have assets in Canada, they would thus be vulnerable to such retaliatory measures. "Blocking orders" would allow the Attorney General to bar Canadian courts from enforcing judgments emanating from U.S. jurisdictions against Canadian defendants. The legal measures also include fines of up to Can\$1.5 million on Canadian companies or Canadian-based U.S. subsidiaries which comply with Helms-Burton.

### Explaining Canada's Cuba Policy

This assertive response by Canada to an American policy potentially deleterious to its interests has been perceived by some as confirmation of Canada's pursuit of a Cuba strategy independent of the U.S. This independence is interpreted as being rooted in Canada's commitment to a foreign policy approach rooted in the principles of Liberal Internationalism.

Articulated during the Cold War, Liberal Internationalism has been the dominant and enduring framework governing scholarly analyzes of Canadian foreign policy. Despite having been much criticized, and validly so, it nevertheless continues to hold sway. Though multifaceted (and this is one of its many problems), in its essence, it interprets Canada's actions on the international stage as rooted in the nation's status as a Middle Power, that is, its juxtaposition between the two then dominant super powers, the U.S. and the U.S.S.R. As an in-between-player, the argument goes, Canada is perceived in neutral terms and, as such, is best equipped to play the role of arbitrator, to encourage parties in conflict to resort to negotiation or to multilateralism to resolve their disputes. The Canadian

method emphasizes adherence to international rules and norms and a rejection of coercion. Engaging the opposing side, rather than threatening or marginalizing them, is deemed the Canadian way.

When it comes to Cuba, that has been the government's declared strategy. In 1994 the Liberal government of Jean Chretien unveiled a policy of "constructive engagement" with Havana, an approach vigorously promoted by Foreign Affairs Minister Lloyd Axworthy who was appointed to his post in 1996—the same year in which Helms-Burton came into force. "Constructive engagement" was premised on the claim that by interacting with the Castro government through trade and diplomacy, democracy could be advanced on the island. In practice, the policy involved, amongst other things, expanding support for Canadian companies pursuing opportunities in Cuba, increasing development assistance to the island, and backing calls for Cuba's inclusion in international fora such as the Organization of American States (OAS) as well as its participation in hemispheric meetings, such as the Summit of the Americas. In fact, "constructive engagement" is very much designed to take advantage of the Cuban market from which the Americans were largely absent. While the strategy eventually encountered several roadblocks because of rising tensions between Ottawa and Havana ostensibly over Cuba's human rights record, it nevertheless continued to be Ottawa's declared approach, though with less fanfare by 2000.

The United States meanwhile has maintained its decades old embargo against the island and even intensified it with Helms-Burton. For adherents of the divergence school (that Ottawa and Washington have different policies towards Cuba), this is convincing evidence that Canada is pursuing a path independent of the United States. Ottawa's implementation of the previously-mentioned countervailing legislation against Helms-Burton added credence, they believe, to their interpretation. As for explaining the many conflicts between Canada and Cuba, they offer *ad hoc* rationalizations, such as the different policy preferences of the different ministers who head Department of Foreign Affairs, or the constraints within the foreign affairs bureaucracy, or the changes occurring within Cuba itself.

Against the above interpretations, this analysis contends that to view Canada's approach to Cuba within the Liberal Internationalist framework and to see it as being largely independent of its southern neighbour does not capture the underlying dynamics which govern the policy. Tensions with the Cubans, for example, cannot always be explained from the perspective of "constructive engage-

ment" or liberal internationalism. Also, while it may be true, for example, that issues such as ministerial preferences may affect our Cuba policy, these are not sufficient conditions to explain the relationship in a consistent manner. Locating Canadian policy within a framework of convergence with U.S. objectives towards the island, however, offers insights which the engagement/Liberal Internationalist framework precludes. Furthermore, it allows for consistency and predictability in Canadian foreign policy action towards Cuba. In sum, the principles which govern Canada's relations with the U.S. have a direct impact on Canadian foreign policy towards Cuba. As such it is insufficient to conclude that Canada has an independent policy from that of the U.S. towards the Castro government.

### Supporting American Hegemonic Leadership

To begin, in order to understand the growing convergence between Canada and the U.S. on Cuba, Canada's policy towards the island cannot be looked at merely in narrow bilateral terms (that is Canada-Cuba relations), but must be more broadly situated. It must be placed within the context of Canada's support for U.S. leadership in the world since the end of the Second World War and Canada's status as a subordinate partner in the construction of the *pax-Americana*<sup>3</sup> not only in Latin America and the Caribbean, but indeed the world. From this perspective, the notion of Canada as a neutral player on the world stage is brought into question, as is the validity of the Liberal Internationalist framework which accords to Canada a Cuba policy independent of the U.S.

Canada's endorsement of American hegemonic leadership is rooted in the cold war, in the global competition between capitalism and communism whereby two hostile blocs, representing different social interests and different organizing principles and led by powerful hegemons, confronted each other in a contest for global superiority. As Rochlin writes in his analysis of the making of Canadian foreign policy: "[T]he context ... [in which Canadian policy is made is] Canada's subordination to U.S. hegemony—a hegemony based upon America's role as the world leader of capitalist forces.... Hence it would be expected that Canada would remain generally loyal to the interests of the United States in maintaining and bolstering its hegemony. But in order for this relationship to operate smoothly, the subordinate state must also perceive benefits from the relationship."<sup>4</sup>

The benefits which accrue to Canada as a result of its support for U.S. hegemonic leadership were elaborated

upon by Cranford Pratt. He argued that Canada's external relations have been constructed on certain key premises, two of which are: (i) that international communism represented the dominant menace to global peace and security and it is only the strength of the United States which serves to contain its advance; and (ii) that the global economic order [established by the United States] along with its accompanying institutions functions to the advantage of all members and "no significant injustices or indefensible inequalities" could be attributable to them.<sup>5</sup> Consequently, it is in Canada's "national interest to provide general support for American economic, strategic and ideological policies on the global stage."<sup>6</sup> It is in this context that Canada's approach to Cuba must be situated.

Even though the cold war has officially ended, when it comes to Cuba the anti-communist struggle is still very much alive. As well, America's relationship with subordinate states has not been fundamentally transformed. In fact, with the events of September 11<sup>th</sup>, 2001, America's capacity to command support from subordinate partners has been accentuated and is reflected in President Bush's much touted declaration "you are either with us or against us." Writing recently on Canada-U.S.-Cuba relations, Heather Nicol reinforced this claim, arguing that the West is organized to advance U.S. economic and geopolitical interests. As she explains: "The Western Hemisphere is reduced to a series of multilateral agreements or spaces in which American policies prevail, and in which American political cultures should.... [It] is seen, quite literally, as a political territory in which American interests must prevail."<sup>7</sup> From this perspective, U.S. hegemony in the hemisphere, or in the world for that matter, remains part of the Canadian foreign policy framework. This was confirmed by former Canadian Foreign Minister Lloyd Axworthy who, while remonstrating against Helms-Burton, at the same time, stressed that U.S. "leadership remains essential."<sup>8</sup>

Canada's support of that leadership has been evident in the policies it has been encouraging the socialist government of Cuba to adopt. These policies are more in keeping with the interests of capitalism and the market economy than with a socialist development model. In 1997, for example, as part of its investment strategies in Cuba, Canada was successful in getting the Castro government to sign a declaration in which the latter committed itself to promoting economic, political, and social reform,<sup>9</sup> in other words, to institutionalize "openings" consistent with the requirements of the free market. In this 14-point agreement the two countries contracted to work on an array of initiatives, including protection of foreign investments and reforms in the central banking and taxation systems.

Important too, from the vantage point of international entrepreneurs, were earlier changes, such as the *Foreign Investment Law* enacted in 1995 codifying regulations governing joint ventures, streamlining the approval procedures for foreign investment, and allowing for 100 percent foreign ownership in most sectors except those of defence, education, and health care. Furthermore, since 1993-94 (the same period in which the Canadian policy of constructive engagement was articulated) some economic liberalization was sanctioned, several free trade zones were established, and a limited free market was permitted in certain sectors.

Commenting on these transformations, Axworthy observed: "Cuba has actually changed a great deal though Washington will not easily acknowledge that."<sup>10</sup> What his comments demonstrate is Canada's desire to reassure the Americans that their mutual goals in Cuba are indeed being realized, that Cuba is moving, albeit slowly, towards greater economic openings and that communism there is being tempered.<sup>11</sup> It is a rationalization and justification of the Canadian approach to Cuba in terms of U.S. demands.

While being a subordinate state in the American led order inevitably imposes constraints on the subordinate partner—which must be cognizant of the wishes of the hegemon from whose protection it benefits—that does not imply that Canada must always be in agreement with the U.S. agenda or how best to advance it. As Rochlin suggests, despite its support for U.S. leadership, "Canada, with a distinct political economy and position within the global hierarchy, possesses national interest which may not converge with the U.S."<sup>12</sup> It is from this perspective that the disagreements over Helms-Burton can be explained.

As a matter of fact, even those states which occupy an even more subordinate status in the global hierarchy, and which are even more dependent on the U.S. than Canada, has had disagreements with the hegemon when it comes to Cuba. Members of the OAS, including America's other partner in NAFTA, Mexico, has opposed the U.S. on this issue. As well, the members of the Organization of Eastern Caribbean States (OECS), all of which are smaller and more vulnerable than Canada or Mexico, have criticized the Helms-Burton legislation. Such challenges do not necessarily signify independence from the hegemon, but a manifestation of the realities of the global market place that states can have competing interests, despite overall policy convergences. Interestingly, their vociferous denunciations of Helms-Burton notwithstanding, neither Canada nor any of the aforementioned groups of states went so far as to take the U.S. to any international trade

tribunal. No substantive challenges were made to the hegemon which could have resulted in direct retaliatory measures. That is particularly interesting in Canada's (and Mexico's) case, as there is a pre-established mechanism in NAFTA to handle such disputes. For all its claims of an independent Cuba policy, there were limits to Canada's ability to challenge the hegemon.

### **Protecting the Global Trading Regime**

Protecting the global capitalist trading regime, which according to Pratt, "functions[s] to the advantage of all members," is another area of convergence between Canada and the U.S. on Cuba. Where advocates of an independent Canada-Cuba policy see the countervailing measures against Helms-Burton as Canada's carving out its own distinct position, the Canadian response, in fact, had a more broad-based goal—to protect the liberal trading order on which both Canadian and U.S. prosperity (and that of all capitalist states) rests. That is also one of the fundamental goals of the United States (which after all was the leading architect in the construction of said regime), though it is not above violating that objective in its drive to safeguard "narrowly defined American economic and security interests" or in its hegemonic "quest to retard the growth of socialism in the Third World."<sup>13</sup>

With Helms-Burton come the threats of commercial suits and countersuits, the restriction on the free movement of business personnel, the infringement on sovereignty, and the contraventions of established international trading agreements. As such, the prosperity of both states would be detrimentally affected. Indeed, Canada's response to the bill, aside from its protective measures to safeguard its investors, was to remind the hegemon of their convergent interests in having a rules-based system. Warned Christine Stewart, then Secretary of State for Latin America: "By ignoring accepted international practice, the Helms-Burton Act sets a dangerous precedent.... This could result in an international free-for-all in which the principles and practices of international law are thrown into disrepute."<sup>14</sup> Minister Axworthy echoed these concerns: "It is ... wrong to pass legislation that in itself contravenes international rules and practices to unilaterally affect individuals and companies in another country against basic treaties and conventions that have been signed.... We must have a world of rule, of law."<sup>15</sup>

In its response to American unilateralism, Canada's actions were not designed to challenge the authority of the hegemon or to assert its independence from it. Rather, it was reflective of a disagreement with the strategy by which

the hegemon chose to assert its dominance—a strategy which threatened the overarching and convergent goals of both states in the global economy. Neither can benefit in the long run from discriminatory legislation such as Helms-Burton which puts in jeopardy the credibility and effective functioning of the pillar of global capitalism—the world trade regime.

### **Safeguarding Trade Relations With the U.S.**

Canada's ability to challenge the Americans on Cuba must also be viewed within the context of the country's massive economic dependence on the U.S. market as this is a key factor which restricts Canada's ability to pursue a foreign policy path which diverges from U.S. interests. Commenting on the deepening continentalization of the Canadian economy, Drew Fagan observed that: "A full 83 percent of Canada's exports now flow to the United States, as compared to 71 percent when the FTA took effect.... (As well, about 60 percent of the two-way trade is intra-corporate, a reflection of close investment and ownership ties.) ... In 2000, almost two-thirds of Canada's industrial output was sold directly to the United States, more than triple the percentage in 1989.... There is also closer co-ordination of capital markets, and major increase in portfolio and direct investment, including mergers and acquisitions."<sup>16</sup> Fagan also emphasized the "striking lack of mutual dependence" between the two economies as Canada "buys only 2.5 percent of all U.S. GDP, whereas the United States buys no less than 38 percent of Canadian GDP."<sup>17</sup>

Also with the growing integration of the hemisphere *via* the various trading agreements, including NAFTA and the anticipated Free Trade of the Americas (FTAA), Canada's trade ties to the U.S. have become even more important, and that has resulted in greater convergence when it comes to Cuba. It should be noted that Canada is not alone in having its Cuba policy influenced by its deepening trade relations with the U.S. Its other NAFTA partner, Mexico, has been mirroring this pattern, modifying its Cuba strategy to bring it more in line with the U.S. After a lengthy history of cordiality, Mexican-Cuban relations began to deteriorate in 2000 with the arrival of the government of Vicente Fox. Mexico's new approach to Cuba was evidenced by its decision to vote, in line with the U.S., to condemn Cuba's human rights record (an ironic stance given that Amnesty International has ranked Cuba's record in this area as better than that of Mexico). The *Economist* attributed this policy shift to the desire of Mexico's Foreign Minister, Jorge Castañeda, to forge an even stronger economic union with the U.S.<sup>18</sup> This bears

a striking parallel to developments within Canada where a new Foreign Minister, committed to strengthening his country's relationship with U.S. followed a similar path, altering Canada's Cuba policy to converge with U.S. preferences.

The minister in question was John Manley (who came to this post after the 2000 U.S. presidential elections) and whose right-leaning, business oriented credentials were well known. Unlike his predecessor, Lloyd Axworthy, who sought to integrate a human security dimension into Canadian foreign policy program, Mr. Manley's emphasis was explicitly and primarily on the economic and trade dimensions, and topping his agenda was an unequivocal commitment to nurturing the bilateral relationship with the U.S.<sup>19</sup> Consequently, given his ideological stripes, greater convergence between Canada and the U.S. was to be expected. With respect to Cuba, not surprisingly, that entailed adopting a more hard-line position as the newly elected U.S. President George W. Bush not only is a strong anti-communist and anti-Castroite, but he is also strongly obligated to the Cuban-American exile community in Florida. (It was their vote which arguably was largely responsible for his occupying the presidency during his first term.)

Reflective of Canada's firmer stance against Cuba and its closer alignment with the U.S. was its decision to exclude the Cubans from the April 2001 Summit of the Americas in Québec City in Canada. According to Minister Manley, this decision was based on the judgment that the Castro government had not shown a commitment to protecting human rights,<sup>20</sup> a view echoed by the prime minister<sup>21</sup> who characterized relations between the two countries as being on "northern ice." Kristopher Moore has suggested that this condemnation of Cuba's human rights record is highly suspect, given that during this period Cuba had less political prisoners than it did during 1994–96<sup>22</sup> when, as discussed below, Canada was calling for the island's inclusion in hemispheric affairs and seemed unaffected by human rights concerns.

In 1994, during the Summit of the Americas in Miami, the Canadian prime minister spoke out against Cuba's exclusion.<sup>23</sup> His then Secretary of State Christine Stewart was eloquent in her advocacy of Cuba's inclusion in hemispheric affairs, declaring that Canada hopes "that when other summits are held in the hemisphere that Cuba be present at the table. We as a nation will work ... to see that happens."<sup>24</sup> These sentiments were reiterated by the Canadian government during the next hemispheric meeting, the Santiago Summit in 1998. Yet in 2001, when Canada, as host of the follow-up Summit, had a chance to

act on a principle it had so vigorously defended, it backed away, succumbing to American pressures, mindful of its deepening ties with the U.S. when it comes to trade in the hemisphere.

It should be pointed out that while earlier calls (in 1994 and 1998) to invite the Cubans might be interpreted as evidence of a Canada acting independently of the U.S., many of the countries in Latin America and the Caribbean, even more economically dependent of the U.S. than Canada and hence more vulnerable to American retaliation, were also doing the same thing, that is, advocating Cuba's presence at the summits, and doing so very vigorously. It is tempting to assume that this activism on behalf of Cuba is conclusive evidence of a policy stance unconstrained by U.S. influence. However, it is also possible to conclude that it was more likely a response to political developments in the U.S. More specifically, it can be argued that this was made possible by the space, or opening, provided by the less hard-line approach of the American administration under Bill Clinton. Clinton, for example had been reluctant to sign Helms-Burton but was impelled to do so by the logic of American electoral politics; it was under his administration that the *Trade Sanctions Reform Act* (discussed in more detail later) was passed, permitting American trade in medical and agricultural products with Cuba on humanitarian grounds; it was his administration too which defied the Cuban exile community in Miami and other hard-line anti-Castroites in the U.S. and allowed the return of Elian Gonzalez to his father in Cuba. In essence then, Canada's call for a greater role for Cuba in the hemisphere, like that of smaller states, more vulnerable to hegemonic retaliations, was in part conditioned by the "opening" provided by the hegemon, just as subsequent more hard-line positions, such as that demonstrated by Minister Manley, were also in response to hegemonic developments and preferences.

Reinforcing the view that Manley's goal entailed deeper convergence with the U.S. is the fact that when he assumed his post of Foreign Minister, he seemed unconcerned by Cuba's human rights record. Indeed, in his address to the 13<sup>th</sup> Human Rights Consultations (a meeting between members of the human rights NGO community and the Department of Foreign Affairs) in February of 2001, he made no mention of the subject and spoke only of violations by countries such as China, Indonesia, and Colombia.<sup>25</sup> His sudden perturbation over the human rights situation in Cuba took shape shortly thereafter, within the framework of the Free Trade Summit where the convergent goals of Canada and the U.S. were highlighted and where it was imperative that Canada demonstrate its

loyalty to the Americans who would never consider tolerating Cuba's presence in a forum designed to showcase the benefits and rewards of capitalism. Meanwhile, despite Manley's declared concerns over human rights, the gross violations and authoritarian practices of countries such as Mexico (Canada's NAFTA partner) and other Latin American states were ignored, and their presence welcome at the Summit, a fact not lost on many Canadian Parliamentarians.

New Democratic Party (NDP) member Svend Robinson challenged the government's claim that it was human rights concerns which resulted in Cuba's exclusion, declaring: "The Prime Minister has also spoken about the summit being about human rights. Colombia has an appalling record on human rights violations, one of the worst in the world with murders, massacres and impunity. If the Prime Minister is serious about human rights, why are countries like Colombia and Peru invited to this summit when the country of Cuba ... is not being invited? Why the double standard?"<sup>26</sup> A similar line of questioning was taken by Bloc Québécois (BQ) member Yvan Loubier who asked for the rationale behind the government's "inclusive and tolerant policy ... towards countries such as China and Indonesia where human rights and democracy are being violated."<sup>27</sup>

Given that the Summit was a forum to promote the expansion and deepening of trade in the region, given that Canada is the second largest investor in Cuba and is seeking to expand its investment opportunities there, and given Canada's previous calls for Cuba's participation, the decision not to invite Havana begs an explanation. Citing Castro's human rights record is insufficient, as this was not a factor in the earlier demands, during prior Summits, for the island's participation. Furthermore, states with even more horrific human rights record than Cuba were included in the Canadian-hosted Summit, as noted in the comments by MPs Svend Robinson and Yvan Loubier. In addition, Cuba's exclusion occurred under an administration eager to emphasize its commitment to Liberal Internationalism, to practice "dialogue rather than isolation" and to promote "constructive engagement."

Reacting to the Canadian decision not to invite his country to the Québec gathering, Cuban President Fidel Castro declared that this confirmed Canada's role as a tool of U.S. interests.<sup>28</sup> A Cuban government communiqué stated: "We wonder if Canadian policy is being drawn up in Ottawa or Washington."<sup>29</sup> Meanwhile, a Cuban Foreign Ministry spokeswoman observed: "Foreign Minister Manley, with his meddling and anti-Cuban language con-

firms his growing subordination to and alignment with the U.S. empire's foreign policy."<sup>30</sup>

### **Backing U.S. Policy in the OAS**

This ongoing strategy of political exclusion, in convergence with American preferences, was also seen in Canada's actions, or rather non-actions, in the OAS. For decades Canada had resisted joining the institution, arguing that given the dominance of the U.S. within this body, it did not want to be seen as rubber-stamping U.S. policy in the hemisphere. In 1990, however, under the very strongly pro-U.S. administration of Brian Mulroney, this policy was reversed and membership embraced with the justification that Canadian presence would help to counter-balance American preponderance in the organization. Theoretically, that seemed feasible under the Chretien strategy of "constructive engagement."

One of the objectives of this policy was to encourage the inclusion of Cuba in the OAS, an organization from which it had been expelled since 1962 at the behest of the United States. Ottawa's logic was that bringing Cuba into the fold of the nations of the Americas would allow for democratic influences on the island. However, aside from an occasional reference to this issue in the early Chretien period, this goal lost its priority as relations between Canada and Cuba deteriorated. Allegedly, as noted earlier, the rationale for this (as with Cuba's absence from the Canadian-hosted Summit) had to do with Cuba's human rights record. But as many studies have pointed out,<sup>31</sup> the human rights situation in Cuba is actually better than in many member states of the OAS. Furthermore, while Canada has cited the Cubans for rights violations, it has remained silent on ongoing U.S. actions against the island (with the exception of its opposition to Helms-Burton from which it stood to be directly harmed).

In view of Canada's declarations about the virtues of multilateralism, its commitment to "engagement" over isolation, and its earlier calls for Cuba's inclusion in hemispheric activities, its silence on the island's absence from one of the region's most powerful institution (in which American preferences prevail) is quite telling about the neutrality or independence of its Cuba policy.

Equally illustrative of the convergence between Canada and the U.S. on the issue of Cuba in the OAS was Canada's support for a U.S. co-sponsored resolution to condemn rights abuses in the country, introduced in the wake of the Castro government's crackdown against dissidents in 2001. While it can be convincingly argued that the objective behind the motion and the position taken by

Ottawa were reflective of Canada's commitment to promoting democracy and human rights, it is also true that Canada found itself amongst a minority of nations allied with the United States on this issue. The majority of OAS members, all more vulnerable to U.S. economic retaliation than Canada but not wanting to be perceived as doing the U.S.'s bidding, voted against it. Canadian support for the decree placed it decisively in the American camp when it comes to Cuba. Some OAS members, such as Brazil, criticized the double standard being applied, noting that the U.S. was following a "selective policy" on human rights, condemning Cuba in international organizations, but ignoring violations by other states.<sup>32</sup>

### Competing Commercially in Cuba

Another dimension of the convergence between Canada and the U.S. when it comes to Cuba relates to their mutual goal of protecting their own commercial positions, present and future, on the island (and this remains true despite Washington's Cuban embargo). While this objective does not necessarily point to convergence in policies but to convergence in objectives, it nevertheless places the claims of an independent Canada-Cuba policy in a different perspective and concomitantly explains incidences of disagreements between Ottawa and Washington over Havana.

It explains, for example, Canada's countervailing measures against Helms-Burton and demonstrates that Canada is acting not so much to assert its independence from the U.S., or to promote "engagement" in order to advance democracy in Cuba, but rather to secure its economic position when it is detrimentally affected by U.S. actions. Earlier arguments have shown that Canada is willing to abandon a position opposed to U.S. interests if this is deemed beneficial to Canada economically.

As capitalist states, both Canada and the U.S. are committed to ensuring that their entrepreneurs are well-situated commercially, an issue of increasing significance in an age of deepening globalization. Even the Helms-Burton bill had amongst its many goals, not only the hastening of the demise of the socialist regime, but also the protection of the interests of American entrepreneurs who believed themselves disadvantaged by Castro's nationalization policies and who were convinced that others were profiting from their assets. The result of this drive to advance commercial positions is competition.

It is this competition which explains the conflict over and the challenges to Helms Burton—not an unexpected or an unusual outcome under situations of competition. (Canada and the U.S. have frequently confronted each

other in trade disputes, the softwood lumber issue being an ongoing one.) The point being established here is that Canada, like the U.S., is acting in accordance with the rules of capitalism where states are impelled by the logic of the market to secure their economic interests. That is often rationalized in idealistic terms, such as the promotion of democracy.

To assert the foregoing, that Canada and the U.S. are competing economically in Cuba, is not to negate or contradict the earlier claim that Canada's approach to Cuba has to be understood within the context of its endorsement of *pax Americana*. Supporting the hegemon does not imply that interests cannot differ. As Rochlin noted, despite its backing of U.S. leadership, "Canada, with a distinct political economy and position within the global hierarchy, possesses national interest which may not converge with the U.S."<sup>33</sup> Their mutual goals of advancing capitalism in Cuba and in protecting their own economic interests also entail their competing with each other economically on the island as they have competed with each other in other areas.

It is an oft-repeated mantra that the U.S. pursues a strategy of "isolation" of Cuba, through the embargo for example, whereas Canada follows one of "engagement" via trade and other diplomatic ties. However, this dichotomy is too stark to capture current reality. There is growing evidence of an increasing U.S. presence in the Cuban economy, and that is providing unwanted competition for Canada. Almost one decade ago, in 1996, John Kavulich, then President of the U.S.-Cuba Trade and Economic Council, a private, non-profit organization, stressed the strength of the U.S. presence in Cuba: "U.S. companies are doing business in Cuba today wherever they can, and the numbers are growing... [T]he business community in the United States is very much like an iceberg: you may only see 10 or 20 percent of it above water, but it is there as the Titanic found out."<sup>34</sup> Furthermore, there is strong evidence of dissatisfaction from U.S. corporations excluded from the island market, and there are indications that the U.S. government is trying to accommodate their demands. At a Toronto forum on hemispheric free trade, Thomas Donohue, President and Chief Executive of the powerful U.S. Chamber of Commerce, which represents over three million companies, declared that, "unilateral economic sanctions do not benefit the United States of America," and the U.S. should end this practice starting "91 miles off the coast of Miami."<sup>35</sup> The National Association of Manufacturers, as well as other influential American business coalitions involving major corporations such as General Electric, IBM, Exxon and Mobil,

have all expressed similar opinions. "U.S. business people," observed one *Macleans*, article, "are champing at the bit to get involved in Cuba before the rest of the world carves it up."<sup>36</sup> This view is echoed by Kavulich, who acknowledged that there is not "a single CEO of a major U.S. company that does not want to return to Cuba today."<sup>37</sup>

Responding, albeit in a limited manner given the embargo, to the dissatisfaction of its investors excluded from the Cuban market, the U.S. government passed the *Trade Sanctions Reform and Export Enhancement Act* during the second Clinton administration in 2000. The bill loosened American restrictions on agricultural and medical sales to Cuba on humanitarian grounds. As a consequence, the U.S. became the major source of imported foodstuffs to Cuba. The consequences for Canada were quite significant as the country lost an estimated 20 percent of market share in these products.<sup>38</sup> Despite the ostensibly humanitarian arguments for the bill, its basis was really to boost American entrepreneurs and protect future market niches and were not nascent manifestations of any political thawing in the relationship between the U.S. and Cuba.

Canada's challenge to the Helms-Burton bill, then, must be looked at in terms of its desire to secure its trading position in Cuba and not as evidence of its desire to carve out an independent foreign policy from that of the Americans towards Havana. It has been pointed out that even the much-lauded policy of "constructive engagement" is rooted in a desire to advance Canada's economic interests. Commenting on the driving force behind the Canadian approach to Cuba, Kirk and McKenna wrote: "Foremost, of course, is the trade-commercial factor ... It [is] important for Canada to solidify political relations at the top as a means of further cementing economic linkages between the countries to shore up Canadian business connections with the island ... to ensure that Canadian companies are not squeezed out of the Cuban market by any future onslaught by U.S. businesses."<sup>39</sup> If Canadian entrepreneurs succumb to the intimidation of Helms-Burton and retreat from the island, then Canada, at present one of Cuba's leading investors, runs the risk of losing the competitive edge it has established in what the Department of Foreign Affairs and International Trade acknowledges "is an important emerging market, offering good potential for Canadian exporters and investors."<sup>40</sup> This problem would become especially pronounced in a post-Castro era when the Cuban economy may become open to all investors, especially the Americans.<sup>41</sup> Canada had already confronted a similar scenario in the post-cold war Eastern Europe where it faced strong competition from U.S. multinational giants. In the Cuban context, it has a competitive edge,

given its long economic presence in the nation, and, hence, its countervailing measures against Helms-Burton were to be expected.

## Conclusion

The foregoing analysis has argued against the prevailingly scholarly view that Canada's foreign policy towards Cuba is independent of the U.S. Using the case of Canada's response to the Helms-Burton legislation, it has attempted to demonstrate that whereas Canada is challenging this bill with countervailing legislation of its own, it is doing so within the constraints of its subordination to U.S. hegemonic leadership. Its policies on Cuba, particularly since the late 1990s, very much converge with those of the U.S. in terms of overall objectives in the region. That is not likely to change soon. The new Canadian Prime Minister Paul Martin is strongly rooted in the business community and is less likely to place emphasis on engagement. His government's orientation is reflected in the comments of Pierre Pettigrew, his minister of Foreign Affairs and International Trade, a minister in the mould of Manley in terms of his ideological orientation. Pettigrew waxed lyrical about the benefits of being a U.S. ally and implicitly affirmed Canada's commitment to advancing the hegemonic project of its southern neighbour. As he said in a 2003 speech: "Being next to the United States of America is a privilege: I mean there is no better place on the planet ... There are 190 countries that would love to be in Canada's position. We [the U.S. and Canada] represent for the rest of the planet a light in the world... With the United States and Canada, we have built the best continent on the planet, a North America of opportunity, a North America of prosperity, the continent where we have the highest quality of freedom and justice."<sup>42</sup>

## Notes

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# *Boundaries and Corridors: Rethinking the Canada–United States Borderlands in the Post 9/11 Era\**

Victor Konrad and Heather Nicol

## Introduction

After September 11<sup>th</sup>, 2001, the boundary between Canada and the United States became more apparent. The boundary line itself did not change, but crossing the border became more protracted, less civil, and generally more complex, reflecting the fact that September 11<sup>th</sup> both accelerated developing techno-based management strategies and also redirected existing border security programs. Cross-border movements, including trade, human migration and information flow, continued and grew, yet the focus shifted. On the border with Mexico, the shift was from stopping drugs, contraband and illegal immigrants to insuring national security. The U.S. was now at war with terrorism. On the United States border with Canada the shift to national security implied a greater change for Canada than Mexico because the United States and Canada had evolved a relaxed border crossing relationship on the “world’s longest undefended border.” Cross-border regionalism contributed to the evolution of the effective and benign exchange between Canada and the world’s leading political, military and economic power, and this transboundary cooperation and identity helped to sustain cross-border movement after September 11<sup>th</sup>. The nature of the Canada-U.S. boundary, and the functions of the cross-border regions, appear, however, to have been transformed during this crisis. This apparent transformation is explored in this paper.

Cross-border regionalism is a shared perception and use of an area, often with similar landscape characteristics,

which result in mutual benefit and cooperation across the border. Borderlands are the functional and recognized, yet necessarily informal, geographical regions that emerge from a sustained process of cross-border regional interaction. In our view, economic, social and cultural components of cross-border regions prevail when cross-border regionalism is strong. However, we do acknowledge the indelible political borderline, its constant presence, and its propensity to re-emerge with tremendous speed and vigor periodically and in response to external threat and internal political pressure.

Cross-border regionalism is, by its very nature, both an ameliorative and a divisive process, for it brings together distinct nations and divides common interests. Add to these forces the impact of external events and the erosive and depositional effects of time, and the cross-border region evident today may show only a resemblance to the borderlands apparent in previous decades. In this paper we explore how cross-border regions operate between Canada and the United States, and how their functions have changed in recent years.<sup>1</sup>

In the post September 11<sup>th</sup> period two apparently opposing, yet fundamentally integrated forces are emphasized. One is the entrenchment of the boundary. In a sense, the wall between the United States and Canada became higher and less permeable as homeland security became a major issue in the United States. Yet, as the border was reinforced, corridors of commodity flow and interaction

were expedited. Technological improvements, gateway acceleration, crossing-point staff enhancement and other enabling measures developed rapidly within cross-border regional contexts. Specific cross-border regional approaches to interaction across the boundary were fundamental to re-articulating and expediting Canada-U.S. trade and migration.

Our road map to understanding cross-border regionalism in the post September 11<sup>th</sup> era begins by situating the borderlands in the NAFTA-September 11<sup>th</sup> transition. NAFTA focused the vaguely defined borderland communities and regions between the United States and Canada. Under NAFTA, cross-border regions became distinct corridors and places of articulation between the national economies. Section II of the paper explores this notion along the extensive boundary and evaluates the NAFTA effects on transportation, trade and regulation on border crossing and borderlands function. After September 11<sup>th</sup>, the United States' focus on homeland security has recast these cross-border regions as sub-national theatres of security implementation. Section III offers a snapshot of the state of the borderlands in the post September 11<sup>th</sup> era. In section IV, we evaluate how boundaries and corridors have been re-envisaged by Canadians and Americans, ostensibly under NAFTA, and then emphatically after the September 11<sup>th</sup> event. The apparent juxtaposition of security and trade, heightened by September 11<sup>th</sup>, moved rapidly from a dialectic to a merged, broader understanding about secure trade. The juggernaut of NAFTA could not be halted long at the border. The September 11<sup>th</sup> event sharpened, emphasized and accelerated a process previously caught up in the massive re-articulation of the Canada-U.S. borderland relationship. After September 11<sup>th</sup> the discourses that situated borders within a popular and political framework emerged on both sides of the boundary. That underscored the significance of the September 11<sup>th</sup> event as a critical signpost on the road map to a new borderlands relationship. Also, as we discuss in Section V, the new discourse on nationalism and transnationalism externalized the threat, and the new Smart Border was designed to function as a trade conduit and, most visibly, to enhance the "security perimeter" around "fortress America." This discourse found proponents among Canadians as well as Americans and triggered flights of neo-nationalism on both sides of the border. There are, however, geographical specificities attached to the debate about borders, depending upon where it takes place. Section VI differentiates categories of borderlands. Some cross-border regions serve as "goods first" borderlands where trade and security concerns impact aspects of function and landscape and the

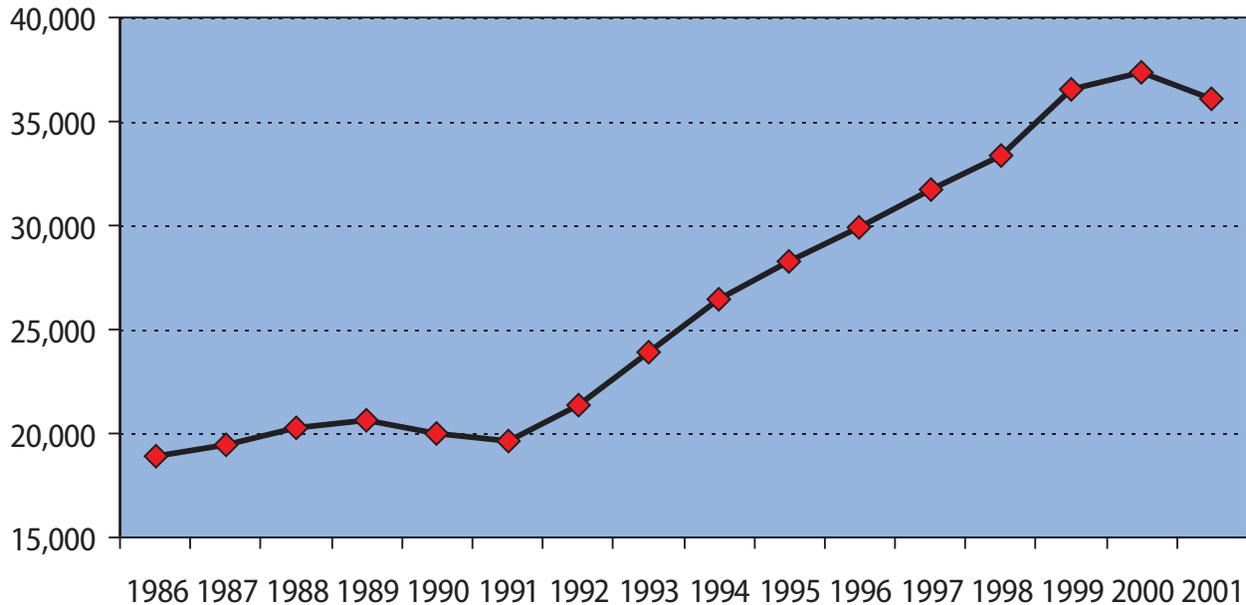
role of the borderland community. From these primary corridors, cross-border regions grade to those borderlands aligned with moderate cross-border activity, and, finally, to marginalized and hinterland areas astride the border. Essentially, we see a continuum from taking care of business in the corridors of the Great Lakes and in the Pacific Northwest to the sustained expression of tradition, culture and community in the less populated border regions. In the final substantive section of the paper, we address the three levels of international engagement which define the border relationship and lead to sustainable cross-border regionalism. First is the level of the immediate physical relationship at the border. Building capacity in the community and infrastructure follows these initial binational policies and practices. The third level concerns the relationship with the broader international community, first as the new Canada-U.S. borderland interaction is now embedded within the wider transcontinental economy, and then as it is situated within the global economy. Are these alignments a necessary condition for sustainable cross-border regionalism? And, will a reinvented border with its inherent sustainable cross-border regionalism enhance participation and success for Canada and the United States in the continental and global economies? These wider questions, and more specific issues related to the characterization of Canada-U.S. cross-border regions emerge from this research, but, in our estimation the work discussed in the following sections clarifies the evolution, indeed the reinvention, of our borderlands, evaluates how they operate, establishes that they are subtle yet effective transnational constructs, and defines their place in emerging globalism.

Understanding the cross-border region requires knowledge of its components and of how these components work together to define the region and sustain it over time. Corridors, boundary structures, linkage points to national networks, intra-regional complementarities and shared visions of place are among the most important elements in realizing cross-border regional integrity and viability between Canada and the United States. This paper evaluates these and other components in several cross-border regions in order to illustrate how our cross-border regions change, yet remain resilient, in the face of international and intra-national forces.

### **Situating the Canada–U.S. Borderlands in the NAFTA-September 11<sup>th</sup> Transition**

The impact of September 11<sup>th</sup>, 2001 upon the Canada-U.S. border cannot be understood without reference to the dy-

Figure 1. Daily Truck Traffic, Canada–U.S. Border, 1986-2001



Source: <http://people.hofstra.edu/geotrans/eng/ch2en/appl2en/tranbordrev.html>

dynamic cross border relationship which had evolved under the North American Free Trade Agreement (NAFTA) well before the tragedy. If much earlier in the century it was possible to cross the Canada-U.S. land border with little appreciable effort in some regions, by the end of the twentieth century, the Canada-U.S. border had become more than a vaguely defined series of borderland communities and was increasingly functioning as a set of corridors and places of articulation for peoples and goods between the national economies. Trade between Canada and the U.S. had increased by approximately 152 percent since NAFTA was signed (figure 1 above), accelerating as the continental economy deepened. The need for efficient cross-border interaction grew proportionately, with a 122.5 percent increase in traffic over a period of approximately a decade and a half. The 1990s saw borderlands function increasingly as places where Canada and the U.S. joined—rather than divided—at very specific points, while the nature of the Canada-U.S. relationship was increasingly intermediated by more and more “focused” or perhaps even “economically specialized” borders.

The importance of land borders to the development of a continental economy was reflected not only in the overall size of the cross-border trade relationship, but also by the degree to which trade was carried in trucks through specific borderlands. There were, in the 1990s, approximately 130 border crossings between Canada and the United States, over which goods, vehicles and people

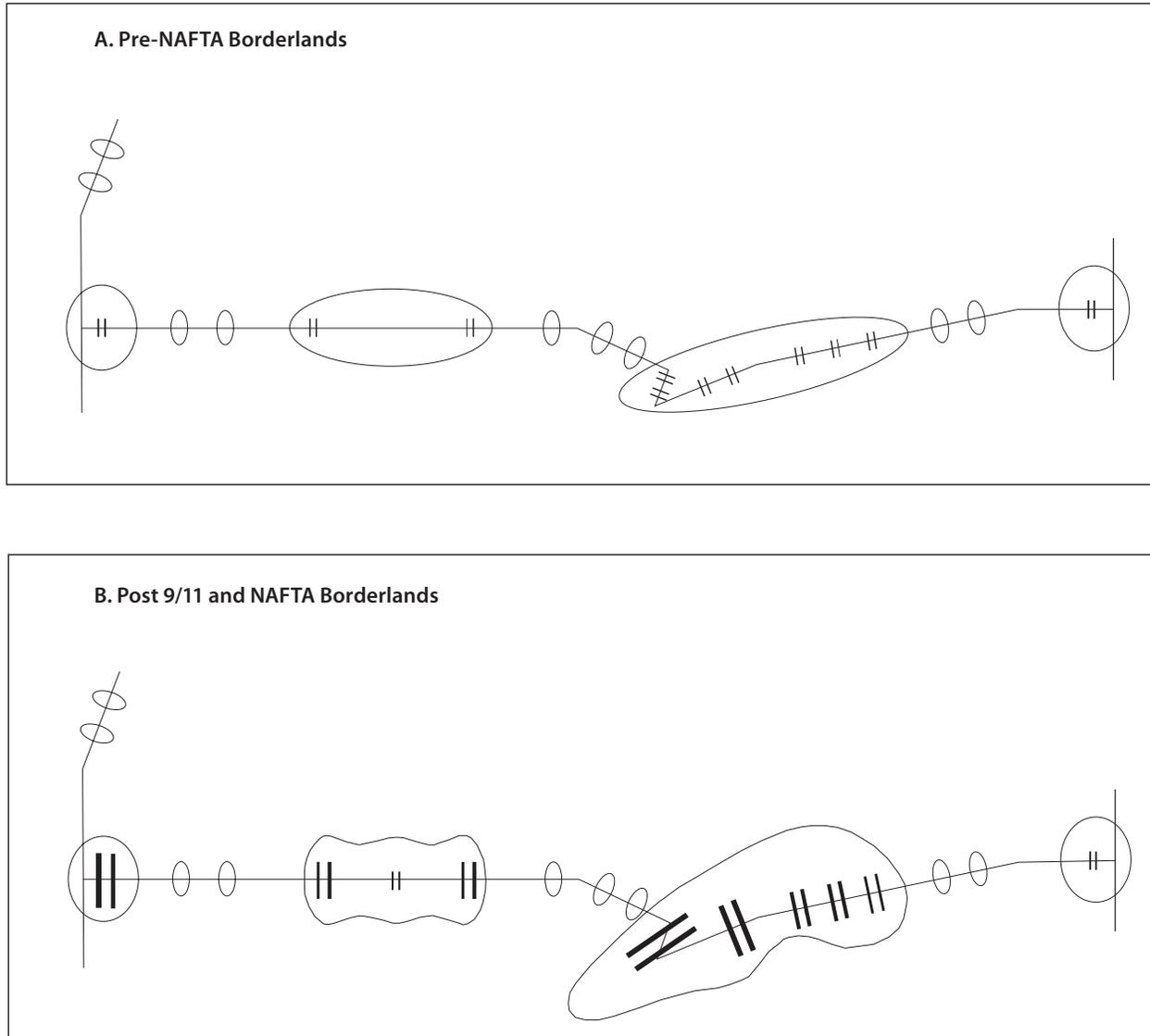
traveled, although their overall importance in facilitating cross-border trade, as indicated by the volume of truck traffic, varied. Most cross-border commercial traffic was recorded in Ontario throughout the 1990s, a situation that prevails today.<sup>2</sup>

Indeed, 52 percent of trade with the U.S. is trucked through four Ontario border points: Queenston, Fort Erie, Sarnia, and Windsor. The latter is responsible for over 25 percent of all cross-border daily truck movements in Canada.<sup>3</sup> These “goods first” oriented crossings, which even in the 1990s were the subject of an expanding infrastructure and increasingly efficient vehicular monitoring processes, reflect to the greatest extent the impact of the NAFTA upon the transnational experience.

On the other hand, there are borderlands which seem to have been little affected by the impact of the NAFTA. At many small and rural crossings in the western, northern, central and eastern interior of the continent, a sense emerged that the growing trade had little impact upon expediting the crossing process or in orienting the physical organization of borderlands and border crossing points. Indeed, the end result of this selective process was that the growing volume of trade in the late twentieth century served to refocus cross-border trade and borderland operations and heap them upon ten major transportation corridors linking coastal and continental United States with corresponding crossings in Canada. These joined the U.S.-Canada economies at strategic points, and “stra-

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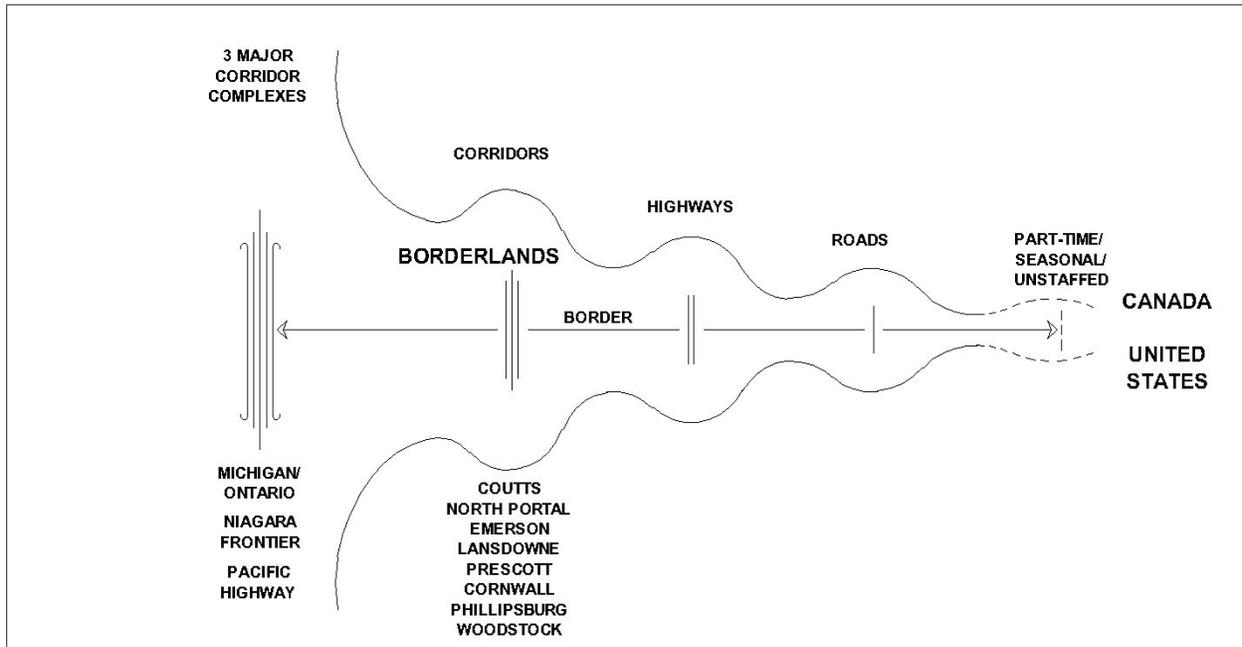
**Figure 2. A Conceptual Model of Changing Canada–United States Borderlands**



tegit” was increasingly defined by volumes of trade and truck traffic. Of the ten “high priority” corridors identified for special development by the U.S. government in 1996, five link with Ontario border crossings—most via the Great Lakes and St. Lawrence borderland primarily via the eastern and western borderlands of Lake Ontario and Erie.<sup>4</sup> Most of the remaining major cross-border transportation corridors are in British Columbia—primarily those linking Western Canada and the U.S. at the Pacific Crossing between Blaine and Douglas B.C. Indeed, the Pacific Highway crossing, linking Blaine in Washington with Douglas in British Columbia, handles approximately equivalent amounts of daily commercial truck traffic as Queenston, Ontario.<sup>5</sup>

If we visualize the pre-NAFTA borderlands between Canada and the United States as regional concentrations of cross-border interaction and activity along the boundary between the two countries, we can identify concentrations along the Pacific coast, in the western interior, in the Great Lakes and St. Lawrence lowlands, and finally on the Atlantic coast (figure 2 above). Although these concentrations varied in the intensity of economic exchange and the kinds of cross-border interactions before NAFTA, and the border crossings varied in traffic load, the border points exhibited similar features that reflect the nation state on either side of the border. In the 1980s, the United States government even exhibited consistent graphics, originated

Figure 3. The Canada–United States Borderlands Continuum



by popular artist Peter Max, at its border stations across the country.

In the post September 11<sup>th</sup> and NAFTA era, the conceptual model shows changes. The border crossings vary more considerably in size, complexity and relative importance. A hierarchy of border crossing places is evident, and these places may be grouped according to their magnitude of cross-border flow, integration of transportation modes, infrastructure development, and impact on the configuration of the surrounding borderlands (figure 3 above). A continuum appears in evidence from the three major corridor complexes dominating the flow at groupings of strategic locations in Southern Michigan/ Southwestern Ontario, the Niagara Frontier and the Pacific Highway, to the growing number of marginalized crossings, some part-time, seasonal or non-staffed. Also more marginalized are the smaller road crossings in less populated cross-border regions along the Alaska-Yukon/B.C., western interior, upper Great Lakes, and northeastern boundaries. Cross-border activities in these regions are more localized, with economic activities often limited to regional commerce and primary industry trade. A secondary set of corridors is, however, growing as well at strategic regional crossing points, often linking U.S. Interstate Highways with major Canadian highways and rail links. These corridors are relatively evenly distributed across the continent. Combined with the three corridor complexes, these secondary cor-

ridors are emerging as the new era portals between the United States and Canada.

The patterns of corridor enhancement and increasing specialization in cross-border trade are not accidental, but are related in large measure to change in the structure and location of the automobile industry. Increasingly, the trade consists to a large part of huge volumes of trade which has become an integrated manufacturing economy, largely, though not uniquely, based on the automotive industry. Indeed, “for the private sector, the border is essentially in the middle of the production line, representing a significant transactional factor for just-in-time delivery systems.”<sup>6</sup> Pressure from a transnational economy gave borders a new currency as points of articulation in an economic system, rather than as the divisive edges of one sovereign state and another. For example, even before the Twin Towers fell, in both 2000 and 2001, both Canadian and U.S. governments set aside \$665 million in funding for border infrastructure under the Border Infrastructure Fund (BIF) and the Strategic Highway Infrastructure Program (SHIP).<sup>7</sup> This new attention to infrastructure was accompanied by significant changes to border management to facilitate cross-border traffic—mainly in the form of technological innovations to ensure speedy movement of what amounted to heightened flows of trucks and vehicular traffic. The bulk of these expediting efforts remained focused on the busiest border crossings in the Ontario and also in the burgeoning Pacific coast area. NEXUS,

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FAST and a host of other experimental programs were initiated to test pre-authorized, high frequency border crossings, while attention to new infrastructure and dedicated lanes was planned. It was part of a plan encouraged by federal authorities who observed, approvingly, that “State, provincial and municipal authorities are forming North-South corridor regions to improve trade, market tourism, and promote foreign investment and exchange best practices.”<sup>8</sup>

Thus, two very important features of the new function and definition of North American borders had taken their cue from the west-coast and Central Canada experience in terms not only of the need for better management approaches to facilitate an increasingly “goods first” approach to cross-border flows, but also in the desire for policy to address the issue of infrastructure and increased traffic in a comprehensive way. They set the stage effectively for cross-border regionalism, and these forces continue to shape it after September 11<sup>th</sup>.

Since September 11<sup>th</sup>, of course, borders have seen a dramatic re-orientation of methods and means of scrutiny. Yet the critical groundwork was laid in the late twentieth century, particularly in the 1990s, with efforts to build a cross-border dialogue with the United States, and effectively to reinvent the Canada-U.S. borderlands as trade corridors. One of the most significant instruments to develop with respect to the latter was the Joint Border Agreement: The Canada-U.S. Accord on Our Shared Border.<sup>9</sup> The Shared-Border process, initiated in 1995 (ostensibly because of the increasing importance of cross border trade and traffic) was announced with much fanfare: Canada and the U.S., it declared, had developed a program whose mandate was “to develop a vision for the border that develops and preserves its open character, while protecting our communities.” But the selection of “community” was an interesting choice because involved in this initiative were numerous, different agencies: the U.S. INS, Canada Immigration and Customs, the U.S. Customs Service, Canada’s Customs and Revenue Agency, the U.S. State Department and Canada’s Department of Foreign Affairs and International Trade. Each of these state agencies was to identify areas in which enhanced cooperation and efficacy would expedite cross-border flows, mindful of the need for security. In fact, there was little evidence of community at all in the processes; rather it suggested that the role of the binational borderlands communities, cross-border settlements and neighborhoods which had shaped the nature of the cross-border relationship prior to September 11<sup>th</sup> were to give way to new a new era in border control—a portent, perhaps, of things to come.

It was at this juncture that a new and dialectical border discourse emerged—based upon the idea that two goals which appeared to be diametrically opposed—trade and security—could be combined into one. This new border dialectic was an important justification for the Shared Border Agreement, setting the stage for a new way of thinking about the structure and mechanics of bilateralism. The Shared Border discourse was rapidly fortified by the Canada-U.S. Partnership (CUSP), was set in place in 1999, and then enhanced by the U.S. INS-CIC Border Vision and Cross-Border Crime Forum, shortly before September 11<sup>th</sup>.<sup>10</sup> That was an agenda for the twenty-first century, outlining a vision which streamlined and harmonized border policies and management.

The “CUSP” and INS-CIC programs were, in many respects, a continuations of the Shared Border Accord, in that their intention was to maintain a process of cross-border consultation and to facilitate an expanding cross border trade. It was also, in many respects, a model for the Smart Border Accord which followed in December 2001.<sup>11</sup> Central to the CUSP was the prospect of establishing a binational consultation process, with governments, agencies and private sector groups (stakeholders in the cross-border businesses), to establish “best practices in border management.” Some best practices included the Pre-arrival Processing System and Customs Self-Assessment Program for cargo, NEXUS identification cards for passengers, the Remote Video Inspection System/Remote Ports Program for non-staffed ports, and the Integrated Border Enforcement Team.<sup>12</sup> Significantly, these initiatives were not rooted in the context of community but in government agency, often integrating various departments and levels of government institutions. In areas such as Cascadia, where binational cooperation has traditionally been cultivated at the level of cross-border regional and municipal governments and NGOs, this comprised a dramatic change.

Another dramatic change was apparent in the fact that the CUSP agreement specifically identified the requirement for “risk management” approaches to facilitate trade while maintaining security.<sup>13</sup> It advocated using high tech border processes, policies and procedures to facilitate the flow of goods and peoples. Risk management strategies refocused borders upon their function as conduits of economic exchange. They promoted efficient “goods first” security strategies rather than alternatives such as furthering binational capacity for cross-border community, cultural exchanges or environmental cooperation. The Commercial Vehicle Processing Center (CVPC) initiative, for example, was a part of this new “risk management” regime.

It was first developed in 1999, encouraging cooperation in “Contraband Detection Terminology” as an integral part of this process—including the use of chemical and x-ray system projects. Vapor detection systems for cocaine, potassium 40 prototype systems for bulk marijuana, pallet X-ray systems, canine detection and other narcotics controls were also planned under the umbrella of the CVPC initiative.

Other new or continuing risk management initiatives included enhanced passenger processing systems like CANPASS, PORTPASS and NEXUS, all working on the idea of harmonized highways, NEXUS, for example, was a low-risk, pre-approved traveler border-crossing pilot project which required license plate readers and identity cards. In some areas, such as the Pacific Coast, these or similar programs, had been in place as early as 1997. Also important under the CUSP and Shared Border initiatives were efforts to improve in-transit highway checks or to create simplification of the border-crossing process—in some cases moving the inspection process away from the border itself—while stepping up attempts to streamline commercial traffic checkpoints.

If the impetus and justification for these initiatives appeared to be “strategic,” promoting economic co-operation and reducing risk to national economic security, the NAFTA became the flash-point for consensus, motivating cooperation for economic integration at the continental level. The latter was not only critical, but increasingly recognized as such because by the late 1990s the Canada-U.S. trade relationship had become the largest in the world. In terms of the bigger picture, then, the CUSP and Shared Border agreements were significant because they acknowledged and formalized two new organizational relationships at the Canada-U.S. border. One, as we have seen, was the importance of risk management and risk management technologies, many of which provided the basis for practices and policies currently in use at specific border posts. The other important outcome was recognition of the burgeoning degree of globalization in which the two-way Canada-U.S. trade relationship was embedded. Even the CUSP report openly acknowledged as much: on the one hand it argued that “risk management” would be an “effective way to expedite low-risk travelers and goods while focusing limited resources on those more apt to pose problems.” For example, programs utilizing smart-card technologies or alternative accounting methods could have significant positive impact. “Intelligent Transportation Systems” offer potential for more efficient use of cross-border transportation networks.<sup>14</sup>

One the other had, the CUSP report noted that “we must be vigilant and cooperate closely to prevent these groups from taking advantage of this openness and playing on the differences between our policies and procedures to move arms, drugs and people to and through our two countries. Improvements in strategic controls away from the border, and cooperation in alleviating the sources of global threats, including those off our shores, could remove much of this advantage and decrease pressures on our internal border.”<sup>15</sup>

In summary, cross-border technologies deployed under the NAFTA to the eve of September 11<sup>th</sup> were designed to facilitate greater economic interaction while maintaining security and protecting against all aspects of cross-border crime. This fact indicated, not a decreasing concern with tracking and facilitating cross-border flows as the volume of trade increased under the framework of NAFTA integration, but rather an increasing concern, making the very idea of “open borders” an oxymoron. Developments in the structure and function of borderlands, as well as in bordering policies and programs, reflected the need to deploy “high tech” to militate against the threat of international transportation “gridlock” while controlling for security threats. As such, a new dialectical function for the border emerged: it had to be both open and closed simultaneously. Indeed, somewhat prophetically, given the events of the following year, the CUSP Forum announced in December 2000 that “Global integration and competition are pushing us toward a seamless border. Yet at the same time, open borders and modern transportation systems provide transnational organized crime organizations reliable and affordable means for conducting illicit activities worldwide.”<sup>16</sup> The latter was to become the overwhelming challenge for North American borders in the post-September 11<sup>th</sup> period.

So accompanying a general effect in transportation infrastructure and trade orientation has been the shifting of regulatory functions, practices and programs to specific borderlands and of the increasing structural and functional specialization of specific crossing points. Indeed, Jason Ackleson suggested, well before the September 11<sup>th</sup> tragedy, that

policy changes vary in degree on both northern and southern borders, but range from using high-tech surveillance systems borrowed from the military, to posting more guards, to actually constructing physical barriers. This ‘rebordering’ or ‘reterritorialisation’ contrasts markedly with concurrent moves to increase economic growth and interdependence by

freeing capital and trade under the North American Free Trade Agreement, and with long patterns of transnational socio-cultural interaction and interdependence that have characterized the borderlands, the wide swath of land which transcends the political boundary and bears unique characteristics.<sup>17</sup>

In recent years that has meant that the most active border regions, in terms of cross-border traffic and trade, have become increasingly important to the process of regulation of trade and immigration and the monitoring of cross-border security. This development is significant to the post-September 11<sup>th</sup> period because it set the stage for the way in which both Canada and the U.S. responded at the border to the tragedy. It conditioned their choice of rhetoric, border check protocols, binational agreements and policing and monitoring technologies. What was to differ, as we shall see in the following section, was not the fact that borders were “open” and then “closed,” but rather the way in which certain, if not all, cross-border regions have in fact become sub-national theatres of homeland security implementation, as well as conduits for deepening the transnational economy. The former concern, only a sidebar in the pre-September 11<sup>th</sup> era, is now the main event to which trade concerns must adapt effectively.

### **The State of the Borderlands in the Post September 11<sup>th</sup> Era**

Cross-border regions between the United States and Canada remain geographically distinct, defined by their traditional alignments north and south astride the boundary running from east to west. Since September 11<sup>th</sup> and the U.S. focus on homeland security these cross-border regions have in fact become sub-national theatres of homeland security implementation where national agendas have been articulated according to regional traditions of cross-border interaction.

In the Atlantic Provinces and New England cross-border region, the “lock down” after September 11<sup>th</sup> was swift as border agencies reacted to the possibility that terrorists had entered the U.S. through relatively quiet crossings between Maine and New Brunswick. This cross-border region, however, retains strong traditions of north-south mobility, extended family linkages across the boundary, cooperative arrangements, and a shared identity. Adjustments to the new security arrangements at the crossings developed rapidly on both sides of the border. Air traffic across the border in this region remains limited, and, consequently, the new air security measures did not have

as great an effect here as in the heartland regions of the St. Lawrence and Great Lakes immediately to the west. In the heartland the full impact of lock down and subsequent heightened security measures was seen in trade disruption, air passenger declines, unprecedented border-crossing line-ups, and redistribution of freight traffic. These impacts remain evident here and in the regions to the west where trade and passenger traffic is also funneled through corridors comprised of parallel surface and air routes across the border. Only along the Alaska-Canada boundary, where crossing points are small, limited in trade and traffic capacity, and far removed from major cross-border flows, were post September 11<sup>th</sup> changes not as apparent.

All of the cross-border regions experienced the impact of the heightened security measures, albeit in varying degrees, often directly proportional to the amount of traffic crossing the border. The greater the cross-border flow, the greater was the strain experienced by travelers and business concerns. Wait times, line-ups, personal inconvenience, enhanced official scrutiny, all added up to financial cost and anxiety about crossing the border. Everyone has a September 11<sup>th</sup> story, and many Canadians have September 11<sup>th</sup> border crossing stories. Mine found me in Washington, D.C., on the morning of September 11<sup>th</sup>, the capital in a state of emergency, everyone evacuating, planes grounded. Fortunately, I had rented a car at National Airport when I arrived early that morning, and, after the traffic subsided, I was able to drive back to Ottawa. Almost two hours of the ten hours enroute were spent in line at the Ivy Lea crossing, where I witnessed first hand the impact of the border lock down as I attempted to leave the United States and re-enter Canada. I was fortunate. Crossings at major ports of entry like the Ambassador Bridge between Detroit and Windsor required considerably more time on September 11<sup>th</sup> and shortly thereafter. Today, the delays continue. Three years after September 11<sup>th</sup> the lines and the scrutiny are still apparent. A recent crossing at Ivy Lea found us waiting for almost two hours for processing a routine customs declaration as we entered the United States. That gave me time to survey the new security landscape of the border crossing. In addition to the enhanced screening procedures by customs and immigration personnel, the crossing bristled with security equipment and weaponry. Around the perimeter, prefabricated brokerage buildings attested to the heightened complexity of moving goods across the border.

The strain of border crossing has been reinforced by additional threats. Several epidemics impacting humans directly and indirectly have heightened health security measures between the United States and Canada. The

SARS outbreak in Asia quickly spread to North America, and particularly to Toronto and Vancouver. Mad Cow disease traced to Alberta devastated the beef cattle industry throughout Canada and immediately halted exports to the United States. A recent occurrence of Avian Influenza identified in British Columbia has had similar impact on the cross border trade in poultry. Germs, as well as terrorism, have heightened border security.

The state of the borderlands in the post September 11<sup>th</sup> era is not chaotic or tense in spite of the constant challenges to security during the past three years. Americans living in the cross-border regions, and particularly Canadians, who mostly reside in these areas, have adjusted to the new security arrangements. Allowances have been made for border-crossing procedures. Once viewed as formalities, border-crossing requirements are increasingly viewed as necessary steps of vigilance and the costs of doing business. The cross-border regions of Canada and the United States have become operational border regions.

### **Re-envisioning Boundaries and Corridors**

We have seen that although the events of September 11<sup>th</sup>, 2001 have led very rapidly to a new perspective on the boundary between the United States and Canada, there is a degree of continuity in the process, not only in the sense of how Canadians and Americans perceive the border, but in terms of border practices and policies already instigated prior to September 11<sup>th</sup>. Ackelson suggested in the late 1990s that a close examination of the U.S.-Canadian borderlands “uncovers anything but completely differentiated spatial identities. Instead, a rich and vibrant historical mosaic of cultural, social, and economic interaction transcends this arbitrary political boundary. Moreover, growing transnational flows and contacts (among migrants and others) under NAFTA are prompting such increased integration and potentially contest the collective identities within the greater North American political ‘space.’”<sup>18</sup> That was to change after September 11<sup>th</sup> in many ways.

Canadian views of the boundary, for example, have always been different from their American neighbors’ views. Canadians have always viewed the border as permeable and an extension of the special and reciprocal relationship between the countries. After September 11<sup>th</sup> the American perspective changed, and the U.S. government chose to place spikes on the good fence between neighbors. These national differences lead to the polarization of thinking about borders and the development of specific national constituencies: security concerns came from the United States, trade concerns came from Canada. The height-

ened security measures were initially seen as an affront by Canadians, but indignation soon turned to practical measures to help expedite security, enhance the flow of people and goods, and re-establish the positive cross-border relationship.

Indeed, the immediate challenge for policy-makers in the post September 11<sup>th</sup> period was to merge the two viewpoints into a broader understanding about secure trade. From a Canadian perspective that was necessary because, between 2001 and 2002, Canadian-based “for hire” trucking firms carried nearly eight million shipments across the border for a total of Can\$7.3 billion in revenue. That was an increase of approximately seven percent from the previous year (although growth in 2002 continued, but at a slower rate, falling slightly in the following year).<sup>19</sup> Obviously the shutdown shock of September 11<sup>th</sup> was to be replaced by a bigger problem—the problem of more vehicular traffic undergoing increasingly onerous border checks. These were increasingly time consuming and complex and increasingly targeted towards high-volume land border posts, where 66 percent of the two-way trade between Canada and the U.S. was carried by trucks.<sup>20</sup> Nonetheless, it was clear, given the significance of September 11<sup>th</sup> upon American security consciousness, that these problems were to remain in place for the long run.

So even after September 11<sup>th</sup>, even after borders had reopened for business, delays in commercial crossings were increasingly common. In 2003, for example, over 60 percent of cross-border commercial traffic experienced delays anywhere from one to eight hours in length—the bulk of delays being one to two hours on average.<sup>21</sup> Clearly the increase in border crossings as a result of a growing continental trade was one reason for the delays, but attempts to more closely monitor traffic also took their toll. Under the burden of increasing scrutiny for security purposes, the problem of increasing traffic and border delays already apparent in the 1990s, intensified. The result has been staggering: in 2004 alone, the Ontario government estimated the cost of these delays to be approximately Can\$13.6 billion binationally from all border crossings—or Can\$8.34 billion to Canadians alone.<sup>22</sup> If they had not noticed before, the sheer costs involved in increasing border scrutiny have forced Canadian and American authorities to pay attention. The result has been new measures to expedite, control and manage the flow of peoples and goods, some promoting greater divisions, others facilitating closer interaction between the two nations. To some, that represents greater coordination and harmonization, whereas for others, it suggests “tokenism” in the sense that Canada-U.S. trade flows continue to develop without substantial

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challenge to the concept that economic borders should be porous. Thus, the concept of “harmonization” is itself left open to interpretation.

For example, in the U.S., in response to the problem of delays, intensification of border security has been met with a tripling of border guards along the Canada-U.S. border—whereas only a few hundred served before, over 1,000 border guards are now deployed<sup>23</sup>—in conjunction with the development of new enabling technologies and dedicated infrastructure to facilitate pre-cleared traffic. The result in the United States has been the development of what might be termed a more militaristic border. Certainly, the Border Guard has adopted a more militant stance. In promoting border security, Customs and Border Control have identified themselves more closely with militaristic imagery. One need only peruse “news events” or “photographs” under the Customs and Border Control website to appreciate this point, or to contrast archival photographs, such as those at the Wellesley Island crossing post in New York State, with contemporary border post images online. The iconography and infrastructure of state are much more highly visible in the latter period, both in defining individual posts and in defining the Customs and Border Control agency more generally, or to new “noteworthy practices” discussed below, including “electronic signage” initiatives or camcorder broadcasts of cross-border choke points on both sides of the border.

In Canada, similar adjustments have been made, both on land and in ports and airports. Borders are well demarcated, the symbols of state prominently displayed, and surveillance and policing personnel and devices prominent. Yet, increasingly, it is clear that, although the regulatory procedures at the border demand more onerous accountability for cargo and immigration, they are not necessarily matched by expediting technologies, despite the best intentions of binational agreements. The problem of sheer increase in volume of flows compounds the issue, and prior to September 11<sup>th</sup> concerns rested more with expedition of ever larger traffic flows than increasing the monitoring of the flows. Now, however, after that event, even with potentially fast-tracking technologies, the problem is not just moving traffic but moving it under heightened regulatory control; and, as always, each year the volume under control is increasing at an unprecedented rate.

That means that, although trade has ostensibly held steady or increased, the conditions under which cross-border trade occurs have become increasingly burdensome. As under the NAFTA, the result of this conundrum in the post-September 11<sup>th</sup> era—more, but slower—has touched off a series of new initiatives designed to heighten security

in a conventional sense, yet to promote expedited trade. Again, the process is not unlike that at the end of the twentieth century when the Shared Border, CUSP and cross-border crime initiatives turned to enhanced technologies. New technologies, or what the Border Guard has called “noteworthy practices” (see table 1), include the Pre-Arrival Processing System (PAPS), the International Mobility, Trade Corridor Project (IMTC), FAST and NEXUS—the latter involving single time pre-clearance or security authorizations for multiple border crossings. Most of these systems or practices require the use of barcode, biometric and other types of “high tech” application. Indeed, there have been close to 30 new high tech and pre-authorization initiatives in practice at the U.S. and Canada border in recent years (see table 1 next page).

Enhanced policing and border patrol initiatives have also gained increased attention in the post September 11<sup>th</sup> era. Although true that “security” may be considered as a “lock” mechanism in terms of its function on border permeability, the building of binational Canada-U.S. border policing mechanisms fall under the second level of transborder adjustments to September 11<sup>th</sup>—the cultivation of a binational context for cooperation—with capacity building in terms of community as well as the creation of infrastructure. For example, Canada and the United States governments respectively have both allocated national funds for specific projects designed to increase the effectiveness of internal border policing. In 2003, for example, the U.S., allocated a 29 percent increase in the INS budget, along with a 36 percent increase to the Customs Service and a significant increase to the Coast Guard.<sup>24</sup> Similarly, Canada has recently committed funding to a host of new national programs designed to heighten security. These include \$137 million for enhancing security capabilities, just over \$99 million for fully implementing the RCMP Real Time Identification Project and improving the national fingerprint system, and approximately \$10 million for the Passport Security Strategy, including facial recognition biometric technology on the Canadian Passport in-line with international standards.<sup>25</sup>

In addition, there are a series of very recent Canadian initiatives to build internal capacity, including projects such as the creation of the Integrated Threat Assessment Centre and Government Operations Centre designed to make the sharing and dissemination of threat information more efficient and coordinated; the creation of Health Emergency Response Teams made up of health professionals, to increase national ability to respond to health emergencies; and the convening of a high-level national Cyber-security Task Force to develop a National Cyber-Security

Table 1. Noteworthy policies and practices at the border

Title	Title	Location	
NP-1	Border Release Advanced Screening & Selectivity	Detroit, MI (Wayne County)	U.S. Customs & Border Protection
NP-2	Electronic Mailing Lists	Port Huron, MI	U.S. Customs & Border Protection
NP-3	Electronic Signage	Port Huron, MI	U.S. Customs & Border Protection
NP-4	Pre-Arrival Processing System (PAPS)	Detroit, MI (Wayne County)	U.S. Customs & Border Protection
NP-5	Pre-Arrival Processing	Port Huron, MI	U.S. Customs & Border Protection
NP-6	Pembina/Emmerson Alliance	Pembina, ND/Emerson, Manitoba Ports of Entry	U.S. Customs & Border Protection
NP-7	Commercial Vehicle Processing Center and the U.S. Customs Service's Pre-Arrival Processing System (PAPS)	Peace Bridge, Fort Erie, Ontario Canada for U.S. Bound Commercial Traffic	Buffalo and Fort Erie Public Bridge Authority (The Peace Bridge)
NP-8	Pre Arrival Processing System (PAPS)	Port of Buffalo/Niagara Falls NY - Note, this may also be employed in Detroit & Port Huron, MI, Champlain & Alexandria Bay, NY, and Blaine, WA.	U.S. Customs & Border Protection
NP-9	NEXUS	Blaine, WA; Pt. Huron, MI; Scheduled Peace Bridge - Buffalo, NY; Ft. Erie, Canada Jan. 2003	U.S. Immigration, U.S. Customs & Border Protection, Canada Immigration, Canada Customs
NP-10	Truck Driver Training School	Alexandria Bay, NY Jefferson County	U.S. Customs & Border Protection
NP-11	Driver Manual - Border Crossing Procedures	Port Huron and other Northeastern Ports	Bowen Enterprises, Inc.
NP-12	Automated Equipment Identifier (AEI)	Washington State, Counties of Pierce, King and Whatcom, Cities of Seattle, Tacoma and Blaine	U.S. Customs & Border Protection
NP-13	Binational Rideshare Program	Northwest Washington State (Whatcom County) and Lower Mainland British Columbia	Whatcom Council of Governments
NP-14	International Mobility, Trade Corridor Project (IMTC)	Washington State, Whatcom County, Bellingham, Blaine and British Columbia, Municipalities of Surrey, Vancouver, etc.	U.S. Customs & Border Protection
NP-15	The International Mobility and Trade Corridor Project (IMTC)	Border region joining western Washington State and lower-mainland British Columbia	Whatcom Council of Governments (MPO)
NP-16	Coordinated Commercial Vehicle Operations (CVO) ITS Projects	Border region joining western Washington State and lower-mainland British Columbia	Washington State Department of Transportation - Advanced Technology Branch
NP-17	Cascade Gateway 2000 Trade and Travel Study	Border region joining western Washington State and lower-mainland British Columbia	Whatcom Council of Governments (MPO)
NP-18	Cross-Border Advanced Traveler Information Systems (ATIS)	The Peace Arch and Pacific Highway ports-of-entry joining U.S. Interstate 5 and British Columbia Highway 99	Whatcom Council of Governments
NP-19	Cross-Border Regional Traffic Model	Northwest Washington State and Lower Mainland British Columbia	Whatcom Council of Governments
NP-20	Southeast Michigan/Southwest Ontario Binational Transportation Planning	Seven counties in Southeast Michigan (Wayne, Oakland, Macomb, Monroe, St. Clair, Washtenaw and Livingston) and five counties in Southwest Ontario (Essex, Kent, Lambton, Elgin and Middlesex).	SEMCOG

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<b>Title</b>	<b>Title</b>	<b>Location</b>	
NP-21	Pre-Approved Travel Program Marketing & Outreach	Marketing and extends to the Cascade Gateway border region, including Whatcom County, Washington State, and the Lower Mainland of British Columbia	Whatcom Council of Governments
NP-22	FAST (Free and Secure Trade)	U.S. & Canadian POEs at Blaine, WA-Douglas, BC; Port Huron, MI-Sarnia, ON; Detroit, MI-Windsor, ON; Buffalo, NY-Ft. Erie, ON; Lewiston, NY-Queenston, ON; Champlain, NY-Lacolle, PQ.	U.S. Customs & Border Protection
NP-23	Niagara International Transportation Technology Coalition (NITTEC)	Buffalo, New York - Fort Erie, Ontario - Niagara Falls, New York - Niagara Falls, Ontario - Lewiston, New York - Queenston, Ontario	NITTEC
NP-24	Queue Detection Trailers	I87 Border Crossing at Champlain, New York, to Province of Quebec I81 Border Crossing at Wellesley Island, New York, to Province of Ontario	New York State DOT
NP-25	International and Intergovernmental Coordination and Cooperation, Calais - St. Stephen Area New International Border Crossing Preliminary Design and NEPA Compliance	Calais, Maine and St. Stephen, New Brunswick, Canada	Maine DOT, New Brunswick DOT, FHWA, GSA, and Canadian Border Services Agency

Source: United States Department of Transportation - Federal Highway Administration

Strategy.<sup>26</sup> One of the newest rounds of capacity building includes an agreement, reached in May of 2004, between the Canadian and U.S. government and partner agencies to spend Can\$323 million to build more infrastructure along the border at specific Ontario border crossings. They announced that “the governments of Canada and Ontario, together with the Niagara Falls Bridge Commission confirmed a joint funding agreement of \$281 million for improvements to highways and border-crossing infrastructure in the Sarnia, Niagara and London areas. This joint funding will support capacity upgrades to the Queen Elizabeth Way and Highways 401, 402 and 405 in Southern Ontario, as well as to the Queenston-Lewiston Bridge.”<sup>27</sup>

On another level, however, are the post September 11<sup>th</sup> bilateral agreements designed to reorganize the relationship between Canada and the U.S. at the border. For example, in December of 2001, following discussions with American decision-makers over border security and responding to the newly identified “risk” posed by Canada-U.S. borders, former Minister of Foreign Affairs and International Trade John Manley told Canadians that they were entering an era of “smart borders” with Americans: “Since signing the Smart Border Declaration, Canada and the United States have proven that tremendous progress

can be made through close cooperation and a commitment to an effective philosophy of risk management.”<sup>28</sup> The Smart Border laid out specific types of technological interventions which were to guide the cross-border relationship in the future. It outlined a thirty-point “Action Plan,” based on four pillars, which provided for on-going collaboration in identifying and addressing “security risks” while “efficiently expediting” the “legitimate flow of people and goods” across the Canada-U.S. border. The border agreement was signed by both Canada and the U.S., amidst fanfare that a new era in security had begun.<sup>29</sup>

But had it? As we have seen, the new security agenda in the post September 11<sup>th</sup> era was already constrained by patterns and expectations in levels of cross-border activity determined under the NAFTA. North America, at least at the Canadian and American interface, was not a “borderless North America” regardless of popular media misconceptions. To a large extent, Smart Borders had already been implemented. Although the discourse of security had changed since September 11<sup>th</sup>, assuming a more frantic and aggressive presence in the public arena, in actual fact the basic proposition, if not many of the locking mechanisms of bordering under conditions of a new economic and security climate, was already in place and had been for

at least half a decade. Smart Borders were a product of the NAFTA as much as they were of September 11<sup>th</sup>. Rooted in the facilitation of cross-border trade and environmental cooperation, the need to deploy “high tech” on the border, to mitigate against a growing international regulatory and transportation “gridlock” with important consequences for trade and commerce, while controlling for security threats, had been foreseen. The “leaky” Canadian border, while a convenient metaphor to whip up a heightened sense of urgency as “globalization” versus “security” became polar opposites, was not really so leaky after all. It was, and had been for some time, more strategically porous than devastatingly vulnerable. Indeed, the metaphor of vulnerability, and the urgency of efforts to “circle the wagons” or “prevent the dam from bursting at the seams,” were based more on fiction than fact. Jason Ackelson, writing prior to September 11<sup>th</sup>, 2001, observed just this trend and linked it to a more comprehensive trend situated within the process of globalization itself. He noted:

American border policy in the 1990s and at the beginning of the twenty-first century increasingly favors tightened or ‘hardened’ ‘control’ of state boundaries, seeking to seal them from unofficial incursions by undocumented workers or drug flows, presenting the ‘image’ that these flows are being reduced and ‘chaos’ is leading to ‘order’. Policy changes vary ... but range from using high-tech surveillance systems borrowed from the military, to posting more guards, to actually constructing physical barriers. This ‘rebordering’ or ‘reterritorialization’ contrasts markedly with concurrent moves to increase economic growth and interdependence by freeing capital and trade under the North American Free Trade Agreement (NAFTA) and with long patterns of transnational socio-cultural interaction and interdependence that have characterized the borderlands, the wide swath of land which transcends the political boundary and bears unique characteristics. Thus, in a moment of globalizing late modernity, the traditional state apparatus (and our accompanying theoretical understandings and reproductions of it) reimposes itself.<sup>30</sup>

That leads us to consider, after September 11<sup>th</sup>, how the discourses that situated borders within a popular and political framework emerged on both sides of the borderlands and how this discourse united and divided borderlands in new and not so new ways.

### Externalization of the Threat: Building a New Discourse on Nationalism and Transnationalism

Whereas before September 11<sup>th</sup> much of the redefinition of borderlands was involved in describing their new role as points of articulation between national economies, clearly, after September 11<sup>th</sup>, the function of the Smart Border was to “externalize the threat” of terrorism to North American borderlands by bolstering the border function more clearly in the area of security as well as trade and by joining Canada and the U.S. in an “Action Plan” that effectively attempted to harmonize security and immigration issues. Although not the equivalent of a *Shengen Treaty*, such as the European Union had already negotiated and implemented in the 1980s and 1990s, the Smart Border was not unlike the latter in its desire to build “fortress America”—although the North American term for the process was “security perimeter.” The idea was predicated on the belief, at least in the USA, that American security and safety was only as good as the weakest link, and that the weakest link was perhaps to be found in the borderlands shared with the U.S.’s “neighbors.” Particularly relevant to this assumption was the growing idea among Americans that there was a vast and “insecure” Canadian “frontier.”

Since September 11<sup>th</sup> a rhetorical sense of risk has been constructed in the U.S., principally by the media, but also in political dialogue and texts. This risk discourse externalizes the inherent security threat to the U.S. and shifts scrutiny towards the outside borders of “America.” There is a sense of the northern borderline being a dangerous frontier, a frontier where a less competent neighbor state, slightly suspect, has been charged with the task of ensuring the safety of North Americans. Recent years have seen the development of what can only be considered a popularized geopolitical narrative, supported by a series of images which, as their inspiration, draw upon such unlikely places as Fort McMurray in northern Alberta, or Indian Reservations in Ontario and upstate New York. These are places where “foreigners” (Arabs and South Asians) are believed to conceal themselves and cross unimpeded into a vulnerable, and ultimately more diligent, America. For example, in the early hours after September 11<sup>th</sup>, there was growing speculation in the U.S. that Canada and Canadian borders had somehow been to blame—that Canadian policies and border practices were not adequate to maintain continental security. Canadian immigration policy was criticized as being too lax, Canada’s refugee program too soft, and the miles of undefended border a “problem” rather than an asset. “Top officials from states along the U.S.-Canadian border told Congress that they needed more help to

tighten the porous 4,000-mile boundary line in the fight against terrorism. The officials said terrorists can still pass easily over hundreds of rural, unstaffed crossings, and they charged that delays at many checkpoints were hurting the economy.<sup>31</sup> Indeed, although no September 11<sup>th</sup> terrorist came from Canada, the Center for Immigration Studies (CIS) in Washington was provoked to make policy recommendations based upon the fact that “leaving the borders largely undefended is an invitation for terrorists to do as attempted Brooklyn subway bomber Gazi Ibrahim Abu Mezer did; having been denied a visa, he simply went to Canada and snuck across the border.”<sup>32</sup> This focus on immigration is consistent with the identification passage of the *Illegal Immigration Reform and Immigrant Responsibility Act* of 1996, Section 110 of which has not entered into force but which is specifically designed to rebuild the Canada-U.S. border relationship.<sup>33</sup> The Canada-U.S. border has recently become the focal point for a new American security narrative which focuses upon the perils of the outside world and its peoples, and the problem that sharing a continent entails.<sup>34</sup> For example, even as this paper was being written, the news broadcast a story concerning an unfortunate incident at the Niagara border where a woman’s shared visible ethnicity and her physical proximity to a drug smuggler in the process of being arrested by American border guards resulted in her suffering physical abuse, despite the fact that she had no connection whatsoever with the individual and was nearby quite by chance. Such short tempers and ethnic targeting represents the unfortunate underside of a heightened process of due diligence, where “security threat” is geographically externalized and borderlands assume important new proportions as a last defense against tragedy.

To Americans, of course, it is the Mexican border, rather than the Canadian border which represents the greatest threat, although both are seen as such, regardless. Still, there is a general sense, at least within the popular media and popularized security discourse, that Canada is “failing” in border security and that greater Canadian governmental intervention is required. That is essentially a U.S. perception, however, in the sense that protecting American borders is the role of the U.S. government and its state apparatus, whereas protecting Canadian borders is Canada’s job. Thus, it is not the fact that U.S. efforts to enhance border security have been less significant on the northern borderline that is a source of concern, but rather that Canadian and U.S. efforts in this area are essentially seen as “tokenism.” Canadians are most concerned with structuring border security to retain and enhance access under conditions of heightened security, reflecting the

crucial role of the continental economy in Canadian economic well being. The U.S., on the other hand, is consumed with the need for border security for protection. Sands suggests, in fact, that to Canadians the special nature of Canada’s bilateral relationship with the U.S. and its relationship with the U.S. border and business community triggered the CUSP response to pre-September 11<sup>th</sup> security concerns in the U.S.<sup>35</sup> It thus remains difficult for Canadians to compete within the post September 11<sup>th</sup> global economy, without a strong commitment by both nations to cooperation across borders: “Canada and the United States face the challenge of governance coexisting and competing with other actors over a network of regional markets and market actors engaged in transborder flows.”<sup>36</sup>

Given these realities and political complexities, the rising tide of American national angst, reflected in new attitudes and, ultimately, in the development of a more militant border imagery and rhetoric, has been accompanied by a growing unease among Canadians. To some Canadians, the U.S. has at times assumed a lurking and dangerous presence halted at the border only by the diligent and persistent evocation of a national claim to sovereign rights. Canadian newspaper articles and public debates have been nothing if not consistent in their identification of the American threat to Canadian identity and sovereignty posed by U.S. security responses to September 11<sup>th</sup>. In this scenario, borders represent cultural lines which, if crossed, threaten the existence of territory, sovereignty and cultural survival. It is a world of “us against them,” one in which a clearly defined sense of being Canadian is pitted against a clearly defined sense of American values and global leadership ambitions. Many Canadians, however, actually shared the U.S. concern about borders being too open (principally with respect to a growing and somewhat xenophobic reaction to refugees and immigrants from non-traditional countries), resulting in a propensity for national sentiments after September 11<sup>th</sup> to harden around the image of the border—whether fence or frontier—on both sides of the borderline.

On the other hand, it was not just Americans who promoted the sense of alarm about the Canadian border. Canadians themselves participated. The more extreme factions of the Canadian parliamentary system whipped up fears. In the days that followed September 11<sup>th</sup>, in the House of Commons, during question period, such talk was typical: “Mr. Stockwell Day, former Leader of the Opposition Canadian Alliance: Mr. Speaker, we hear reports continually about suspected terrorists hiding in Toronto, or in Fort McMurray or simply roaming the countryside. Will the Prime Minister please commit here in the House today

that any discussions with our North American partners on securing the perimeter will definitely include changing the laws and the policies in Canada, so that we can detain and deport, if necessary, those who are deemed dangerous?”<sup>37</sup> Or: “Mr. Kevin Sorenson, Crowfoot, Canadian Alliance: Mr. Speaker, we learned from immigration documents and the media that three men in Fort McMurray may have been connected with the September 11<sup>th</sup> attack on the United States. Canadians had to learn from the Sun newspapers that Nabil Al-Marabh, who was freed by the government’s Immigration and Refugee Board, may be the chief al-Qaeda operative in North America and living in Canada. We also learned from the media that Mohammed Atta may have been working in Toronto.”<sup>38</sup> Clearly elements of the Canadian political community thus supported and exaggerated the “weak Canada” and the “security initiative” as the “culture wars” supposedly between Canadian and American values were reflected in the structure of parliamentary discourse. Indeed, in the early days after September 11<sup>th</sup>, Canada responded to the U.S. crisis as if it were its own. New initiatives were put in place to enhance security at the U.S. border, as well as at airports. While some were vaguely alarmed at the rhetoric of a “perimeter defense system,” which they saw as compromising Canadian security, Canadians were in general more than willing to take action in terms of security—it was a compelling argument and a compelling fear—one which opened pocket books and mobilized action. On 11 October, 2001, for example, Canada’s anti-terrorist plan was adopted by the government of Canada. It allocated more than 79 million dollars for equipment and support activities at the airports and 12 million to meeting staffing and public security requirements of Canada Customs and Revenue agency and Transport Canada,<sup>39</sup> presumably many of the new resources to be deployed within the traditional borderlands and land crossings.

Yet for Canadians, the Canada-U.S. borderlands were not necessarily the source of concern because ultimately the threat was perceived to be southern-bound. That was inherently clear in the “anti-terrorist legislation” in terms of the language it contained. Although its aim was ultimately to stop terrorists from entering Canada and to protect Canada from terrorist acts, its purpose was to develop “tools to identify, prosecute, convict and punish terrorists” and to “work with the international community to bring terrorists to justice and to address the root causes of such hatred,” all the while preventing the Canada-U.S. border “from being held hostage by terrorists and impacting on the Canadian economy.”<sup>40</sup> Closed borders were not seen as the result of a functional failure on the part of the state, but

rather a greater more globalized threat—between North American allies and terrorist “others.”

Indeed, Hart and Dymond, in their comprehensive post-September 11<sup>th</sup> study, observed that, despite Canada’s traditional concern with the unilateral nature of American policy, surveys and contemporary polls showed Canadians to be exceptionally united in their support for structured border controls.<sup>41</sup> However, there was little support, on the other hand, for a continent-wide system of securing the perimeter. The Canadian government’s response, *Managing Relations in Light of the New Security Environment*, reported that during discussions of the re-structuring of Canada-U.S. border relations, there was considerable unease and uncertainty remaining, extending to certain concepts being promoted, such as a “common security perimeter.” “For example, [some] saw risks that this might reinforce ‘fortress’ North America tendencies in which the margin for a creative multilateralist Canadian foreign policy would be constrained. Hence, if there is to be a ‘rebranding’ of the bilateral relationship, [they] argued it would be much better to ‘move beyond perimeter notions. [T]he emphasis should be something like smart borders because, not only does this allow for security and an economic dimension, at the same time it focuses on technical issues, in some of which Canada is ahead of the United States.”<sup>42</sup>

Part of the challenge to Canadians, with respect to developing secure borders with the United States, is the problem that until such a moment as September 11<sup>th</sup>, the idea that Canada-U.S. borders require consideration under the rubric of “foreign policy” was an oxymoron of sorts, rendered obsolete by NAFTA. Canadian domestic interest required and had successfully constructed, a friendly and stress-free border relationship with its southern neighbor. In that sense, borders were a reflection of national, rather than international, processes. The Canadian government actually said as much: the Canadian Government’s report, *Managing Relations in Light of the New Security Environment* observed that a border review was long overdue, and that “apart from occasional consideration within general foreign policy reviews, there has been no wide-ranging parliamentary examination of Canadian-American relations in recent times. Moreover, in the decade since Canada joined Mexico and the United States in the NAFTA negotiations, there has yet to be a thorough parliamentary inquiry into developments at the rapidly evolving North American level that could have a large foreign policy impact.”<sup>43</sup>

September 11<sup>th</sup> and its impact triggered a round of nationalism and neo-nationalism on both sides of the Canada-U.S. border. We have seen that for Americans the

issue was, of course, the idea that the Canadian border was really a frontier—a foreign place. For Canadians, however, the relationship between border and national identity was also affected, in the first place by the degree to which a new post September 11<sup>th</sup> polemic discourse of economic versus security concerns has been constructed which, first, juxtaposes Canadian sovereignty against American expansionism, and second a discourse in which Canadian society has become polarized—traditional national sentiments pitted against cold hard cash and the politics of continental economic interest. One only needs to go as far as the *Globe and Mail* and its recent headline “Are we being integrated into the U.S. without having real public debate?”<sup>44</sup>

The problem is, as we shall see when we explore, below, the changing nature of specific borderlands, there are geographical specificities attached to the issue of how the debate about borders is structured depending upon where it takes place. Indeed, rather than representing some kind of essential clash over culture, that of Canada and the U.S., the security perimeter approach, and ultimately, Canada’s position towards its bordering activities, is a response to fundamentally different visions which are shared among Canadians, as well as between Canadians and Americans: not just both interterritorial, but also intersectional. Rather than “us versus them” it represents a growing fracture line between discourses or constructed prescriptions in public policy—both of which are perceived as mutually exclusive, polar opposites. That is the tension between the potential impacts of open and closed borders: those which facilitate “free commerce” and those which facilitate “security,” the only apparent resolution lying in a borderless North America, or more likely still, a North America without Canada. As Emile Martel articulated so clearly, “the fatality of geography has imposed on us the necessity of establishing a relationship which will always be ... odd, and uneven.”<sup>45</sup>

### Regional Comparisons: How the Cross-Border Regions Operate

Figure 2, based upon the importance of specific border crossings in terms of cross-border trade, suggests that there are several categories of borderlands. Those which carry the largest volumes of commercial traffic may be considered as “goods first” borderlands where trade and security concerns have had significant impact upon the physical landscape of borderlands, the function of borderlands, and the role of borderland community. These include the borderlands of the Great Lakes Region and central Canada, as well as the Pacific Northwest. In these

cases, as figure 3 suggests, borderlands are connected by highly visible and prioritized transportation corridors to U.S. markets.

Regional specialization and differentiation among regional borderlands in Canada is nothing new. The degree of connection and disconnection along borderlines has always been highly regionalized. Gibbens, for example, suggests that in the east, where cultural enclaves were divided by subsequent boundaries, the juxtaposition of community across the border with statist allegiance, designated by the boundary, produces complex borderland landscapes of interwoven continuity and differentiation. Akelson, too, suggests that there is a degree of interwoven community life which transcends the Canada-U.S. border in the northeast where “The northern border straddles mutually interdependent communities; numerous examples of the international line bisecting community churches, restaurants, and even homes exist.” He observes that residents in these bi-national communities cross the border frequently, if not regularly, and have done so for centuries. In many places, “the boundary is unmarked or demarcated only by a post or sign; multiple free crossing points exist. Derby Line, Vermont, for instance, is literally spliced in two in places where Vermont collides with Québec, sharing municipal services, neighborhoods, and even a library where the international line crosses.”<sup>46</sup> Recently, however, the nature of regionalism with respect to cross-border interaction has assumed new dimensions in the sense that “for local communities along the border, the economic benefits of cross-border trade are obvious ... border congestion has meant that these communities assume a much larger share of the infrastructure, social and environmental costs associated with trans-boundary traffic.”<sup>47</sup> The role of the border, increasingly formalized, increasingly focused, increasingly binational and based on accords and “noteworthy practices” rather than general treaties, has turned border communities inside out—refocusing them on physical landscapes which are highly formalized and dense with the infrastructure of transnational institutions and information for successful crossings. The Electronic Signage initiative is one such example, used to direct trucks through particular primary lanes at the Port Huron Border crossing in Michigan, as are many of the electronic border information initiatives which broadcast border wait times and display by camera the state of cross-border traffic at busy crossings (table 1). In this sense, it is the land border landscapes which increasingly “must do the work” not only of policing borders, but of symbolically representing them to the cross-border community whose constituency is increasingly economic and

institutional in nature. Indeed, prior to the formation of the U.S. Department of Homeland Security, inspection services on the border from both countries were mandated to act on behalf of over 50 government agencies!<sup>48</sup> Moreover, the border, rather than a broad and vague frontier which facilitates exchange of goods, services and people, has become more geographically specific in terms of state practice: The government of Canada observed in 2000 that the border was effectively a place where “the majority of vehicle crossings take place in choke points along the Ontario-Michigan, the Ontario-New York, and the British Columbia-Washington borders. These crossings are located on narrow slips of land surrounded by the Great Lakes or between the Pacific Ocean and the Cascade Mountains.”<sup>49</sup> Such formal, government sourced definitions of borders are indeed revealing.

***Great Lakes Corridors and the North West Coast:  
Taking Care of Business or Finding a Balance?***

An astounding 52 percent of trade with the U.S. is trucked through four Ontario border points—Queenston, Fort Erie, Sarnia, and Windsor—the latter responsible for over 25 percent of all cross-border daily truck movements in Canada.<sup>50</sup> The major border crossings are the Ambassador Bridge between Windsor, Ontario and Detroit, Michigan, and the Detroit and Canada Tunnel between the same city pairs. Indeed, The International Boundary Commission observes that “heavy commercial and private traffic rumbles through a tunnel and across a bridge (Ambassador) between Windsor and Detroit”<sup>51</sup>—a total of approximately 7,000 per day or one truck every minute in each direction.<sup>52</sup> It is here that the greatest change in the borderlands over the last two decades of the twentieth century has occurred. The change is most apparent in its expanding function as a transportation and trade corridor to facilitate increasing internationalization of the North American economies.

Other important commercial crossings include the international boundary between Buffalo, New York-Fort Erie, Ontario (Peace Bridge); Sarnia, Ontario-Port Huron, Michigan (Blue Water Bridge); Watertown, New York-Lansdowne, Ontario (Thousand Islands Bridge); Cornwall, Ontario-Roosevelt, New York (Seaway International Bridge); Sault Ste. Marie, Ontario-Sault Ste. Marie, Michigan; and Ogdensburg, New York-Prescott, Ontario.<sup>53</sup> Combined, these crossings account for over 50 percent of cross-border truck movements and equivalent cross-border flows in goods and peoples. This clearly places Ontario, and specifically Central Ontario, as the

focal point in a series of transportation networks and corridors linked to transcontinental trade.

Because of the sheer volume of trade and the structure of the transnational economy, certain regions, such as Central Canada, have become the nexus for cross-border trade networks in a “goods first” universe. Most border crossings are affected by “noteworthy practices” connecting U.S. monitoring of shipping and vehicular traffic flows with Canadian border posts. Special programs facilitate advanced screening of commercial traffic (see table 1: BRASS, PAPS, Pre-Arrival Processing, CVPC, Truck Driving School, Driver Manuals, NEXUS, SE Michigan/SW Ontario Binational Transportation Planning, NITTEC, Queue Detection Trailers). Most of these programs function in the area of developing policies and procedures for binational cross-border interaction, of developing technologies for detection and information management, and for congestion and traffic management.<sup>54</sup>

The economic imperative of the relationship is reflected in the agreements to govern transnational interactions in the Great Lakes region. In central Canada, formal treaty agreements have prevailed in organizing the nature of the binational relationship, including government-to-government agreements regulating the use of the St. Lawrence Seaway and the Great Lakes. Most crossings take place over water, via bridges traversing a number of rivers. In this region, the development of binational agreements under the NAFTA has remained relatively new and institutionally limited to economic and trade imperatives. Yet most of these policies are not jointly administered between Canada and the U.S.—of all noteworthy practices listed in table 1 only two are managed jointly with Canada. That means that the border crossings themselves are points of reference for “noteworthy practices and policies” which are irregular in their application. The Northeast Michigan and Southwest Ontario Binational Transportation Planning Project is one exception, where seven counties in southeast Michigan (Wayne, Oakland, Macomb, Monroe, St. Clair, Washtenaw and Livingston) and five Southwest Ontario counties (Essex, Kent, Lambton, Elgin and Middlesex) have opted to work together. Another cross-border planning and development initiative links the Niagara Peninsula and upstate New York in comprehensive efforts to build and manage tourism, develop the wine industry and cooperate in education and cultural activities. Indeed, the formality of the Central Canada border region has much to gain from a more localized consultative effort—as a pre-September 11<sup>th</sup> dialogue among Canadian and American governments was to emphasize. They noted in 2000, that “Ontario-Michigan-New York bridge authorities are con-

BOUNDARIES AND CORRIDORS:  
RETHINKING THE CANADA–UNITED STATES BORDERLANDS IN THE POST 9/11 ERA

templating over \$1 billion in infrastructure outlays, but do not have a good sense of what the inspection agencies are planning in coming years. Federal agencies also have much to learn from border-area NGO groups, some of which are very forward-looking in the area of intelligent transportation systems and environmental protection.<sup>55</sup>

In Central Canada it is clear that a “goods first” orientation defines the borderlands, at least at the institutional and formal level. But economic imperatives are also important to a burgeoning transnational regionalism in Western North America. The volume of traffic at the Blaine crossings is equal to some cross-border points in Southern Ontario, and border waits significantly lengthy for many. Nonetheless, it is clear that the role of borderlands in building transnational linkages has remained somewhat less specialized in the area of economic linkages and more developed in terms of the development of binational cultural, environmental and intergovernmental cooperation, precisely because regionalism in Western Canada and the U.S. has historically been more environmental and comprehensive in its focus and the institutional capacity for cooperation more broad-based and localized.<sup>56</sup> Here, “under the Pacific North West Economic Region (PNWER), provincial and state governments have been cooperating on the creation of a binational transportation network and have made a number of policy proposals to federal governments.”<sup>57</sup> The result is that binational transportation projects are well-developed in this region and better integrated at local levels of governance, integrating Washington State and the B.C.’s Lower Mainland.<sup>58</sup>

The only major exceptions are FAST and NEXUS, however, both of which are programs developed through cross-border agreements and implemented jointly. FAST and NEXUS have been adopted at both the Central Canada and Cascadian borders and their U.S. counterparts (at Blaine WA-Douglas, BC; Port Huron, MI-Sarnia, ON; Detroit, MI-Windsor, ON; Buffalo, NY-Ft. Erie, ON; Lewiston, NY-Queenston, ON) as well as one point of entry in Québec (Champlain, NY-Lacolle, PQ).<sup>59</sup>

At the same time, however, the PNWER borderland has a history of broad-based regionalism which is unparalleled in other cross-border regions. Artibise, Cohen and Alper suggest that there are unprecedented ecological, cultural, institutional and strategic alliances which have shaped the cross-border community. That means that while the PNWER region thus supports an efficient cross-border relationship for goods and services, it does not take the character of transnational regionalism exclusively from a goods first perspective. Municipal and regional governments are connected in efforts to promote sustainable

cross-border development, environmental protection, and indigenous cultures. Indeed, Artibise suggests that the notion of closer cooperation along the Pacific Northwest Coast is rooted in a common historical and environmental geography—based upon the old Oregon Territory “severed by the fixing of the forty-ninth parallel” and the persistence of bioregional visions and bioregional initiatives.<sup>60</sup>

Alper, suggests, however, that although there are multiple linkages, including the Georgia Basin Ecosystem Initiative, the Puget Sound Action Team and the Fraser Basin Council, transboundary NGOs, the BC-Washington State Environmental Cooperation Council, frameworks for state and province coordination including the BC-Washington Corridor Task Force and the Pacific Corridor Enterprise Council, there is a lack of development of a more general operational model for the organization and management of transboundary cooperation—a fact which he suggests relates partly to the relatively late onset of cross-border activities within the region and partly to the fact that British Columbia has rejected formalized ties with its American neighbors.<sup>61</sup> Alper observes that the effective cooperation in transportation and environment prior to September 11<sup>th</sup> had progressed without the aid of Washington or Ottawa—a fact of significance in the post September 11<sup>th</sup> era where new security measures implemented, such as FAST and NEXUS, have become integral and connected to a broader continental security vision. Still, because the focus of regionalism in the PNWER has been significantly influenced by environmental awareness of the distinctive Cascadian bioregion, business-oriented regionalism has been supplemented by environmental cooperation. Indeed, Artibise suggests that “a central characteristic of evolving trans-border regions around the world is the differing visions groups within the region hold regarding the purpose and future of cooperation. In Cascadia, the debate takes place between those who promote Cascadia as a fundamental imperative in the new global and continental economy, and those who envision Cascadia as a bioregion.”<sup>62</sup>

Given the massive amount of discourse and media coverage that accompanies the Cascadia movement, it is possible to exaggerate the importance of this cross-border region’s impact and of Cascadia-type cooperation in general. Some skeptics may say that little has been accomplished in practice, due in large part to both federal governments’ discouragement of state-provincial linkages. Experts in subnational relationships between the United States and Canada point to a varying yet consistent state/provincial and cross-border regional alignment. This is an ongoing debate in Canada-U.S. relations, and it is not the purpose of this paper to engage in the vacuous argument

about who is right or which position is more accurate at any point in time. Our position is that cross-border regions like Cascadia, real or imagined, are now embedded in the functional, if not formal, relationship between Canada and the United States.

Some researchers would be skeptical that the potential for such informal and broadly defined borderlands will continue to exist in the post September 11<sup>th</sup> years. Based upon analysis of the texts and discourse brought to the table by American policy makers in the late twentieth century, Ackelson suggests that “by understanding the border in a modern territorial, sovereign frame,” that is to say by reducing transnational flows to the problem of controlling “chaos” at specific points and lines, problems can be solved “by the proper application of technology,” and indeed “control’ becomes the objective.”<sup>63</sup> It is perhaps significant, with this in mind, that in the Great Lakes and Central Canada borderlands and within the PNWER the major thrust of new border technology appears to be instruments which effectively expedite the movement of pre-authorized vehicles across the borderlands to carry members and goods in increasingly quantities to and from transnational communities. The borders are increasingly formal and increasingly open to scrutiny at the same time that they continue to express increasingly strengthened cross-border community. Controlling chaos has become the primary goal, and the definition of borderlands functionally narrowed to efforts that address these border crossings in such specific terms.

#### ***Far from the Corridors: Tradition, Culture and Community in the Less Populated Border Regions***

Nonetheless, borderlands are more than funnels for economic change. The post-NAFTA agreements and the focus on the trade and security dialectic have not obliterated the importance of cross-border community and cultural ties. They have merely concentrated the thrust of the security dialogue in certain areas. There are, however, specific borderlands where the ties remain strong and differentiation less prominent. Atlantic Canada and New England continue to sustain traditional ties and expand connections along time-honored routes between places where community thrives on the border and borderlands culture extends across the boundary. In the summer of 2004, Canadians and Americans celebrated 400 years of Acadian history in the cross-border region. The Canadian-American Center at the University of Maine recently published a commemorative map to document and explain the cultural linkages that persist.<sup>64</sup> The New England States and

Atlantic Provinces, including Québec, continue to build on the history and tradition of cooperation among the intertwined cultures of Aboriginal, French, English and other charter cultures in the cross-border region through annual summit meetings, cross-border accords for trade and environmental cooperation and an array of cultural linkage initiatives. Cross-border community continues to thrive and work where cooperation is necessary both to sustain livelihood and community. The twin cities of Sault Ste. Marie are a case in point. Only through cross-border commerce and cooperation in municipal services such as fire and emergency response can the cross-border communities sustain desired levels of quality of life in the wake of economic downturn in the steel and resource industries. These symbiotic, cross-border adjustments to retain and build community are found along the U.S.-Canada border from the Atlantic coast to the western inter-montane crossings and north to the Canadian boundary with Alaska. After September 11<sup>th</sup>, these crossings were indeed placed on alert, and measures were taken to enhance security. However, trade and commerce were characteristically more localized, and, consequently, the trade and security dialectic that emerged so strongly at the major corridors did not materialize to the same extent. What did emerge was a stronger differentiation between these smaller crossings and their respective borderlands regions and the massive conduits of cross-border traffic in Central Canada and on the Pacific coast.

In understanding this relationship, that is the difference between what contemporary American and Canadian decision-makers and transportation planners have identified as the “chokepoints” and corridors and the borderlands which remain secondary to that process, we need to see how the renegotiation of borderlands functions as part of a bigger process—one in which cultural plurality plays its role as a basis of nationalism—is important. For example, the Eastern Townships of Québec, and the northern portion of Vermont were less distinguishable in the mid twentieth century than they are today. The borderline has become more evident as the French language has become institutionalized in the Eastern Townships or L’Estrie. The border, in this context is much more a cultural and linguistic line than it was fifty years ago. This example shows us that at the border “identities are being rendered and reproduced through difference, which is manifest through many kinds of ‘borders’ and narrative practices, including those of securitization.”<sup>65</sup> The work done by some of the cultural borders outside of the “goods first” corridors indicates that in North America cultural plurality plays a more important role because borderlands

may also accentuate the differences among group identities, cultural experiences and practices by multiple groups within the Canadian state itself. The divisive lines are not simply questions of English versus French constitutional rights, but of the multiple, gendered, ethnic, income, and identity-laden concept of cultural identity and Canadian culture itself that is regionally distinctive and remains expressed in territorial terms. Here, the important role played by regional context in defining the function of borders cannot be ignored and is perhaps best measured in terms of the lack of cross-border traffic, rather than in the degree to which cross-border traffic is facilitated. So while September 11<sup>th</sup> and its long term impact on the security discourse of North America seems clear cut—Canada versus the U.S., locked in asymmetrical political, cultural and sovereign negotiations, joined only by increasingly scrutinized and formal border practices—there remains considerable room for variation.

The example of the Point Roberts border also highlights this process of variation. Point Roberts is a small point of land along the Pacific U.S. coastline which shares its own border with Canada. The border is routinely crossed by school children, shoppers those traveling to and from work, and virtually any and all forms of goods and services, as American citizens pass through Canada to the U.S., or *vice-versa*. Point Roberts is an exclave of the U.S., a rare occurrence in the twentieth century, and as such it remains a strongly regionalized border. There is little in the way of border security, some crossings controlled only by a gate opened during the day and closed at sun down, or, perhaps, an infra-red beam, recording the crossing of people, vehicles and the occasional large mammal. To some residents of the region, this represents a potential security threat—but in terms of the reality of a regionalized border such as this, the threat is minimal because the border does not offer potential for a gateway to anything more than a “dead end.” Such extreme examples of regionalized, yet marginal, borders between Canada and the U.S. are rare and stand at one end of the continuum of border types.

The situation is different again in the Alaska/Yukon/British Columbia border region. While miles away from population ecumenes, many fret about the potential for terrorists to transport weapons of mass destruction from such remote areas. In truth, however, these borders are also highly regionalized. Transportation corridors are limited, in some cases seasonal, and the U.S. territory lying beyond the international interface represents another kind of “dead end” in North America—inaccessible directly to the rest of the American land mass. Indeed, most of the

cross-border traffic consists of herds of migratory caribou and other large and small mammals, and the real concern is the transnational nature of economic and environmental impacts upon indigenous peoples. While not impossible, the scenario of border insecurity within the region makes little sense. Such remote locations, far away from the action of the South, difficult to traverse, relatively unpopulated, are poor strategic locations for illicit cross-border activity. Rather, these represent the frontiers of North America which have always been highly indigenous and indeed scrutinized and controlled by indigenous institutions. The U.S.-Canada border in this region is perhaps one of the few in which cross-border cooperation has been promoted on the basis of foreign policy and environmental issues, while rigorous cross-border management policies remain poorly developed.

That is because the circumpolar North has been targeted as a region for cooperation among the international community, and there is considerable effort expended to establish cross-border co-operation in the area of Arctic environmental monitoring. Moreover, as the end of the cold war removed American troops from Canadian territory along the D.E.W. line, the real focus with respect to border issues in the Arctic has turned to maritime considerations. Will there be a contested border in the Beaufort Sea? How will Canada and the U.S. manage the cross-border movement of oil, resources and even defense infrastructure, ships and satellite imagery? Clearly a new type of regionalism is emerging within the circumpolar North which the Canada-U.S. border will increasingly have to accommodate and which will be increasingly focused on indigenous human security and resource utilization.

### **Sustainable Cross-Border Regionalism: Where to From Here?**

There are three levels of international engagement which increasingly define the border relationship between Canada and the U.S. One level, defined in table 1, concerns the immediate physical relationship at the border—those binational policies and practices exercising influence over policing, national security, risk management technologies and procedures, protocol and criterion for entry between each country. These include programs like NEXUS, FAST and other pre-clearance and pre-authorization practices and technologies. The second concerns the cultivation of a binational context for cooperation: capacity building in terms of community as well as the creation of infrastructure. That includes the building of joint border posts, policing initiatives, cross-border transportation corridors

and infrastructure and other initiatives, including policy orientation and capacity-building documents such as the Smart Border Agreement. The third concerns the relationship which Canada adopts with respect to the broader international community—policies nested in an increasingly globalization context and involving the coordination of immigration and security policies which are directed to third party countries. The first and second are of direct concern to the definition of Canada-U.S. borderlands as goods and peoples attempt to cross at the interface between the two countries. The third governs this interaction also, but indirectly; it also establishes the “bar” from which broader international security measures take their cue and the degree to which new borders designed to secure trade and security will be sustainable.

The Smart Border Agreement, for example, has proven to be the first of a series of agreements whose aim is to harmonize Canada-U.S. policies in other critical areas such as immigration. Recently, Canada and the United States have signed the “Safe Third Country Agreement” to allow both countries to manage more effectively the flow of refugee claimants,<sup>66</sup> whereas the Permanent Resident Card, effective in December, 2003, was required by permanent residents seeking to re-enter Canada on any commercial carrier.<sup>67</sup> Such broad field agreements will be increasingly part of the bordering process, and Canada’s border crossings will undoubtedly change to reflect the more global context.

Binational cooperation, then, has proven to be embedded in a series of more globalized initiatives which attempt to limit and control the impact of potential third parties—sometimes Mexico, as in the case of the new Hazardous Materials Rules, and some even more globally targeted, such as the *Bio-Terrorism Act*. Effective in August 2004, the new Hazardous Material Rules demand a national safety permit from all motor carriers of hazardous goods. The permit will be issued by the U.S. Federal Motor Carrier Safety Administration, and requires that

a carrier must have a “satisfactory” security program in place—using telephone or radio or electronic tracking devices, by which the vehicle operator can contact the motor carrier during a trip and a means of giving employees security training. The carrier must be registered with the Research and Special Programs Administration, the agency within the Department of Transport concerned with “Hazmat” issues. Carriers of radio-active materials also must provide a written route plan for trips, and undergo a pre-trip inspection by a federal, state or local government inspector or a government-approved contractor.<sup>68</sup>

Similarly, the *Bio-Terrorism Act* which took effect December 2004 requires pre-notification for cross-border shipments of foods, including information with the identification of the articles of food, complete FDA product code, the common or usual or market name, the trade or brand name, quantity (smallest package size to the largest container), and the lot or code numbers along with a host of other identifiers including that of the manufacturer, identification of the grower, the originating country, identification of the shipper, the country from which the food was shipped, its anticipated arrival information: location, date and time and identification of the carrier.<sup>69</sup> In their response to this initiative, some Canada seafood exporters have lamented that “still swimming” is not a category contained in the paperwork options, drawing attention to the fact that the *Bio-Terrorism Act* is, much like the initial Shared Border Accord, now targeting a highly internationalized and flexible-time food and drug industry. That raises again the point that the Canada-U.S. border is a product, not only of a policy paradigm designed to expedite increasing trade, but that the trade is itself embedded in the fact of a global economy and a reorganization of world-wide trade patterns.

In other words, the current state of Canada-U.S. borderland interaction is embedded within a broader transcontinental economy, but even more, it is situated within a globalized economy. In many respects, these represent two sides of the same coin: the intensification of greater border scrutiny accompanied by the increasing attention given to building a common and globalized foundation for international interaction. Part of the challenge for building sustainable borders will be cultivating an understanding both of the nature of the changing function of the borderlands with respect to the role served in context of the Canada-U.S. relationship and of a more global context is fundamental to the construction of sustainable borders. Until recently, Canadians have been more concerned with economic and sovereign aspects of the bordering process and in general have failed to appreciate the importance of developing regionalized or spatialized approaches to cross-border cooperation, leaving it to those narrower constituencies, such as the business sector and its political lobby, to function as an epistemic community. That narrows the scope of negotiations and the vision of cooperation, enhancing asymmetries and highlighting differences. In the end, it makes the impetus for reorganizing the border process and the nature of security versus globalization a question of internal politics as much as external politics, even a cultural war revolving around Canadian resistance to U.S. hegemony. There is a

danger in having specific sets of sectoral interests prevail without articulating a more general vision of how borderlands serve as both fences and corridors, filters and hinges, which mediate between a broad variety of communities and broad fields of interest. Moreover, there is a danger in negotiating a series of arrangements which do not take into consideration, not only the broad context in which Canada and the U.S. meet at the border and the varied nature of persistent borderland communities, but also in the increasingly trinational context of border functions. In engaging in transnational projects and agreements, the Canada-U.S. borderline finds itself increasingly contextualized at the continental scale, where rules applying to cross-border trade with Mexico are now increasingly relevant for Canada, as well as operating with reference to more globalized security issues.<sup>70</sup> Recognition of this fact requires broad field thinking concerning how Canada's visions for international relevancy can be incorporated into its spatial practices, i.e., regulatory border functions, as well as thinking about how continental border practices reflect foreign policy priorities and impact more generally upon a Canadian consensus concerning internationalization.

### Conclusions

The events of September 11<sup>th</sup>, 2001 define a sudden and distinct turning point in the emergence and development of the cross-border regions between the United States and Canada. To a great extent this change or watershed was really an acceleration of a process toward smart borders and rapid corridors that was already well in hand with the NAFTA developments of trilateralization of trade and economic integration during the 1990s. Clearly the consideration, and indeed implementation in some areas, of development of cross-border risk management in the area of crime, bioterrorism and drugs had begun in the pre-September 11<sup>th</sup> era under the Shared Border agreement. In the months that followed, however, national leaders and policy makers in both countries were obliged to stop and ponder the implications of September 11<sup>th</sup>. They found it necessary to consider the impact of the events on the border relationship between the two countries and how the call for heightened security would affect the constantly increasing trade and human traffic across the border. Their response was to reinvent the border but to reinvent it in ways which built upon the foundations already established prior to this major terrorist event. These existing concepts of risk management and heightened technological survey techniques thus continued to serve as a toolbox for new

border management structures, helping to set the stage for the nature of interventions which followed.

In this way, the reinvention of the border between Canada and the United States has accelerated the development and operationalization of a set of rapid corridor complexes and a larger group of secondary rapid corridors to enhance trade. The rapid corridors are primarily a response to traffic pressure in trade, rather than other concerns such as balanced regional accessibility. The new border is replete with technological advances and enhanced security measures that only a tragedy like September 11<sup>th</sup> could instill. Yet, the reinvented border is more than a technological advance and an enhanced conduit of trade. In the wake of these rapid responses to sustain the economic powerhouse of the United States and Canada, borderland communities have emerged with clearer cross-border visions and embarked on stronger cooperative enterprises. Heritage tourism in the Niagara region continues to grow and thrive in the wake of September 11<sup>th</sup> as community leaders on both sides of the Niagara River expand their horizons and take advantage of expedited border crossings at Queenston, Niagara Falls and Fort Erie. Similarly, the Detroit/Windsor cross-border economic zone has turned a potential trade bottleneck into a state-of-the-art core for one of the world's largest border crossings and international economic zones. In the Pacific Northwest, the vision of a coastal transportation corridor by land and sea, mindful of a delicate environment, representative of cultural plurality, and reflective of human scale, continues to emerge. These regional developments and others across the continent have brought new vitality to the borderlands between the United States and Canada. The reinvented border is much more than a stronger boundary between Canada and its powerful and often isolationist neighbor. The reinvented border lies at the core of a new definition of cross-border regions, regions that are both expedient transfer places between countries and expressions of transnational community. In this sense the cross-border regions between Canada and the United States are a part of a global phenomenon and one of the world's most important proving grounds for transnational development.

Several questions remain to be explored more thoroughly. What are the characteristics of the emerging hierarchy of border crossing places? The border crossings appear to be more and more differentiated, and it is important to understand the increasing complexity of this system of places. Where is the Washington-to-Ottawa dialogue more important and less important? During the 1990s, subnationalization at the border was growing, and subnational governments were becoming more involved

in cross-border dialogue and in decision-making. Is this still the case? At the major corridors? In the marginalized borderlands? One of our most important conclusions is that the difference between major corridors and smaller crossings is growing. This difference needs to be explored carefully in all of its facets. Then we need to expand our exploration to the global context. How does concurrent globalization and localization develop in cross-border regions? This paper has raised some issues in this regard, and it has contributed some insight on this important process. The Canada-U.S. situation may reveal more important information to expand our understanding of concurrent globalization and localization. Also, there is the continuing situation of asymmetries between the United States and Canada and how this imbalance impacts on every aspect of the relationship between our countries. The asymmetries are perhaps most evident at the border, but it is also in the borderlands that they are ameliorated. As we have seen in this study, the boundary relationship is, however, varied and dynamic in space and time. This fluidity may be both consistent with, and contrary to, the asymmetric United States-Canada relationship. Where are the asymmetries between the United States and Canada eroding and remaining intact, or expanding?

These are all large questions. Our aim is to reveal the continuing importance of these issues as we explore and document the state of the border regions in the post September 11<sup>th</sup> era. The borderlands and the charged boundary that energizes them have changed somewhat in response to a complex of increasingly linked local, regional, national and global forces, but their continuing significance as a mediation space between Canada and the United States prevails.

## Notes

- \* This paper has been previously published in *Canadian-American Public Policy*, 2004 (<http://www.umaine.edu/canam/Publications/listoftitles.htm>).
- 1 The literature of cross-border regionalism and borderlands applied to the Canada-United States border continues to expand rapidly. No comprehensive review is currently available. A useful cross-section is available in the following publications. McKinsey, Lauren, and Victor Konrad. 1989. *Borderlands Reflections: The United States and Canada*. Borderlands Monograph 1,

University of Maine; Konrad, Victor. 1996. "Borderlines and Borderlands in the Geography of Canada-U.S. Relations." In *NAFTA in Transition*. Edited by Stephen Randall and Herman Konrad. Calgary: University of Calgary Press; Gibbens, Roger. 1997. "Meaning and Significance of the Canadian-American Border." In *Borders and Border Regions in Europe and North America*. Edited by Paul Ganster, Alan Sweedler, James Scott, and Wold Dieder-Eberwein. IRSC, San Diego State: San Diego State University Press; Nicol, Heather, and Ian Townsend-Gault, eds. 2005. *Holding the Line: Borders in a Global World*. Vancouver: University of British Columbia Press. The last two volumes also contain an extensive and significant border literature on North American and European case studies, particularly in so far as regionalism and the European Union are concerned.

- 2 Government of Canada. 2000. *Building a Border for the 21st Century*, CUSP Forum Report, December. <http://www.canadianembassy.org/border/cuspreport-en.asp>.
- 3 Government of Canada. Transport Canada. 1998. "Transportation and North American Trade." <http://www.tc.gc.ca/trucking/corridors>. See also Turbeville III, Daniel E., and Susan Bradbury. 2005. "NAFTA and Transportation Corridor Improvement in Western North America: Restructuring for the Twenty-first Century." In *Holding the Line: Borders in A Global World*. Edited by Heather Nicol and Ian Townsend-Gault. Vancouver: University of British Columbia Press. P. 277. See also U.S. Department of Transportation, Federal Highway Administration. n.d. *NHS High Priority Corridors Description*, <http://www.fhwa.dot.gov/hep10/nhs/hipricorridors/hpcor.html>.
- 4 U.S. Government. Department of Transportation. Federal Highway Administration. <http://www.fhwa.dot.gov/hep10/nhs/hipricorridors/hpcor.htm>.
- 5 Turbeville and Bradbury 2005:277.
- 6 Canada 2000.
- 7 Government of Canada, Transport Canada. "Canada/U.S. Border Transportation Planning." <http://www.tc.gc.ca/pol/en/tbwg/310.htm>.
- 8 Ibid.
- 9 See Government of Canada. n.d. "Canada-U.S. Smart Border Declaration: Action Plan for Creating a Secure and Smart border." [www.deait-maeci.ca/anti-terrorism/actionplan.asp](http://www.deait-maeci.ca/anti-terrorism/actionplan.asp).
- 10 Canada 2000.
- 11 Ibid.
- 12 Ibid.
- 13 Ibid.

- 14 Canada 2000.
- 15 Ibid.
- 16 Ibid.
- 17 See Ackleson, Jason. 2000. *Navigating the Northern Line: Discourses of the U.S.-Canadian Borderland*. Los Angeles, CA: International Studies Association 41st Annual Convention, 14-18 March, <http://www.ciaonet.org/isa/acj01/CIAO 7/00>
- 18 Ibid.
- 19 See Government of Canada. Canadian Embassy, Washington, D.C. n.d. "Canada-U.S. Customs Cooperation." <http://www.canadianembassy.org/border/customs-en.asp>. Canada exported Can\$317 billion in goods to the United States in 2002, while the U.S. exported Can\$218.3 billion in goods to Canada—or approximately Can\$535 billion in cross-border trade. Significantly, the lion's share (from 55 percent on the Canada side to 80 percent on the U.S. side) crossed the border in trucks.
- 20 Ibid. This source indicates that 17 percent was by rail, 10 percent was by pipeline, six percent was by air and three percent was by marine vessels.
- 21 *The Bar Code Border*. 2003. "Clogged Border? The Border—How Bad is It?" 2(34), 15 June.
- 22 Government of Ontario. Ontario Chamber of Commerce. 2004. *Cost of Border Delays to the Ontario Economy Study*, <http://www.occ.on.ca/>
- 23 Yet the rationale for this increased deployment appears to have little to do with expedited shipping. U.S. Border Patrol Chief Gus de La Vina explained that "the additional agents will enable the force to maintain a more comprehensive enforcement posture in our efforts to sustain border security and combat terrorism." See *The Bar Code Border*. 2004. "U.S. Border Agents Raised Past 1,000." 2(24), 1 January.
- 24 Andreas, Peter. 2003. "A Tale of Two Borders: The U.S. Canada and U.S. Mexico Lines after 9-11." In *The Rebordering of North America*. Edited by Peter Andreas and Thomas J. Biersteker. New York: Routledge. P. 7.
- 25 Government of Canada. Office of the Prime Minister. 2004. "Government of Canada releases comprehensive National Security Policy." News Release, 27 April, <http://pm.gc.ca/eng/news.asp?id=186>.
- 26 Ibid.
- 27 Canada, Infrastructure Canada. n.d. "Joint Investments to Tackle Congestion at Canada-U.S. Border." [http://www.infrastructure.gc.ca/bif/publication/newsreleases/2004/20040506forterie\\_e.shtml](http://www.infrastructure.gc.ca/bif/publication/newsreleases/2004/20040506forterie_e.shtml)
- 28 Government of Canada, [http://www.dfait-maeci.gc.ca/can-am/seattle/border/smart\\_border\\_12\\_02-en.asp](http://www.dfait-maeci.gc.ca/can-am/seattle/border/smart_border_12_02-en.asp).
- 29 But consistent with the idea that the current state of Canada-U.S. borderlands have as their foundations economic imperatives organized by the NAFTA, the plan looked vaguely familiar, including among its provisions infrastructure and technology development. Nine of the 30 points it embraced had already been set out in the Shared Border Accord of 1995 and the 2000 CUSP Forum.
- 30 Ackleson 2000.
- 31 Eggert, David. 2001. Seattle-Post Intelligencer Washington Bureau, 6 December.
- 32 See: <http://www.cis.org/support.html>.
- 33 Ackleson 2000.
- 34 See Center for Immigrations Studies. n.d. "How Have Terrorists Entered the U.S.? Study: Since 1993, Almost Every Means of Immigration Exploited." [www.cis.org](http://www.cis.org).
- 35 See Sands, Christopher. 2003. "Institutions or Networks? The Future of Conflict Management Between Canada and the United States." Paper presented at the Association of Canadian Studies in the United States, 17th Biennial Conference, Portland, Oregon, November.
- 36 Ibid.
- 37 Government of Canada. "The Hansard, selected discussion concerning the Canada-U.S. border." 1410-E han099.htm
- 38 Ibid. Selected discussion concerning the Canada-U.S. border, from 1410-E han099.htm
- 39 Government of Canada. Transport Canada. 2001. "New Initiatives to Enhance Airport Security." 11 October. [www.tc.gc.ca/mediaroom/releases/nat/2001](http://www.tc.gc.ca/mediaroom/releases/nat/2001).
- 40 Government of Canada. Foreign Affairs Canada. n.d. "Canada-U.S. Smart Border Declaration: Action Plan for Creating a Secure and Smart Border." [www.dfait-maeci.ca/anti-terrorism/actionplan.asp](http://www.dfait-maeci.ca/anti-terrorism/actionplan.asp).
- 41 Hart, Michael, and Bill Dymond. 2001. *Common Border and Shared Destinies: Canada, the United States and Deepening Integration*. <http://www.carleton.ca/ctpl/>.
- 42 Government of Canada. *Managing Relations in Light of the New Security Environment*. <http://www.parl.gc.ca/InfoComDoc/37/1/FAIT/Studies/Reports/faitrp03/08-rap-e.htm>.
- 43 Ibid.
- 44 *The Globe and Mail*, 20 April 2002, A8.
- 45 Ibid.
- 46 Ackleson 2000.
- 47 Canada 2000.
- 48 Ibid.
- 49 Ibid.

- 50 Canada 1998. See also Turbeville and Bradbury 2005:277. See also U.S. Department of Transportation, Federal Highway Administration. n.d.
- 51 The Canada-U.S. International Boundary Commission. <http://www.internationalboundarycommission.org/ibcpg1.htm>.
- 52 Government of Canada. Canadian Embassy, Washington D.C. n.d. <http://www.canadianembassy.org/border/customs-en.asp>
- 53 Ibid.
- 54 Government of the United States. U.S. Department of Transportation. Federal Highway Administration. [http://www.fhwa.dot.gov/uscanada/studies/noteworthy\\_prac/type/](http://www.fhwa.dot.gov/uscanada/studies/noteworthy_prac/type/).
- 55 Canada 2000.
- 56 See, for example, chapters by Ted Cohen, Don Alper, and Alan Artibise in *Holding the Line: Borders in a Global World* (2005).
- 57 Canada 2000.
- 58 See Theodore H. Cohen. 2005. "Transportation and Competitiveness in North America: The Cascadian and San Diego-Tijuana Border." In *Holding the Line: Borders in a Global World*. Edited by Heather Nicol and Ian Townsend-Gault, 200-221. Vancouver: University of British Columbia Press.
- 59 U.S. Department of Transportation, Federal Highway Administration, [http://www.fhwa.dot.gov/uscanada/studies/noteworthy\\_prac/type/](http://www.fhwa.dot.gov/uscanada/studies/noteworthy_prac/type/)
- 60 Artibise, Alan F.J. 2005. "Cascadian Adventures: Shared Visions, Strategic Alliances and Ingrained Barriers in a Transborder Region." In *Borders in a Global World*. Edited by Heather Nicol and Ian Townsend-Gault. Vancouver: University of British Columbia Press.
- 61 Alper, Donald K. "Conflicting Transborder Visions and Agendas." In *Borders in a Global World*. Edited by Heather Nicol and Ian Townsend-Gault, 222-237. Vancouver: University of British Columbia Press.
- 62 Artibise 2005.
- 63 Ackleson 2000.
- 64 University of Maine, Canadian-American Center. 2004. "Explanatory Maps of Saint Croix and Acadia/Cartes explicatives de Ste Croix et de l'Acadie."
- 65 Ibid.
- 66 Canada. Department of Foreign Affairs and International Trade. 2002. "Governor Ridge and Deputy Prime Minister Manley Issue One-year Status Report on the Smart Border Action Plan." 6 December, <http://www.dfait-maeci.gc.ca/can-am/menu-en.asp?act=v&mid=1&cat=10&did=1671>.
- 67 Canada. Citizenship and Immigration Canada. n.d. "The Permanent Resident Card." <http://www.cic.gc.ca/english/pr-card/index.html>.
- 68 The *Bar Code Border*. 2004. "HAZMAT Rules: Hazardous to Balance Sheet." 2(36), 15 July, 5-6.
- 69 The *Bar Code Border*. 2003. "Double Jeopardy." 2(4), 3 March, 2
- 70 See Sands 2003 for discussion of this issue.



*The Iconography of Canada/United States Territorial Security Relations at the Forty-Ninth Parallel Border: The Crossings at the Point of Nowhere*

Rod Fowler

Canada's and United States' politicians and representatives of the business communities with their convergence of interests often refer with pride to their countries' shared border as the "longest undefended border" in the world. Since September 11<sup>th</sup>, this unique characteristic has also made it the world's longest territorial security issue for both countries. However, from the Canadian and American strategic and cultural perspectives, with their divergence of interests, the reason it is "undefended" is that it is strategically and culturally undefendable. This study examines that strategic assertion in the light of Canada/U.S. territorial security concerns since September 11<sup>th</sup>.

National borders such as the Canada/U.S. border are statements of territoriality identified by images of political symbolism and strategic force. This political symbolism and strategic force is most clearly seen, and its presence experienced, at ports of entry and exit to the national territory. These ports of entry in North America are highway crossings, airports and water ports. The symbolisms and controls at these ports of entry are mainly addressed to maintaining territorial integrity and security over the entrance and exit of goods and people. It is to maintaining and upgrading this territorial security and integrity that both the United States and Canada have committed millions of dollars in instituting new ports of entry security

arrangements.<sup>2</sup> To bolster this security, both governments have enacted legislations aimed at identifying "terrorists," legislation that has also led to concerns over the curtailment of civil rights and individual liberties and freedoms<sup>3</sup> and also have established new federal agencies charged with the daily strategic and legislated responsibilities of providing territorial security and integrity at their respective ports of entry.<sup>4</sup> However, while massive attention has been given to these ports of entry, simultaneously there appears to have been little attention given to the physical security and integrity of the boundary area landscape of the Canada/United States border line.<sup>5</sup> It is this geographical boundary area that has provided the landscape imagery of the undefended border.<sup>6</sup>

Along this border line, Canada and the United States have relied more on political symbols of identity rather than on strategic demarcation of this shared border. Historically, the landscape of the Canada/United States border at its western end in British Columbia along the forty-ninth parallel, while electronically monitored, has not been strategically demarcated along its length by 'scorched-earth corridors;' physical barriers of wire, steel or concrete, armed soldiers; mine fields or other visible, strategic paraphernalia. However, the trees have been cleared through forested areas along the B.C./Washington State border in an approximately six metre swath, a

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clearing that allows for the electronic sensor monitoring.<sup>7</sup> Also along this border line, spaced a mile apart, there are white-painted metre-high metal obelisks demarcating the border.<sup>8</sup> While the electronic beam, installed and monitored by the U.S. Border Patrol, can tell observers if a warm-bodied creature has crossed the border in either direction, it is only by the height and size of the infra-red image that the observer can distinguish between a human and an animal. Where the border line is close to a highway port of entry and at selected points in some remote areas, there is visual television monitoring able to operate in daylight and at night.<sup>9</sup> However, this visual monitoring does not extensively cover more remote parts of the border, nor does it extend into the wilderness mountain border areas. In addition, there is also the time-delay in having a Border Patrol or Canadian Police officer attend the actual location of an illicit borderline crossing. It can take from minutes to hours for an officer to reach and find a more remote border location and, by then, there has been ample time for the violator to have disappeared into the fields and forests.<sup>10</sup>

Partly because of this response lag, it is unofficially estimated by the U.S. Border Patrol at the Blaine port of entry that only about 10 percent of the illicit border crossing violators entering the United States are actually caught. On the Canadian side, the local RCMP detachment or local municipal police force has the jurisdiction for apprehension of illicit border crossers. In this case, there are not even any unofficial estimates of how many people may have been caught illicitly entering Canada outside of the ports of entry.<sup>11</sup> Anecdotal accounts indicate that, while the total number of those entering may be small, the success rate of undetected crossings is very high. That is especially true in the more rural and wilderness areas of the border line where crossings are most often made by local residents in short, round trip journeys.<sup>12</sup> These circumstances indicate that, away from the politically identified and strategically controlled highway ports of entry, the lack of embedded national political and strategic symbolisms in the border landscape allows for the vernacular physical activities and cultural symbolisms of the local residents who live on either side of the border to become the dominant landscape activities and images.<sup>13</sup>

Geographer Robert Sack, in his study of territoriality, provides a theoretical basis for analyzing and interpreting the symbolic meaning of these vernacular images in this border area landscape. According to Sack, the symbolic meanings of these images can be analyzed and interpreted across three functional criteria: classification, communication and control. These three criteria are expressed in

the landscape through its embedded material objects representing each of the four hierarchical levels of political power: local, municipal, provincial/state and national. This matrix of three spatial criteria and four levels of political power are reflected in landscape symbols across four categories of state functions: the political, the strategic, the economic and the cultural.<sup>14</sup> At the local level, this provides an analytical framework with which to evaluate the embedded imagery of the Canada/United States geographic border through a field survey of a section of that border area. The results of this survey can then be analyzed and its meanings evaluated across the three spatial criteria of classification, communication and control, theoretically symbolizing the respective political, strategic, economic and cultural state functions. The research question then can be framed as “how does this vernacular symbolism complement or challenge, or both, the higher level symbols of municipal, province/state and national identities and security?” To answer this question, a field survey of one short length of the Canada/U.S. boundary that lies across the Point Roberts Peninsula and along Zero Avenue in the municipalities of Delta, Surrey and Langley, B.C was conducted in the Spring of 2004. Across Point Roberts, this boundary is at the most westerly end of the forty-ninth parallel ground border and, on the United States side demarcates an isolated peninsula of U.S. territory surrounded by ocean. Zero Avenue on the Canadian side of the border exactly follows the demarcated forty-ninth parallel border line in the municipalities of Surrey and Langley, British Columbia.

Along the study's border line, there are four official highway ports of entry crossings between Canada and the United States. These are the Tsawwassen/Point Roberts crossing, the Surrey/Blaine Peace Arch Crossing, the 176<sup>th</sup> Street/Blaine Truck Crossing, and the 264<sup>th</sup> Street/Lyndon Crossing.<sup>15</sup> These official port of entry crossings, following Sack's functional criteria, are clearly classified, communicated and controlled as being of national territorial concern and jurisdiction. There is little or no embedded imagery of local, municipal or provincial/U.S. State identities manifest at these official ports of entry. Federal customs and immigration officers from both Canada and the United States staff these entry ports 24 hours a day seven days a week<sup>16</sup> to check vehicle traffic entering either Canada or the United States. On the United States side these officers are also supported by additional officers from the Blaine Police, the Washington State Troopers, the U.S. Border Patrol, the F.B.I., the D.E.A., and the C.I.A. and, in a heightened alert situation, military personnel.<sup>17</sup> On the Canadian side, the R.C.M.P. from the Surrey and



**Figure 1. The 176<sup>th</sup> Street/Blaine Truck Border POE Crossing looking into U.S.A. The Canadian buildings (left) and U.S. Buildings (right) are all related to economic functions in the control of goods crossing the border. (Zero Avenue is the road to the left.)**

Langley detachments and the Delta Municipal police force are on-call for assistance.<sup>18</sup>

While these federal agents and agencies are ostensibly checking for all forms of illicit border activities at these ports, the embedded landscape imagery at them clearly indicates that the primary focus of these federal officers is for economic concerns.<sup>19</sup> Political concerns at these ports are only nominally addressed by border icons, such as flags, signs and the metallic border markers. The embedded imagery of strategic concerns at these ports is only nominally visible by way of towers carrying electronic monitoring equipment, some concrete balustrades and some posts. The only physical barrier across a roadway is a drop-bar lowered when a check-point is closed to traffic. The only cultural image found at these ports is the French/English signage of the Canadian federal government. The greatest amount of embedded landscape imagery at these ports clearly relates to the entry of goods into both countries. It is clearly an indication that the greatest national government concern at these border crossings is economic, not political, strategic or cultural.<sup>20</sup> Therefore, this must bring into question the rationale for much of the debate, discus-

sion and expenditures by both Canada and the United States federal governments over the political rights, national security, and cultural attitudes about this shared border. Any recent attention since September 11<sup>th</sup> given by both countries to functional criteria other than economic is not substantially reflected in the landscape imagery at these four ports of entry within the survey area.

However, once the border line leaves these highway ports of entry, national identity imagery almost completely disappears from the boundary area landscape. Also absent from this boundary area are any clear images of municipal or provincial/U.S. state identification, or both. Only vernacular images are present and they have been embedded by the local residents living on either side of the border line. This vernacular imagery is exemplified by residential driveways that cross the border line from one country to houses in the other country, residential gardens that extend over the border line, national border signage covered by local graffiti, unimpeded footpaths and trails crossing the border line between the two countries, unimpeded pedestrian beach access across the border line, and un-



**Figure 2. Looking into the Municipality of Delta, Canada from Point Roberts, U.S.A. This footpath crosses the boundary line about two kilometres east of the Point Roberts POE.**

impeded access across the border line through unfenced fields and forest.<sup>21</sup>

Therefore, in answer to the research question, this local imagery clearly challenges the security concerns of the state for its political and strategic functions in this boundary area and gives primacy to local vernacular functions. Federally, Canada and the United States clearly have not established their national identities in these boundary areas that are removed from its ports of entry. The vernacular images present along the border line clearly suggest that local functions, and not national political and strategic functions, are of primary importance in this boundary area. They indicate that the national concerns of both countries have little relevance and play few roles in the local landscape uses of this boundary area. They indicate that, in British Columbia's Fraser Valley and the Point Roberts boundary area, the forty-ninth parallel border, away from the official ports of entry, is operating as a classic frontier zone. A frontier zone is symbolized in its landscape by the presence of images of vernacular local activities rather than national political symbols or a physical strategic border line or both built into the ground. This

lack of national territorial presence is a typical characteristic of a geographic frontier zone where national territorial interests are minimized by the local population. In these frontier zones, unless strategic interests of state security are given primacy of concern through construction of physical barriers, the boundary area is usually the site of fluid border accessibility for local activities.<sup>22</sup> Therefore, it is not unusual or unexpected that the study's boundary area presents frontier zone characteristics.<sup>23</sup>

However, this frontier zone minimization has serious territorial security implications for both countries, as does any frontier zone for a state's purposes of territorial security and integrity.<sup>24</sup> Clearly, with current international discussions surrounding Canada's and the United States' shared border areas, territorial integrity and security, this areas' landscape imagery indicates that a security problem exists along their border line and that solutions to this problem should be an integral part of those discussions. Currently it is not certain that that is the case. The local presence and daily activities in this zone serve to undermine the current political rhetoric and proposed practices of a joint national security policy promoted by

both Canada and the United States in the post-September 11<sup>th</sup> world.<sup>25</sup> The most serious of implications are the possible assumptions and treatments of this boundary area by both countries national bureaucracies and security agencies solely as an economic highway port of entry border crossing,<sup>26</sup> while overlooking the potential security and integrity issues involved if the daily vernacular activities operating in the frontier zone were also to be engaged in by terrorists and groups intent on compromising state security.<sup>27</sup>

The current increase in security concerns of both Canada and the United States since September 11<sup>th</sup> has led to large and expensive increases in security procedures at the highway ports of entry but minimal physical boundary area security within the frontier zone itself.<sup>28</sup> Current national security procedures fail both to recognize and address the potential security problems of the boundary area as a vernacular frontier zone with fluid accessibility to local residents. Ways in which the security of this zone can be increased without massive physical strategic barriers, such as walls, implementation of security procedures that are invasive of the privacy and property rights of the local residents, political strictures which could possibly be found unconstitutional in both countries, are difficult and probably impossible to implement continuously on the ground from a federal authorities and agencies perspective.<sup>29</sup>

However, a mitigation of this security concern can be found within the cultural characteristics of the frontier zone itself. The local residents of frontier zones are usually very knowledgeable about routes around and across the boundary line and the people who use those routes, both when and for what purposes.<sup>30</sup> Within the study area, the Neighbourhood Watch program operates on both sides of the boundary line in order to keep a local eye on the area for suspicious, possibly criminal, behaviour. Currently it is often a local resident who will report to authorities an illicit crossing of the boundary line.<sup>31</sup>

Therefore, offered here as one suggestion is a local “international” border security program, similar in concept to the ‘Neighbourhood Watch’ or ‘Citizens-on-Patrol’ programs, which could be established drawing on the knowledge and presence of the local residents.<sup>32</sup> With proper selection and training,<sup>33</sup> volunteer local residents could enhance the visual monitoring of border integrity while conducting their daily affairs. The goals and structure of such a program, however, would have to be clearly established in consultation with the local community and other stakeholders and with community involvement in training. This local involvement would attempt to avoid

operating some form of “out-of-control” “Peoples’ Secret Police/Militia” type of organization in the boundary area. However, this strategic use of local residents might be more effective, less costly and less intrusive of peoples’ rights than the current federal use of public and private agencies in Canada and the United States.<sup>34</sup> Other mitigating alternatives at the local level are also possible if the security dynamics of a boundary area in a frontier zone are clearly understood and these strengths developed.

Through this study of the landscape iconography and of these images embedded into the border area landscape at points of crossing that ostensibly lead nowhere, but in fact do provide illicit access to somewhere important, this paper has attempted to clarify our convergent and divergent perceptions and understandings of the Canada/U.S. strategic territorial relations at this frontier zone. This study and its findings are contributions towards trying to address future compromises to the territorial integrity and security of both countries. Its suggestion for procedures and actions that could possibly address and mitigate these security concerns will obviously need further study. It is to be hoped that future research will build upon the findings, observations and interpretations of this paper.

## Notes

- 1 An earlier version of this paper was presented at the State Borders and Border Policing Workshop held at Queen’s University, Kingston, Ontario, 20-22 August, 2004.
- 2 See Litchblau, Eric and John Markoff. 2004. “Accenture Is Awarded U.S. Contract for Borders.” *New York Times*, 2 June. This contract had a potential price-tag of between US\$10 million and US\$10 billion over its 10 year life. Because of its trans-national operations, Accenture’s contract was subsequently revoked by U.S. politicians. See also Johnson, Chris. 2004. “U.S. tightens border with fingerprint program.” *Vancouver Sun*, 15 July.
- 3 See concerns by civil liberties officials in both Canada and the United States over the U.S. decision on fingerprinting. Johnson, Chris. 2004. “U.S. tightens border with fingerprint program.” *Vancouver Sun*, 15 July.
- 4 The U.S. Dept of Homeland Security and Canada’s Integrated Border Enforcement Teams (IBETs). According to the RCMP Web Site, “Integrated Border Enforcement Teams (IBETs) are multi-disciplinary teams comprised of federal, provincial/state and mu-

municipal law enforcement agencies. They target cross-border crimes and terrorist activity on both sides of the US-Canada border. In Cornwall, Ontario, for example, 12 different police services and agencies are involved. They share information, intelligence, technology and personnel. IBETs across Canada have confiscated drugs, weapons, liquor, tobacco, and vehicles and made numerous arrests. An IBET in British Columbia seizes over a million dollars' worth of illegal materials per month!" (www.rcmp-grc.gc.ca/about/safe\_secure\_e.htm). IBET is comprised of the following Canadian and U.S. agencies: Royal Canadian Mounted Police, U.S. Customs and Border Protection (CBP), Citizenship and Immigration Canada, U.S. Immigration and Customs Enforcement (ICE), the Canada Border Services Agency, and the U.S. Coast Guard. Along with IBET the Canadian government has also established Integrated National Security Enforcement Teams (INSETs) specifically to deal with issues of national security and terrorism. INSETs are made up of representatives of the RCMP, federal partners and agencies such as Canada Border Services Agency (CBSA), Citizenship & Immigration Canada (CIC), Canadian Security Intelligence Service (CSIS) and provincial and municipal police services. INSETs were originally formed in Vancouver, Toronto, Ottawa and Montreal. Despite this appearance of inter-agency preparedness, a recent report by Canada's Auditor-General has noted that there are "major deficiencies in inter-agency co-operation" that leave Canada vulnerable to infiltration by both organized crime and terrorist agencies. (See Fife, Robert. 2004. "Auditor likely to find gaping security holes." *Vancouver Sun*, 9 July.)

- 5 See Read, Nicholas. 2003. "Border security fails agents' test." *Vancouver Sun*, 31 January. This paper uses the following geographic definitions for the terms Boundary Area, Border Line and Frontier Zone derived from the theoretical work of geographer Robert Sack (Sack 1986).

The *Boundary Area* refers to those strips of national territory on either side of the border line when residents of both countries interact in the conduct of their daily routine activities without any particular notice or regard to the presence of the border line.

The *Border Line* refers to the actual internationally agreed upon and demarcated boundary between two states. In the Pacific Northwest of North America the boundary line is the forty-ninth parallel (the forty-ninth degree of latitude). It should be noted that in this study's boundary area, the border line is actually demarcated approximately 1000 feet further north, (49 degrees, 00

minutes, 08.027 seconds N) than the true forty-ninth degree of latitude.

The *Frontier Zone* refers to the actual cross-border line activities and inter-actions of local residents and other non-locals within the boundary area. A contemporary example of an active Frontier Zone is the border area lying along the 'Line of Control' between India and Pakistan in the Kashmir region. (see Waldman, Amy. 2004. "India and Pakistan: Good Fences Make Good Neighbors." *New York Times*, 4 July.)

- 6 See Martin, Don. 2003. "Tracing a thin line on a Map." *Vancouver Sun*, 9 August. This reporter spent three weeks traveling the 6,118 kilometres of the border from the Atlantic to the Pacific Oceans. Having inspected the land-based border line, boundary area and its frontier zone, Martin concluded that, despite both countries' political and security assertions of "standing-on-guard-for-thee," this "undefended" land border, in reality, "cannot be defended."
- 7 McEwen 2001.
- 8 There are more than 8,000 of these obelisks erected from coast to coast.
- 9 See *Calgary Herald*. 2003. "Canadian teen nabbed in border drug bust." 14 November.
- 10 Nuttall-Smith, Chris. 2001. "Tightened borders won't hurt drug trade, police say." *Vancouver Sun*, 21 September.
- 11 Ibid. This lack of apprehension by local Canadian police forces is exemplified by the story of Ramsey Matthew. 2003. "Motorists help brings police chase to conclusion." *Vancouver Sun*, 27 November. Surrey RCMP acknowledged that without the help of a private motorist spotting the offender, they would not have been able to find, stop and apprehend a truck driver who crashed through the border fence "near" the port of entry at Aldergrove, B.C.
- 12 Anecdotal accounts and observations of these activities at Point Roberts and Zero Avenue are given in Chapter 2 of James Laxer's account of his trans-Canada journey along the border (Laxer 2003).
- 13 Meinig, D. W. 1979. "Symbolic Landscapes." In *The Interpretation of Ordinary Landscapes: Geographical Essays*. Edited by D.W. Meinig, 164-192.
- 14 Sack 1986:32-34 and 48-49. In this study, the cultural function is taken to be the local vernacular expression of culture rather than the nationalist high expression of culture. Many studies in Canada have examined the porosity of the Canada/U.S. border in respect to U.S. culture being a threat to the development of Canada's own national cultural expression.

- 15 These are the local vernacular and descriptive names for these crossing points, not the official names.
- 16 This is not the case at all of the border crossings across the country. (See Greenaway, Norma and Mike Trickey. 2001. "U.S. figures show 62 border points unstaffed at night: A traffic cone is all that stops intruders at many small crossings on remote parts of the U.S. -Canada border." *Vancouver Sun*, 4 October.)
- 17 See Sandler, Jeremy. 2002. "U.S. Army urges arming troops at Canadian border: More than 700 unarmed National Guard troops are already patrolling frontier." *Vancouver Sun*, 28 March.
- 18 See notes #11 and #33.
- 19 See the recent comment by Luis Arreaga, the United States consul-general in Vancouver, B.C., that the 5,000 mile "undefended" Canada-United States border was a "symbol of ... economic prosperity." (Parry, Malcolm. 2004. "U.S. Consul-General throws Fourth of July party." *Vancouver Sun*, 10 July.)
- 20 See Editorial arguing that Prime Minister Paul Martin's main priority in his Canada/U.S. relations is to "maintain a porous border for trade." (Spector, Norman. 2004. "Martin has to show U.S. that Canadians aren't soft on terrorists." *Vancouver Sun*, 23 April.)  
See also Paraskevas, Joe. 2003. "Cross-border security needs more help from Ottawa." *Vancouver Sun*, 20 March. In this article, the use of the word "security" in the Canadian perspective clearly means security of economic transactions.
- 21 While it can be argued that such access is mostly restricted to pedestrian traffic, this is not totally true. Two locations were noted in the study area where vehicle access is possible and appears to have been used. Reporter Don Martin's account of his coast to coast journey along the border contains many examples of these vernacular activities by local residents. Martin, Don. 2003. "Tracing a thin line on a map." *Vancouver Sun*, 9 August. See also the account of illicit vehicle use in *Calgary Herald*. 2003. "Canadian teen nabbed in border drug bust." 14 November.
- 22 An account of the then historical and contemporary nature and tradition of this Frontier fluidity in the Kashmir region is given in Romila Thapar's *Early India: From the Origins to AD 1300*. (Thapar, Romila. 2001. *Early India: from the Origins to AD 1300*. Berkeley: University of California Press.) See also Waldman, Amy. 2004. "India and Pakistan: Good Fences Make Good Neighbors." *New York Times*, 4 July.
- 23 These characteristics are likely to extend along the length of the Canada/United States border line from British Columbia to New Brunswick. James Laxer's account of his trip along the border indicates that these fluid Frontier Zone conditions do exist along its length (Laxer 2003).
- 24 See Read, Nicholas. 2003. "Border security fails agents' test." *Vancouver Sun*, 31 January.
- 25 Prime Minister Paul Martin has rejected assertions by Colin Powell that the Canada/United States border is insecure on the Canadian side because of lax security and immigration laws. Rather, Martin responded, Canadian border security is "top." Bohn, Glenn and Peter O'Neil. 2004. "We have taken the steps that are necessary." *Vancouver Sun*, 27 February.
- 26 One assumption could be that everyone who enters the countries comes in a vehicle. There are several recent accounts of illicit cross-country pedestrian border crossings. Also illicit vehicle crossings through back-country roads and trails occur. In a recent account of an illicit border crossing the perpetrators drove across a back-country trail east of the Abbotsford/Sumas port-of-entry in a 2003 Chevrolet Venture van and a 2003 Ford Expedition (See *Calgary Herald*. 2003. "Canadian teen nabbed in border drug bust." 14 November).
- 27 What if al-Qaida were to purchase a residence along Zero Avenue with its back garden in the United States?
- 28 See McLaughlin, Peter. 2004. "Attack on U.S. launched from Canada is biggest fear." *Vancouver Sun*, 19 June. Denis Stairs of Dalhousie University has stated that "the country has been doing well at increasing security at its ports, in airports and offshore. The problem is it's very hard to defend against terrorists who can quietly slip through jurisdictions undetected."
- 29 See note #3. There is no mention in these listing of agencies of any local border watch programs.
- 30 See the account of local residents' knowledge in Waldman, Amy. 2004. "India and Pakistan: Good Fences Make Good Neighbors." *New York Times*, 4 July.
- 31 An Internet tip line to the RCMP is already available and could be integrated into this reporting procedure. See note #33.
- 32 A similar program has been in operation for many years in the Canadian Arctic. Since 1950, the Canadian military has operated the Canadian Rangers, an Inuit volunteer force, to patrol and protect Canada's sovereignty in the High Arctic by reporting any suspicious "goings-on." The force is equipped with Ranger baseball caps, snowmobiles and .303 rifles. However, Conservative MP Peter Goldring has called the Ranger force "hardly a deterrent" in today's high-tech military world of satellite surveillance and nuclear submarines.

- Garvey, Bruce. 2004. "Sovereignty threats spur major exercise." *Vancouver Sun*, 7 August. Therefore, any locally operated border surveillance program would need to have better electronic and technical equipment and training than the Arctic Rangers, although their fundamental objectives may be similar.
- 33 Such as the formal certificate training program currently provided by the RCMP to volunteers to the "Citizens on Patrol" program and implementation and adaptation of the RCMPs "Crime Prevention Through Environmental Design (CPTED)" and internet reporting (RECOL): [www.recol.ca](http://www.recol.ca) programs. A check of the RCMP's "E" division Web Site reveals that, although there are programs and services utilizing local residents' knowledge listed for airport and coastal watches, there is no mention of any programs or services utilizing local resident's knowledge for the land border area in "E" Division ([www.rcmp-grc.gc.ca/bc/crops/index\\_e.htm](http://www.rcmp-grc.gc.ca/bc/crops/index_e.htm)).
- 34 Now that Accenture has had its Homeland Security contract rescinded, it is expected that one of the two other bidders, Lockheed Martin or Computer Sciences, will be successful in obtaining this work. *Vancouver Sun*. 2004. "Accenture could lose contract." 10 June.
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# *Working with the Continental Command: NorthCom and Canadian Defence Policy*

Philippe Lagassé

In the spring of 2002, the United States altered its Unified Command Plan to include Northern Command, a combatant command for the defence of North America. Allocated responsibility for the continental United States, Canada, Mexico and portions of the Caribbean, NorthCom joined the United States' other regional commands – Central, Southern, Pacific and European Command – in coordinating American military assets across the globe. From an American perspective, the creation of NorthCom was a logical response to the events of September 2001. Although the Department of Homeland Security (DHS) was formed to coordinate civilian counterterrorism efforts, the provision of effective military assistance to DHS required an equally centralized command structure. Once its structure is finalized, NorthCom will fulfill that function.

Contrary to subdued American responses to the setting-up of NorthCom, Canadian reactions to the continental command have been disproportionately alarmist. Canadian nationalists wasted no time in predicting that NorthCom would absorb the Canadian Forces (CF), undermine the CF's Canadian values and result in an overall diminishing of Canadian sovereignty and freedom of action.<sup>1</sup> On the other side of the spectrum, some defence intellectuals faulted the Liberal government for not having negotiated a Canadian role in NorthCom.<sup>2</sup> These critics argue that the Liberals' decision not to include the CF in NorthCom showed a lack of resolve with respect to North American defence.

In retrospect, both sides exaggerated NorthCom's mandate and Canada's options in the North American defence relationship. Canadian nationalists overlooked the fact that NorthCom's primary function is to support other American government departments rather than lay claim to an operational control of the CF. Likewise, some defence intellectuals have overlooked Joseph Jockel's assessment that the United States government will maintain a uniquely American command for the defence of North America, no matter what bilateral regimes are established. To be blunt, even if fortress 'North' America were erected, there would be a fortress 'America' providing the United States a backup layer of protection.

Indeed, instead of inviting Canada to be part of NorthCom, most of the available evidence suggests that Washington initially proposed that North American Aerospace Defence Command (NORAD) be expanded. Had Ottawa accepted this proposal, it is very likely that *United States* NorthCom would still have been created alongside an expanded NORAD.

By embellishing the NorthCom mandate and the purported failures of the Canadian government, both nationalists and critical defence intellectuals have glossed over the more subtle, but nonetheless notable, effects NorthCom has had on Canadian defence policy. This paper aims to explore these subtler effects. The paper begins with a brief overview of the NorthCom mandate and its potential force structure. Next, it will examine NorthCom's impact on new continental defence measure and Canad-

ian naval policy. Finally, it will survey NorthCom's role in shifting Ottawa's outlook on ballistic missile defence.

### NorthCom's Mandate<sup>3</sup>

NorthCom's area of responsibility includes the continental United States, Canada, Mexico, and portions of the Caribbean and extends 500 miles off the Atlantic coast line. NorthCom headquarters are located at Cheyenne Mountain, Colorado, next to NORAD headquarters. NorthCom's combatant commandant, General Eberhart, is also dual-hatted as the commander of NORAD. There is talk of NorthCom's being merged with Southern Command during the next UCP revision in 2006 to create a single U.S. command for the entire Western Hemisphere, but for the moment NorthCom focuses exclusively on North America.

NorthCom's first function is to coordinate aid of the civil power and consequent management efforts in the United States. Under the direction of the National Command Authority, CINCNorthCom commands National Guard Weapons of Mass Destruction Civil Support Teams. CINCNorthCom also commands Joint Force Headquarters-Homeland Security, Joint Task Force Civil Support and the counter-narcotic team Joint Task Force 6.

NorthCom's second task is the conventional defence of the North American continent. Although NorthCom has no standing forces of its own, CINCNorthCom will be ceded control of all Atlantic-oriented services in times of need. The United States Navy (USN) Atlantic Fleet, United States Air Force (USAF) Air Combat Command, Marine Forces Atlantic and U.S. Army Forces Command can each be called upon by CINCNorthCom. An example of how CINCNorthCom might make use of these forces is seen in Operation Noble Eagle, launched immediately after the 11 September attacks. Under Noble Eagle, tactical aircraft from Air Combat Command have been assigned to assist continental air defence efforts. Ageis-equipped ships from the Atlantic Fleet bolstered NORAD's surveillance capabilities, and the 26<sup>th</sup> Marine Expeditionary Unit was placed on alert to assist civil authorities.

NorthCom's organization includes no provisions that would allow CINCNorthCom to command or control CF units. However ominous a U.S. North American command might seem, NorthCom is not part of a mischievous plan to absorb the Canadian military or undermine Canadian sovereignty. NorthCom is merely a uniquely American command designed to assign American forces to aid American civil powers and defend the continent and adjacent waters.

Of course, some might argue that this mission already entails an infringement on Canadian sovereignty. Put in its proper context, however, that is at best questionable. Since 1947, the United States has maintained a European Command, whose commander is dual-hatted just as NATO's Supreme Allied Command Europe is. The existence of European Command has not undermined the sovereignty of those countries in its area of responsibility. In the same vein, then, Canada should not be overly concerned with NorthCom.

### The Binational Planning Group<sup>4</sup>

All this is not to say that NorthCom is inconsequential to Canadian defence policy. As noted earlier, after September 11<sup>th</sup>, Washington proposed to Ottawa that NORAD be expanded to include land and maritime security cooperations. Ottawa was reluctant to embrace an enlarged NORAD. As has traditionally been the case in the North American defence relationship, Ottawa opted to create a joint study group to inject any future bilateral arrangement with a dose of caution and fiscal restraint. Although the Canadian government is committed to continental defence, Ottawa rightly worries about the cost and size of new security arrangements.

Shortly after NorthCom was set-up, Canada and the United States formed a Binational Planning Group (BPG) to structure what DND has called "Enhanced Canada-U.S. Security Cooperation." The BPG is headed by a Canadian Lieutenant-General, and is staffed by approximately twenty Canadian and American officers. Most of the American members of the BPG are also posted to NorthCom. The BPG was established in Colorado Springs alongside NorthCom and NORAD.

Organizationally, the BPG is divided into three subsections. Section one deals with expanding maritime cooperation. Section two addresses land cooperation and is also responsible for reviewing all the memorandum of understanding that exist between Canada and the United States. Reviewing these hundreds of MOUs is critical since any of them provide information sharing procedures that the Planning Group will streamline into a comprehensive defence and consequence management plan. Lastly, Section three of the Planning Group is negotiating new intelligence sharing procedures.

Since it was formed the BPG has had some unsung successes. With respect to land cooperation, the BPG is negotiating procedures whereby Canadian and American consequence management teams could perform cross-border operations in the event of a natural, nuclear, bio-

logical, or chemical (NBC) disaster. The logic behind this agreement is simple. Should there be a disaster in Canada or the U.S., it is sensible for the closest consequence management team, irrespective of its nationality, to deploy to the scene. Control of the troops will be ceded to the country where the disaster occurred. Command of the forces, however, will be retained by the forces national government. Although there has been an agreement in principle, the BPG is still discussing legal particulars and control responsibilities.

Most of the BPGs efforts have been focused on maritime cooperation. The United States government is determined to establish a circumspective maritime perimeter around North America that will be able to survey, track and board suspicious vessels and engage and destroy hostile ships. The task of the maritime subsection of the Planning Group is to ensure that Canada and the United States have the mechanisms in place to share the requisite information to be able to maintain this maritime perimeter.

In an age of catastrophic terror, the need to bolster maritime security is paramount. Using shipping containers, terrorist cells can smuggle operatives and weapons of mass destruction (WMD) ashore. A black market or crudely designed cruise missile with a WMD warhead can be launched into a city from the deck of a large ship. As shown by the attack on the USS Cole, terrorists can also target ships and crews. Furthermore, acts of piracy across the globe demonstrate that ship hijackings might be another form of maritime terrorism. Most importantly, each of these types of terrorist activity are possible in North American waters; although the oceans that surround the continent provide a considerable barrier against conventional assaults, waterways are a terrorist force multiplier.

Unfortunately, as efforts to prevent drug smuggling have shown, high levels of commercial shipping render an overarching surveillance and monitoring of North America's maritime domain exceedingly difficult. Though satellites, radar installations and surveillance aircraft can detect when a vessel enters a country's exclusive economic zone (EEZ), it is simply not feasible for military or civilian agencies to inspect every ship that approaches a coastline. Instead, what is needed to secure a greater maritime domain awareness is a coordination of intelligence, detection, interception, surveillance and reconnaissance capabilities. Armed with intelligence about which ships are dangerous or suspicious, maritime security agencies can make an informed decision about which vessels should be boarded, halted or destroyed. In turn, if intelligence assets are sufficient, an affordable number of platforms to

survey maritime domains and intercept suspicious vessels can be maintained.

Since September 2001, Canada and the United States have worked to improve maritime intelligence and security. Both countries have implemented the International Ship and Port Facility Security Code, an international agreement designed to standardize port security measures and crew and cargo registration. In December 2002, the United States released a Maritime Strategy for Homeland Security, a document that reaffirmed the United States Coast Guard's (USCG) role as the lead agency in American maritime security, and promised to improve port security and maritime domain awareness. The USCG's role as the lead maritime security agency implies that it will be working closely with NorthCom. In fact, the USCG may be placed under the control of NorthCom's commander in the event of a crisis, as outlined in Title 10 of the U.S. code.

To ensure that the USCG is better equipped to meet current and emerging maritime threats, the United States is funding a USCG recapitalization program known as the Integrated Deepwater System (IDS).<sup>5</sup> Once completed, IDS will provide the USCG with a rejuvenated fleet composed of three new classes of cutters and associated small boats, new fixed-wing surveillance aircraft and helicopters, and land and sea-based unmanned aerial vehicles (UAVs). Alongside strengthened radar technologies and intelligence gathering, it is hoped that IDS will enhance the USCG's ability to detect, intercept and interdict maritime threats in America's coastal waters.

In Canada, the minister of transportation formed an Interdepartmental Maritime Security Working Group (IMSWG) in 2002 to study maritime security coordination and propose a maritime security plan to cabinet. Ottawa's 2004 National Security Policy (NSP) trumpeted a Can\$308 million investment in marine security, advances in intelligence and surveillance capabilities, and greater cooperation with the United States to secure North American ports.<sup>6</sup> The NSP also announced the establishment of two Marine Security Operations Centres (MOCs). These MOCs will include members of the Canadian Coast Guard (CCG), Transport Canada, the Royal Canadian Mounted Police (RCMP) and be headed by Canadian Forces (CF) Maritime Command. In addition, the MOCs are to work with USCG operations centres to bolster continental maritime security.

A possible outcome of the BPG's maritime coordination efforts might be an expansion of NORAD to include a binational maritime security command and control centre. Presumably, a "maritime NORAD" would create a binational maritime security centre to facilitate com-

munications between USCG operations centres and the Canadian MOCs. A “maritime NORAD,” moreover, would likely increase intelligence and surveillance data sharing between the USCG and MOCs, include provisions for a binational control of maritime security forces and synchronize interdiction efforts to maximize efficiency while minimizing costs and confusion. Owing to the refinement in North American maritime domain awareness and security cooperation it would enable, a ‘maritime NORAD’ is an advisable venture. Indeed, for Canada, access to American satellite and radar data would substantially reduce costs associated with building comparable national capabilities; and for the United States, providing Canada with these capabilities would be beneficial because it will increase continental maritime security as a whole. Truly, then, a “maritime NORAD” is a “win-win” opportunity.

Yet, for a “maritime NORAD” to function optimally, both Canada and the United States should complete their internal maritime security restructurings. On the American side, Stephen Flynn of the Council on Foreign Relations has observed a lack of leadership on homeland and maritime security issues.<sup>7</sup> The current administration, he argues, has been slow to admit that the war on terror must first and foremost be fought within the United States. Americans and their government must adopt a new approach to homeland security, one which devotes serious attention to infrastructure protection, intelligence reform, and prevention. As discussed, however, the United States is moving forward with efforts better to guard its, and the continent’s, coasts. Though improving maritime security capabilities is only one step among many, it is a step nonetheless. Once IDS is complete, the USCG will be equipped to contribute most of the capabilities a ‘maritime NORAD’ would require.

A more decisive approach to homeland security is also lacking on the Canadian side. Many commentators note that the 2004 National Security Policy (NSP) grounds Canada’s homeland security strategy on rhetorical devices rather than substantial policies. Arguably, that is especially true on matters of Canadian maritime security. While the NSP promises to increase on-water patrols and funding for maritime security, the document is silent about a particularly pressing maritime security issue, namely, the need to rethink Canadian naval policy and force structuring in order to arm Canada with an adequate number of maritime surveillance and interdiction forces. Absent a revision of naval policy and force structuring, it is unlikely that Canada will have enough maritime security forces to contribute meaningfully to a “maritime NORAD.”

Three agencies are involved in Canadian maritime security: the CCG, the RCMP and the CF.<sup>8</sup> Unlike the USCG, the CCG is a purely civilian agency. The CCG does not have a law enforcement mandate or bear arms. In addition, the CCG sails a fleet of debilitated ships, and no recapitalization of the CCG fleet has been proposed by the Canadian government. As a result, the CCG has neither the equipment nor the mandate to serve as Canada’s primary maritime security agency. For its part, the RCMP is armed and has a law enforcement mandate. Yet, being supplied with only a limited fleet of small boats, the RCMP is ill-equipped to perform many maritime security tasks. Hence, as the command of the MOCs suggests, responsibility for Canada’s maritime security lies principally with the Canadian military.<sup>9</sup>

The CF boasts four maritime security platforms. First are the CP-140 Aurora maritime surveillance aircraft. Eighteen Auroras are currently being upgraded with new radar systems. Given their limited numbers, however, the modernized Auroras will provide only a partial maritime surveillance capability. Second are twelve Kingston-class maritime coastal defence vehicles (MCDVs). Mostly used to train reservists, the MCDVs have a limited maritime security role. The MCDVs, moreover, are slow, minimally armed and too few to serve as interdictors. Third are the four Victoria-class submarines. When, or if, they become fully operational, the Victorias will be useful for clandestine surveys of Canada’s EEZ, but because of their small number, will play a marginal role in maritime security. Fourth are the Cormorant search and rescue helicopters. Being search and rescue helicopters, though, the Cormorants are of limited value for surveillance and enforcement.

Including the navy’s warships as maritime security platforms improves the CF’s maritime interdiction capabilities. The Canadian navy sails sixteen warships: twelve Halifax-class frigates and four Iroquois-class destroyers. The frigates are fast, decently armed, versatile ships. Current policy demands that the frigates give twelve weeks a year to coastal defence. Dedicating the frigates to more coastal surveillance missions would enhance Canadian maritime security. Indeed, during the summer of 2004, CF frigates participated in several well-publicized maritime security operations, thereby illustrating their adaptability and utility as a maritime security platform. A comparable case could be made for the destroyers. Though nearing the end of their life expectancy, the destroyers are also fast and well-armed ships.

The Canadian navy, however, is hesitant to assign more maritime security missions to the frigates and destroyers. These ships are the core of Canada’s global naval projec-

tion capability. As demonstrated on Operation Apollo, the frigates and destroyers are central to Canada's contribution to the global war on terror and the maintenance of international security via multinational efforts such as the Proliferation Security Initiative (PSI).

A tempting solution to this conundrum proposes that Canada emulate the United States in recapitalizing the CCG and giving the service an enforcement mandate.<sup>10</sup> However wise this suggestion may be, it is at odds with Canada's fiscal and political realities. Contrary to the urgings of many experts, the Canadian government has eschewed a substantial increase in defence spending. It is unclear how calls for a significant increase in the CCG budget would fare better. Indeed, in light of the public's unwavering demand for more health and education spending, it is highly unlikely that a Liberal minority government will prioritize funds for maritime security over social programs. Even if Canada can afford to revitalize the CCG, the political capital required to push such a proposal through Parliament is virtually non-existent.

Assuming, then, that the CCG will not be recapitalized, what politically and financially realistic solutions exist to fill the gaps in Canada's maritime security capabilities? Two options present themselves. First, the government could impose a maritime security focus on the navy. That would entail curtailing the navy's expeditionary operations, leaving more frigates to serve as coastal interdictors. Because this option would make use of existing platforms, there would be few financial costs involved. In fact, reducing overseas naval operations might save defence dollars. Politically, this option is also attractive for a minority government because it would be an executive branch decision that would not need legislative approval. That being said, restricting the Navy's expeditionary activities would harm Canada's internationalist image and aims. The Canadian government has committed itself to the global war on terror and, as Operation Apollo and the PSI show, the navy is a vital part of Canada's role in that war. Restricting the navy's overseas operations thus would be met with charges of isolationism and might be seen by allies as an abandonment of Canada's collective security and defence obligations.

A second option, put forth by Joel Sokolsky,<sup>11</sup> is to replace the navy's aging destroyers with coastal defence cutters. The Iroquois destroyers are slated for decommissioning in 2012. Rather than replacing them with another command and control platform, the destroyers' command function and technologies could be transferred to the frigates. The frigates and the recently announced Joint Support Ships (JSS) would then become the navy's sole

expeditionary vessels. Capital funds earmarked for new destroyer would be used to buy cutters similar to those the USCG is developing as part of IDS. Indeed, were the Canadian government to acquire cutters being built along IDS specifications, the Department of National Defence (DND) could benefit from lower shipbuilding costs associated with economies of scale. Using the same cutters as the USCG, moreover, would ensure that Canada's maritime security forces are interoperable with their American counterparts.

Replacing the destroyers with a fleet of coastal defence cutters is doubly attractive when compared to the cost of buying new destroyers. According to Brian Macdonald of the Royal Canadian Military Institute, replacing the navy's four destroyers with equivalent ships would cost DND Can\$5.3 billion.<sup>12</sup> A fleet of twelve cutters, on the other hand, could cost as low as Can\$500 million.<sup>13</sup> Even if the actual cost of the cutters were triple this estimate, opting for a fleet of cutters instead of new destroyers would result in substantial savings for DND's capital equipment budget.

Whichever option is preferred by the government, some reduction in the CF's naval projection capabilities must be embraced if Canada's is to be equipped to contribute significant forces to a "maritime NORAD." In spite of Canada's wealth as a G8 nation, funds for a CCG recapitalization or for both new destroyers and a fleet of cutters for the navy are unlikely to materialize. Accordingly, when debating which maritime security capabilities Canada should acquire, it is necessary to think within current budgetary allocations. Indeed, given the centrality of intelligence to maritime security, it is advisable that most new maritime security monies be directed towards intelligence agencies instead of to new equipment. Hence, in order to strengthen North American and Canadian maritime security by agreeing to a "maritime NORAD," the Canadian government and members of the Canadian defence community must first reexamine how the navy best serves the nation in an age of catastrophic terrorism.

The push for a "maritime NORAD" would likely not be as strong if NorthCom had not been set-up. Because NorthCom demonstrates that the United States is prepared to secure North America's coasts alone, NorthCom's existence prompted Canadian planners to negotiate a role for Canada in continental maritime security consistent with the protection of Canadian sovereignty and interests. However, to play an effective part in a 'maritime NORAD,' Ottawa will need to reconsider the missions and force structure of the Canadian navy. In this sense, NorthCom's existence has propelled forward an important

reconsideration of Canadian defence policy and Canadian naval policy in particular.

### Ballistic Missile Defence

Arguably the most apparent and publicized shift in Canadian defence policy, in part brought on by the establishment of NorthCom, is Ottawa's shifting attitude towards a Canadian participation in ballistic missile defence. To use John Kingdon's terminology, NorthCom opened a political window that allowed pro-BMD groups to put a Canadian BMD participation at the top of Canada's defence policy agenda.<sup>14</sup>

Over the next few decades, the United States hopes to establish a layer BMD system that will protect both the North American continent, American service personnel in select theaters and chosen foreign allies. Within the next six months, a ground-based midcourse defence is slated to come online. The command structure that will ultimately control the BMD system and the warning and assessment capabilities it needs has yet to be decided.

However, NORAD is the most obvious choice. That is because NORAD provides the integrated warning and attack assessment (ITWAA) that detects ballistic missile launches.<sup>15</sup> In effect, NORAD already performs the first half of missile defence: it identifies the launch and trajectory of ballistic missiles headed towards North America. Locating BMD command and control within the NORAD structure would, therefore, be a logical extension of its current operations. In recognition of that fact, the Canadian and American governments signed an agreement in August 2004 which will allow NORAD to transmit ITWAA data to BMD command and control. In doing so, the Canadian government essentially included Canada in the first phase of missile defence, that is, the detection and assessment phase that precedes the interception. Whether that move ultimately means that a Canadian role in BMD command and control is inevitable is not clear. What is clear, it is held, is that the August 2004 agreement implies that Canada is now part of the arching missile defence system; although Canadians may not be pushing the button to launch interceptors, they will be transmitting the data the button pushers need to make the kill. Regardless of how coy the Martin government chooses to be, Canada is playing a part in missile defence, albeit an inconspicuous one.

NorthCom was critical to the negotiation of the August 2004 NORAD agreement. Since NorthCom shares NORAD's Cheyenne Mountain headquarters, transferring ITWAA to NorthCom would have been relatively simple.

The only difficulty with removing ITWAA from NORAD would have been deciding what to do with its remaining air defence functions. NORAD could be reduced back to North American *Air Defence* (instead of Aerospace) Command. Canada-U.S. air defence cooperation could have been renegotiated on a simpler scale by the binational planning group. A more troubling alternative, though, was that a Canadian refusal to share NORAD's ITWAA data with BMD command and control could have resulted in a complete dissolution of NORAD as a binational command, with air, land and maritime defence cooperation occurring on a more informal level.

To Ottawa, NORAD's survival was politically expedient. Above all, the NORAD structure makes concrete the idea that North American defence is a binational endeavor between two equal partners. Whether that is true in practice is debatable, but NORAD preserves this idea of an equal partnership. Secondly, the end of NORAD would be a bad omen for Canada-U.S. defence relations. At a time when Washington is increasingly concerned with homeland defence, it would be bad form for Ottawa to allow the continental defence relationship to degrade. Arguably, that would signal that Canada does not take North American defence seriously, a perception which already sours some Americans' views of Canada.

The possibility that locating missile defence at NorthCom could lead to the dissolution or downgrading of NORAD was not lost on DND. Former Defence Minister David Pratt's letter to Donald Rumsfeld highlights this point. Pratt's second paragraph began by stating, "A key focus of our co-operation in missile defence should be through NORAD."<sup>16</sup> Ottawa, thus, sought to save NORAD by allowing ITWAA data to be shared with BMD command and control. Had NorthCom not existed, finding a new home for ITWAA would not have been easy for the United States. Arguably, then, it was the possibility of an ITWAA transfer from NORAD to NorthCom that prompted Ottawa to reexamine its BMD policy and negotiate the August 2004 NORAD agreement.

### Conclusion

In conclusion, Although NorthCom's impact may not be as dramatic as first presented by nationalists and certain defence intellectuals, it has had a noticeable impact on key Canadian defence policies. Washington's focus on homeland defence lead to the creation of the binational planning group which could in turn lead Canada and the United States to broaden NORAD's mandate to include maritime security functions and compel Ottawa to re-

think Canadian naval policy. In addition, the possibility that NORAD's ITWAA role could be transferred to NorthCom compelled Ottawa to reconsider its approach to BMD. Together, these policy evolution demonstrate that NorthCom's impact on Canadian defence policy, though not momentous, is nonetheless not insignificant.

## Notes

- 1 Byers, Michael. 2002/03. "Canadian Armed Forces Under United States Command." *International Journal LVIII*(winter).
- 2 Mercedes Stephenson, remarks at the University of Calgary's Society for Military and Strategic Studies conference, 14-15 February 2003.
- 3 For a more detailed analysis of NorthCom's mandate, see Lagassé, Philippe. 2003. "NorthCom and the Evolution of Canada-United States Defence Relations." *Canadian Military Journal* 4(1, spring).
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- 5 For details on IDS see Adm. Thomas H. Collins Commandant of the United States Coast Guard Special Report (excerpts), *Sea Power*, April 2003, Navy League of the U.S., <http://www.sfu.ca/casr/ft-collins1-2.htm>.
- 6 It is debatable whether this initial investment in maritime intelligence and surveillance is sufficient. See Avis, Captain (N) Peter. 2004. *Maritime Security and the Culture of Prevention*. Ottawa: Norman Paterson School of International Affairs. [http://www.carleton.ca/csds/occasional\\_papers/NPSIA-42.pdf](http://www.carleton.ca/csds/occasional_papers/NPSIA-42.pdf)
- 7 Flynn, Stephen E. 2004. "The Neglected Home Front." *Foreign Affairs* September/October.
- 8 The following section summarizes portions of Lagassé, Philippe. Forthcoming. "Matching Ends and Means in Canadian Defence." In *Canada Among Nations 2004: Setting Priorities Straight*. Edited by David Carment, Fen O. Hampson, and Norman Hillmer. Montréal: McGill-Queen's University Press.
- 9 It should be noted that, unlike the situation in the United States, the Canadian military can assist in law enforcement if called upon by a civilian agency.
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- 15 For a detailed look at NORAD and ITWAA see Jockel, Joseph T. 2003. *Four U.S. Military Commands: NORAD, NorthCom, SpaceCom and StratCom—The Canadian Opportunity*. Montréal: Institute for Research on Public Policy. <http://www.irpp.org/miscpubs/archive/wp/wp2003-03.pdf>.
- 16 Canada, Department of National Defence. 2003. "Letter from Minister Pratt to Secretary Rumsfeld." January, [http://www.forces.gc.ca/site/Focus/Canada-us/letter\\_e.asp](http://www.forces.gc.ca/site/Focus/Canada-us/letter_e.asp).



# *Doing the NAFTA Laundry: Security and Cross-Border Capital Movements*

Bradly Condon and Tapen Sinha

## **Introduction**

Cross-border capital flows are at once the lifeblood of international commerce and the lifeblood of international crime, be it drug or people smuggling, tax evasion, or terrorism. The central issue is, therefore, how to strike the right balance between measures to liberalize cross-border capital flows and the restrictions that are necessary to deal with transnational crime. This article begins with some examples of U.S. and Canadian government actions with respect to terrorist financing. We then examine restrictions on capital flows that criminalize money laundering and terrorist financing in the NAFTA countries.

## **Freezing Terrorist Assets**

In November 2001, the Bush administration froze the assets of two suspected bin Laden financial networks, Al-Taqua and Al-Barakaat, and affiliated organizations in Minnesota, Massachusetts, Ohio, and Washington. Both are money exchanges, known as “hawalas,” suspected of channeling funds to al-Qaida through businesses and charities. The affiliates include Aaran Money Wire Service, Inc., of Minneapolis; Al-Barakaat Wiring Service of Minneapolis; Barakaat Boston of Dorchester, Massachusetts; Barakaat Enterprise of Columbus, Ohio; Barakaat North America, Inc., located in Ottawa and Dorchester, Massachusetts; Barakaat Wire Transfer Co. of Seattle; Global Service International of Seattle; and the Somali International Relief Organization of Minneapolis (*Globe and Mail* 2001a).

On August 22, 2002, the United States requested that a United Nations panel remove four individuals and two businesses from a sanctions list after European countries and Canada criticized the lack of evidence that they were linked to the al-Qaida network. The U.S. Treasury Department maintains a list of individuals and groups that allegedly support al-Qaida, which it submits to the United Nations Security Council sanctions committee. At the end of August 2002, more than 215 names were on the U.S. list. The United Nations collects such lists from its members, and then asks all United Nations members to block the transfer of those funds. However, there is no formal United Nations system to determine whether those on the list should be.

Three of the individuals (Somali-born Swedes) worked for the al-Barakaat Bank and exchange company, which is used by expatriate Somalis to send remittances home to their relatives. However, the United States alleges that the bank was also used to channel al-Qaida funds. A fourth individual, a Somali-born American citizen, ran Aaran Money Wire Service in Minneapolis. The two businesses removed from the list were Global Services International U.S.A, of Minneapolis, and Barakaat Enterprise, of Columbus, Ohio. The individuals signed sworn statements with the U.S. Treasury Department declaring that they would not participate in banned organizations. Their assets had been frozen for several months (Leopold 2002).

The Canadian Superintendent of Financial Institutions maintains a list of terrorist suspects, based on a list estab-

lished under the United Nations Suppression of Terrorism Regulations. The Canadian cabinet must approve additions to the Canadian list. Under Canadian *Proceeds of Crime* legislation, financial institutions must scrutinize their records and freeze the assets of suspected terrorists on the list.

In December 2001, hours after the United States froze the assets of some of the same groups, Canada added three groups allegedly linked with Hamas (a Palestinian organization) to its list. The previous week, Hamas had claimed responsibility for suicide attacks in Israel. The three groups were Al-Aqsa Islamic Bank; Beit El-Mal Holdings Co., a Palestinian-based investment group; and the Holy Land Foundation for Relief and Development, of Richardson, Texas. The latter says it is the largest Muslim charity in the United States and is not a front for Hamas. As of December, Canada had frozen Can\$344,000 in suspected terrorist assets in twenty-eight accounts (*Globe and Mail* 2001b).

While Canadian and American authorities cooperate closely with each other, differences in the two legal systems can create frictions. A perception exists in the United States that weaknesses in the Canadian system complicate the fight against terrorism, especially when terrorist suspects are deported instead of being charged with crimes. In one case in November 2001, authorities accused Hassan Almrei of being involved in financing Usama bin Laden's terrorist network, first in Saudi Arabia and later in Toronto where he arrived with a false passport from the United Arab Emirates on January 2, 1999. Almrei was also alleged to be connected with Nabil al Marabh, whom the FBI arrested in the United States on September 19, 2001 on suspicion that he might have provided false documents used by the September 11<sup>th</sup> hijackers.

Judges in the United States and Canada have also reached different decisions regarding bail. Liban Hussein, a Somali-born resident of Ottawa, was accused by American authorities of managing an international money-transferring operation that channeled \$3.8 million to al-Qaida. His brother, Mohammed M. Hussein, was arrested in Boston. In November 2001, a Canadian judge released Liban Hussein on \$8,000 bail. Mohammed Hussein was denied bail in the United States.

Another source of systems friction is the difference in the way the two countries treat refugee claimants. The United States detains them. Canada detains them only if there is a risk of flight. That left the refugee system subject to abuse by those who claimed refugee status in order to gain legal residency while awaiting their refugee hearing. Until Canada streamlined its system in 2001, such individuals could remain in Canada for years while their cases worked

their way through hearings and appeals. However, some U.S. officials still think that Canada's refugee law is inadequate because detention is not mandatory (DePalma 2001).

### NAFTA and Barriers to Capital Flows

NAFTA has done much to break down barriers to cross-border capital flows. NAFTA applies to "persons" of a NAFTA country, which means citizens or permanent residents of a NAFTA member or a business organized under the law of a NAFTA member. Thus, as long as a company from outside the NAFTA region is able to meet the requirements for incorporation (or other forms of business organization) and complies with foreign investment laws, it may become a NAFTA company. However, companies that are controlled by investors from outside the NAFTA countries may be denied NAFTA benefits if the enterprise has no substantial business activities in the territory of the country under whose laws it is constituted. Benefits may also be denied if a NAFTA country does not maintain diplomatic relations with the investor's home country or prohibits business transactions with enterprises from that country.

NAFTA prohibits restrictions on transfers of profits, proceeds, or payments unless the restrictions are due to the application of laws relating to bankruptcy, securities, criminal offenses, currency transfer reporting, or enforcement of judgments. Governments, therefore, remain free to restrict transfers under laws such as those relating to money laundering and those that permit the freezing of assets in litigation and bankruptcy proceedings. Following the attacks, the NAFTA governments used money laundering laws to deal with terrorist funds.

NAFTA also contains a more general national security exception that applies to all of its provisions, including the treatment of foreign investors. Because it is so broad and discretionary, this exception could be used to restrict capital movements whenever one of the governments considers such restrictions necessary for the protection of its essential security interests in a time of war or other emergency in international relations.

Although there have been no cases interpreting this provision under NAFTA or the equivalent provision under the General Agreement on Tariffs and Trade (GATT), capital restrictions placed on terrorist funds in the context of the September 11<sup>th</sup> attacks would very likely qualify under this exception. Support for this view may be found in the preparatory work relating to the equivalent GATT security exception. One of the drafters of the original draft charter stated: "We gave a good deal of thought to the question

of the security exception.... It is really a question of balance.... We cannot make it too tight, because we cannot prohibit measures which are needed purely for security reasons. On the other hand, we cannot make it so broad that, under the guise of security, countries will put on measures which really have a commercial purpose” (WTO 1995:600). In the case of restrictions on terrorist funds, the purpose of the measures would clearly be related to their security interests, not to a commercial purpose.

### Capital Flows and Multilateral Financial Cooperation

Canada, Mexico, and the United States are all members of the Financial Action Task Force on Money Laundering (FATF). FATF is an intergovernmental policy-making body created in 1989 by the G7 summit in Paris. It has created a list of forty recommendations that provide a framework for policy implementation in member and nonmember countries (FATF 2002a). There are currently thirty-one members, listed in table 1, and several international organizations with observer status, listed in table 2. Since 2000, FATF has published lists of countries that are not cooperative in fighting money laundering. FATF members request their financial institutions to scrutinize business transactions with individuals, companies, and financial institutions from listed countries. Table 3 lists those countries.

**Table 1. Thirty-one members, Financial Action Task Force on Money Laundering (FATF)**

Argentina	Greece	Norway
Australia	Gulf Co-operation Council (GCC)	Portugal
Austria	Hong Kong, China	Singapore
Belgium	Iceland	Spain
Brazil	Ireland	Sweden
Canada	Italy	Switzerland
Denmark	Japan	Turkey
European Commission	Luxembourg	United Kingdom
Finland	Mexico	United States
France	Netherlands	
Germany	New Zealand	

Source: OECD, [www1.oecd.org/fatf/Members\\_en.htm](http://www1.oecd.org/fatf/Members_en.htm)

Notes: The members of the GCC are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates. While the GCC is a member of the FATF, its member countries are not.

**Table 2. Observers, Financial Action Task Force on Money Laundering (FATF)**

- *FATF-Style Regional Bodies*
- Asia / Pacific Group on Money Laundering (APG)
- Caribbean Financial Action Task Force (CFATF)
- Council of Europe PC-R-EV Committee
- Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)
- Financial Action Task Force on Money Laundering in South America (GAFISUD)

#### *Other International Organizations*

- African Development Bank
- Asia Development Bank
- The Commonwealth Secretariat
- Egmont Group of Financial Intelligence Units
- European Bank for Reconstruction and Development (EBRD)
- European Central Bank (ECB)
- Europol
- Inter-American Development Bank (IDB)
- International Monetary Fund (IMF)
- Interpol
- International Organisation of Securities Commissions (IOSCO)
- Organization of American States / Inter-American Drug Abuse Control Commission (OAS/CICAD)
- Offshore Group of Banking Supervisors (OGBS)
- United Nations Office for Drug Control and Crime Prevention (UNODCCP)
- World Bank
- World Customs Organization (WCO)

Source: OECD, [www1.oecd.org/fatf/Members\\_en.htm](http://www1.oecd.org/fatf/Members_en.htm).

**Table 3. Thirteen countries listed as noncooperative in fight against money laundering**

Cook Islands	Indonesia	Russia
Dominica	Marshall Islands	St. Vincent and the Grenadines
Egypt	Myanmar	Ukraine
Grenada	Niue	
Guatemala	Philippines	

Source: OECD, Third FATF Review to Identify Non-Cooperative Countries or Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures (June 21, 2002), [www1.oecd.org/fatf/pdf/NCCT2002\\_en.pdf](http://www1.oecd.org/fatf/pdf/NCCT2002_en.pdf).

Notes: Cayman Islands, Panama and Liechtenstein were removed from the list in June 2001. Hungary, Israel, Lebanon, and St. Kitts and Nevis were removed from the list on June 21, 2002.

Following the terrorist attacks of September 11<sup>th</sup>, in Washington in October 2001, FATF held an extraordinary plenary meeting on the financing of terrorism. FATF agreed to expand its mandate beyond money laundering to include terrorist financing. The group issued a set of international standards for countries to adopt, including to criminalize the financing of terrorism, to freeze and confiscate terrorist assets, to enhance international cooperation and to impose anti-money laundering requirements on alternative remittance systems (such as those used by Mexican migrants). FATF also agreed to identify countries that lack appropriate measures to combat terrorist financing, as was already done with respect to money laundering (FATF 2002b).

The Washington meeting was followed by a global forum in Hong Kong in February 2002, attended by sixty jurisdictions representing members of FATF and similar regional organizations. The Hong Kong meeting launched a process under which all jurisdictions were asked to complete a self-assessment questionnaire, the results of which FATF will use to determine what further actions are required to combat terrorist financing globally. As of September 2002, 108 jurisdictions had responded (FATF 2002c).

As members of FATF, Canada, the United States and Mexico have comparable laws in place to combat money laundering. In Canada and the United States, FATF estimated that 60 to 80 percent of money laundering transactions involved narcotics proceeds. Also according to FATF, the United States has a serious money laundering problem because of the size and diversity of its financial system, a plethora of state and federal laws, and its proximity to South American drug producers. Success in reducing the laundering of illegal proceeds in traditional banking institutions has led to a significant increase in cash smuggling out of the United States, particularly on the border with Mexico. Mexico's money laundering problem stems from its strategic geographic location between the South American drug producers and American drug consumers. In Canada, the problem stems from its location next to the United States (FATF n.d.).

In May 1996, the Mexican Congress modified the penal code to make money laundering a punishable offense, independent of other monetary violations (Article 400 *bis*). Article 400 *bis* is broad enough to apply to all criminal activities. To combat money laundering, banks, stock brokers, and exchange houses have been required since May 1997 to report confidentially suspicious financial activities involving \$10,000 or more. Mexico established a Special Prosecutor's Office for Crimes Against Health

under the attorney general in April 1997 to spearhead anti-narcotics investigations. In addition, Mexico has added a Financial Intelligence Unit to the Finance Ministry's Directorate General for the Investigation of Transactions (FATF n.d.).

Around the same time, Canada introduced several changes to its money laundering regime, beginning with new anti-money laundering guidelines published by the Superintendent of Financial Institutions in 1996. In May 1997, Canada enacted organized crime legislation that expanded the scope of money laundering offences. All serious crimes are now covered. In June 2000, Canada enacted the *Proceeds of Crime (Money Laundering) Act*, which established the Financial Transaction and Reports Analysis Centre of Canada (Section 41). The Act applies mandatory record-keeping and reporting rules regarding suspicious activity to banks and non-bank financial institutions and sets out new search and seizure and forfeiture laws (FATF n.d.; Canada 2000).

In the United States, money laundering regulations are issued by the director of the Financial Crimes Enforcement Network (FinCEN) under the *Bank Secrecy Act (BSA)*, enacted in 1970. More than 220,000 financial institutions are subject to BSA reporting and record-keeping requirements, including banks and non-bank financial institutions. A very extensive list of crimes is covered, including terrorism, health care, and immigration offences.

### The USA PATRIOT Act

The USA PATRIOT Act was signed into law October 26, 2001 in response to the terrorist attacks of September 11<sup>th</sup>. The official title of the USA PATRIOT Act is "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001." The Act adds to U.S. money laundering laws in two ways. First, it expands the authority of the secretary of the Treasury to regulate the activities of U.S. financial institutions, particularly their relations with foreign individuals and entities. Second, the Act creates new money laundering crimes and amends and increases penalties for earlier crimes (Doyle 2002). For example, it includes foreign corruption offences as money laundering crimes (Section 315).

*Section 314(a) permits regulations requiring co-operation between financial institutions and law enforcement officials (for example, requiring financial institutions to monitor customer accounts and search their records at the request of law enforcement officials). Section 314(b) permits financial institutions, upon providing notice to the United*

*States Department of the Treasury, to share information with one another in order to identify and report to the federal government activities that may involve money laundering or terrorist activity. Financial institutions may notify the Treasury Department at the FinCen website (www.fincen.gov). The USA PATRIOT Act also expands the definition of “financial institution,” including securities brokers and dealers, in order to subject a wider range of businesses to the requirement to file suspicious activities reports (SARs) (Doyle 2002). The definition continues to expand, most recently through a rule, effect 18 May, 2004, expanding the record keeping and reporting requirements of the BSA regulations for suspicious transactions to futures commission merchants and introducing brokers in commodities (www.fincen.gov).*

### **The Money Laundering Process**

Street-level narcotics sales occur frequently in the United States. Naturally, cash is the preferred method of payment for these transactions. The cash from one or multiple sales locations is collected at a safe or “stash” house for processing. The cash is then taken to a remittance business for transmission out of the country.

To avoid scrutiny by law enforcement or bank regulatory authorities, the cash may be divided into amounts less than \$10,000 and “smurfed.” Smurfing is a process that uses a large number of individuals to make small deposits and withdrawals (transfer of amounts below federal reporting requirements) at a remittance business. The funds are sent by the U.S.-based remitter to a Mexican-based counterpart. The remittance company will normally utilize an offsetting book entry transfer or conduct a bank wire transfer in order to move the money out of the United States. The remittance business in Mexico pays out in Mexican pesos. That is the most common method applied to avoid detection of money movement at either end (Molander, et al. 1998).

In the initial, or placement, stage of money laundering, the launderer introduces the illegal profits into the financial system. That might be done by breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank account or by purchasing a series of monetary instruments (checks, money orders, etc.) that are then collected and deposited into accounts at another location.

After the funds have entered the financial system, the second, layering stage takes place. In this phase, the launderer engages in a series of conversions or movements of the funds to distance them from their source. The funds

might be channeled through the purchase and sales of investment instruments, or the launderer might simply wire the funds through a series of accounts at various banks across the globe. This use of widely scattered accounts for laundering is especially prevalent in those jurisdictions that do not cooperate in anti-money laundering investigations. In some instances, the launderer might disguise the transfers as payments for goods or services, thus giving them a legitimate appearance.

Having successfully processed the criminal profits through the first two phases of the money laundering process, the launderer then moves them to the third stage—integration—in which the funds re-enter the legitimate economy. The launderer might choose to invest the funds into real estate, luxury assets, or business ventures (Molander, et al. 1998).

### **Banking on Supervision: Regulation in North America**

Banks and other financial institutions play a key role in the detection of money laundering and terrorist financing. In a series of tables (table 4a to table 4g), we compare and contrast banking regulation and supervision in the NAFTA region. Table 4a tells us that even though in Canada and Mexico the licensing authority rests with their respective ministries of finance, it is not so in the United States where licensing is done state by state by the comptroller of currency. Given the existence of the Glass-Steagall Act, which restricted expansion of banks across states for over seven decades, the United States ended up with more than 10,000 banks compared to fifty odd banks in Canada and Mexico. Given the relative sizes of the economies, there should not be more than 500 banks in the United States (table 4a).

Legal submissions required for banking licenses are virtually the same across the three NAFTA partners (table 4b). The only difference is that in the United States banks are not required to submit their intended organizational charts. The use of risk management is also similar, except for one item with one exception. In Canada, the capital required to be held by banks does not vary with the riskiness of the banks, whereas in Mexico and United States it does (table 4c). The requirements for capital structure vary widely across countries. For example, in Mexico and United States, use of securities (that is, stocks of corporations) is severely restricted, whereas in Canada it is not. Moreover, the use of insurance instruments is prohibited in Mexico but fully permitted in Canada and restricted in the United States. In addition, the use of real estate as an

asset is unrestricted in Canada but not in the other two. On the other hand, banks' ownership of non-financial firms is fully permitted in Mexico but highly restricted in Canada and the United States (table 4d). Audit requirements for the banks are very similar across the three countries (table 4e). It appears that the supervisory body has more teeth for forcing additional actions in the United States and Mexico compared to that of Canada (table 4f). Finally, asset allocation requirements are similar across NAFTA countries, with the exception of an asset diversification rule imposed in Canada (table 4g).

### **Hidden Treasure: Mexico's Bank Secrecy Act**

A crucial provision of the Mexican law regulating financial groups relates to secrecy. Commonly called the law of *secreto bancario* (although it applies to all financial groups, not only banks), the rule prohibits a financial holding company from disclosing information relating to its operations or to the operations of any member of its group, other than to the legally empowered government agencies. This prohibition includes board members, officers of the company, and any company agent or employee. The legally empowered agency means the relevant Mexican federal regulator. The main concerns raised so far by this secrecy law are related to money laundering. A more mundane (but no less important) concern is that the secrecy law could exclude revelation of information to an adversary in a lawsuit as part of the standard U.S. process of discovery. Also, it is not clear that a U.S. regulatory agency inspecting or evaluating the operations of a U.S. subsidiary in Mexico would be able to obtain the information it requires in spite of this provision. However, Mexican officials say that *secreto bancario* does not stand in the way of access to information in criminal investigations.

### **Shell Games: Unilateral Actions by the United States**

After the September 11<sup>th</sup> attack on the World Trade Center in New York, the United States government moved swiftly to take actions to starve the terrorist organizations of funds. In a bill passed by Congress in October 2001 (H.R. 3162/P.L. 107-56), a section called "Shell Bank Ban" (Sec. 313) prohibited U.S. banks and securities firms from opening accounts for foreign shell banks that have no physical presence anywhere and no affiliation with another bank and required closure of any existing shell bank account by December 2001.

That led to a huge protest by U.S. banks. On September 20, 2002, the U.S. Treasury reversed course. The reversal, which came after pressure from U.S. banks and other financial institutions with global operations, means new prohibitions aimed at excluding so-called shell banks from U.S. financial markets will apply only to bank operations within the United States.

The prohibitions on U.S. financial institutions dealing with shell banks—usually small banks with nothing but a post office drop in an offshore banking secrecy haven—indicate a dilemma. Such shell banks are seen as particularly vulnerable to money laundering, and the United States is seeking to ban all dealings between U.S. financial institutions and shell banks. But the United Kingdom and European countries do not have similar restrictions, leading U.S. officials to worry that shell banks will find new ways to move money. In an effort to extend the reach of the new regulations beyond U.S. shores the Treasury had originally proposed including foreign branches of U.S. banks under the prohibition.

### **Business Implications of Money Laundering Rules**

The financial services industry plays a central role in the detection of proceeds of crime. However, the industry's role consists mainly in scrutinizing and reporting suspicious transactions, not in conducting investigations. Instead, the reports sent to the financial intelligence authorities in each country trigger investigations on the part of the authorities. The industry needs to familiarize itself with the types of activities that should trigger greater scrutiny as part of general due diligence procedures. The industry also needs to remain up to date with respect to lists of countries and persons identified as meriting added scrutiny.

FATF recognizes that it will be difficult for financial institutions to detect terrorist financing as such, and it is not the role of the industry to determine the legality of the source or destination of the funds. Moreover, the guidelines that have been developed are not intended to discourage transactions with legitimate clients. Whereas money laundering laws are being modified to cover terrorist financing, the activities that should trigger added scrutiny will be similar to those involved in money laundering in general. There are two main sources of terrorist funds: first, governments (so-called state-sponsored terrorism) and organizations (such as al-Qaida) and, second, revenue-generating activities of terrorist groups. These latter activities may be criminal in nature (kidnapping, extortion, smuggling, fraud, theft, and drug trafficking)

or consist of legitimate activities (fund-raising for charitable organizations where some funds are later diverted to terrorist groups). When the funds derive from criminal activities, the methods used to launder funds do not differ from those used by non-terrorist activities, and the task of financial institutions does not differ greatly from their duties with respect to money laundering in general.

However, the size and nature of terrorist financing may make detection more difficult. With the September 11<sup>th</sup> hijackers, for the most part money was sent in small sums by wire transfer and appeared to be for the purpose of supporting students studying abroad. Thus, the size of the transfers fell below the normal cash transaction reporting threshold of \$10,000 and the nature of the transactions did not trigger financial institution guidelines for greater scrutiny. FATF has developed a list of characteristics of transactions that may be cause for greater scrutiny as possible terrorist financing that should be followed by financial institutions (see FATE, *Guidance for Financial Institutions on Detecting Terrorist Financing*, April 24, 2002, especially Annex 1).

### **Migrant Worker Remittances: A Source of Mexican Capital**

Remittances from Mexicans working in the United States are one of Mexico's biggest sources of foreign exchange income. This money is building dreams for millions of Mexican families who would otherwise live in grinding poverty. At the same time, however, the flow of remittances has expanded the financial services sector that moves this money across the border. This money tends to be transferred in small amounts. Thus, while they represent an important source of income for Mexico, remittances provide a cross-border flow of money that makes it easier to hide illicit transfers which are also sent in small amounts to avoid detection. Moreover, the increase in the number and type of money transfer services further complicates the supervision of financial institutions with respect to money laundering and terrorist financing laws.

Mexicans working in the United States are most likely to send their money home using wire transfers or money orders. Many migrants also take the money home themselves or send it by check or cash. Banco de Mexico estimated that in 1995 almost 40 percent of these remittances came in the form of money orders, 27 percent were electronic transfers, almost 25 percent were via telegraph, eight percent were pocket and in-kind remittances, and less than one percent were personal checks (Lozano-Ascencio 1998). Wire transfer services receive a lot of busi-

ness transferring money to Mexico, despite the high fees they charge for two principal reasons. In addition to the security of the transfer, Mexican banks charge high fees for cashing checks and money orders for those without bank accounts, and many of the recipients of remittances fall into this category.

Responding to the increased volume of remittances, money transfer services expanded noticeably in the 1990s, especially in the non-bank financial institution (NBFI) sector. In a summary of these activities, Orozco noted: "These institutions (NBFI) manage the majority of remittances. International money orders, the next most frequent means of transferring remittances, grew at about 7 percent a year in the same period. Today, at least 90 percent of all remittances are transferred electronically or via money orders" (Orozco 2002:14). Western Union, for instance, typically charges \$29 for the average electronic transfer of \$300 that is completed within fifteen minutes. Moreover, its agent in Mexico, Elektra, generally exchanges the money at 10 percent less than the interbank rate, meaning that up to 20 percent of the remittance is lost in transfer costs. Elektra also encourages those receiving the money to spend it in Elektra stores by providing a discount on goods bought with the remitted money. Elektra alone transferred US\$100 million in 1994, \$400 million in 1995, and about \$700 million in 1996 (Lozano-Ascencio 1998). Other partnerships in Mexico include the U.S. Postal Service and Bancomer, which teamed up in May 1997 to provide their Dinero Seguro service, which charges \$15 for up to \$250 remitted from a U.S. post office to any of Bancomer's branches, though it takes a few days. Wells Fargo and Banamex offer similar services, as do U.S. Bank and Banca Serfin, who charge \$25 for any money transfer to Mexico and promise the interbank exchange rate and no extra pickup charges (Orozco 2002). Numerous other small money transfer businesses tend to focus on specific immigrant groups and generally charge more per transaction.

The channel Mexican emigrants choose depends on various factors: whether a modern banking and financial infrastructure is present at the destination, the efficiency of the delivery system, and the educational and income status of the recipient and sender. Many migrants were forced to pay these fees because they could not perform an inter-bank transfer. The reason they could not send the money through the banks is that they lacked bank accounts in the United States. The reason they lacked bank accounts was that most of them lacked official documents to open a bank account (because of the illegal nature of their stay

in the United States). Thus, paying high transmission fees seemed to be a vicious circle.

Remittances are now Mexico's third largest source of income, exceeding local and state budgets in much of rural Mexico. They amount to US\$10 billion, approximately the same order of magnitude of foreign direct investment to Mexico in recent years. In the last decade, Mexican immigrants across the United States have organized themselves into powerful hometown clubs that finance public works projects and small businesses in Mexican communities that would otherwise languish. When the Mexican political scene was dominated by the old guard of the Institutional Revolutionary Party of Mexico (PRI), Mexicans who migrated to the United States (or other developed countries) were treated with contempt (so much so that many politicians in Mexico called them "traitors"). Abandoning the attitudes of past governments who viewed emigrants as an embarrassment, Mexico's current president, Vicente Fox, has hailed them as "national heroes" (Thompson 2002). The government of Mexico now recognizes that the money sent by migrants is a major source of investment. However, the vast majority of remittance amounted to \$250 or less.

In the wake of the attacks of September 11<sup>th</sup>, the Mexican government began to distribute new, digitally coded consular identification cards. These cards check an applicant's information against computerized census and voter rolls in Mexico. Mexican consulates in the United States issue the identification cards to Mexican migrants in order to facilitate this flow of money and to capitalize on its potential to bring economic development to communities all over the Mexican countryside. These cards enable undocumented workers to open bank accounts, acquire ATM cards, and reduce the cost of sending money home. And that means higher foreign exchange receipts for Mexico.

The Mexican government also negotiated with banks and wire transfer agencies in the United States to make it cheaper for immigrants to send money home. Beginning in December 2001, some fifteen NBFIs and regular banks all over the United States agreed to allow immigrants from Mexico to use identification cards they receive from Mexican consulates to open bank accounts, irrespective of their legal status in the United States. This process of "regularization" has produced positive results for charges paid: there has been a decline of some 30 percent (Thompson 2002). However, these cards could also facilitate illicit transfers of money unless they are designed and monitored to prevent such abuse.

## Conclusion

Flows of foreign direct investment have increased dramatically both worldwide and among the NAFTA members, playing a crucial role in economic integration. However, foreign direct investment cuts both ways with respect to security. On the one hand, the integration of the banking sector should facilitate compliance with money laundering rules. More than 70 percent of banking capital in Mexico is under foreign control. The capital, management expertise, and technology that foreign banks have brought to Mexico's banking sector should facilitate bringing their ability to monitor suspicious transactions up to the same standard as Canada and the United States. On the other hand, foreign direct investment flows increase the number of transactions that need to be monitored. Similarly, the flow of migrant remittances has its good and bad sides. This source of foreign capital helps economic development in Mexico but also provides a cover for illicit money transfers.

For security purposes, each of the three NAFTA governments may exercise a lot of discretionary power in the financial sector. Moreover, the active membership of all three in international organizations and agreements that deal with money laundering and terrorist financing facilitates cooperation in this area. However, the growing volume of capital flows among the NAFTA countries increases the difficulty of detecting illicit transfers of money across borders. Moreover, differences remain among the three countries with respect to the regulation of financial transactions.

**Table 4a. Banking in NAFTA**

	Licensing authority	Number of banks	Minimum capital entry requirement in millions	Is information on source of funds for capital required?
Canada	Ministry of Finance	55	CDN \$10	yes
Mexico	Ministry of Finance	52	U.S. \$6.5	yes
United States	Office of the Comptroller of the Currency	10,500	No absolute minimum	yes

Source: Bank Supervision Database, World Bank, Special tabulation, 2001.

**Table 4b. Legal submissions required for banking license**

	Draft by-laws	Intended organization chart	First three-year financial projections	Financial information on shareholders	Background and experience of future directors	Background and experience of future managers	Sources of funds in capitalization of new bank	Intended market differentiation of new bank
Canada	yes	yes	yes	yes	yes	yes	yes	yes
Mexico	yes	yes	yes	yes	yes	yes	yes	yes
U.S.	yes	no	yes	yes	yes	yes	yes	yes

Source: Bank Supervision Database, World Bank, Special tabulation, 2001.

**Table 4c. Use of risk management**

	Minimum capital-asset ratio requirement (percent)	Is it risk-weighted in line with Basle guidelines?	Does the ratio vary with a bank's credit risk?	Does the ratio vary with market risk?	Actual risk-adjusted capital ratio (percent)
Canada	8	yes	No	no	11
Mexico	8	yes	Yes	yes	13
United States	8	yes	Yes	yes	12

Source: Bank Supervision Database, World Bank, Special tabulation, 2001.

**Table 4d. Structure of capital**

	Securities	Insurance	Real estate	Regulatory restrictiveness of bank ownership of nonfinancial firms
Canada	unrestricted	Permitted	unrestricted	restricted
Mexico	restricted	prohibited	restricted	Permitted
United States	restricted	Restricted	restricted	Restricted

Source: Bank Supervision Database, World Bank, Special tabulation, 2001.

**Table 4e. Auditing banks**

	Is an external audit compulsory?	Are there specific requirements for the extent of audit?	Are auditors licensed or certified?	Is auditor's report given to supervisory agency?	Can supervisors meet external auditors to discuss report without bank approval?
Canada	yes	no	yes	yes	yes
Mexico	yes	yes	yes	yes	no
United States	yes	yes	yes	yes	yes

Source: Bank Supervision Database, World Bank, Special tabulation, 2001.

**Table 4f. Additional supervisory issues**

	Are auditors legally required to report misconduct by managers/directors to supervisory agency?	Can legal action against external auditors be taken by supervisor for negligence?	Has legal action been taken against an auditor in last five years?	Can supervisors force banks to change internal organizational structure?	Has this power been utilized in last five years?
Canada	yes	no		no	
Mexico	no	yes	no	yes	yes
United States	no	yes	no	yes	yes

Source: Bank Supervision Database, World Bank, Special tabulation, 2001.

**Table 4g. Asset allocation by banks**

	Are there guidelines for asset diversification?	Are banks prohibited from making loans abroad?	Minimum liquidity requirement (percent)
Canada	yes	no	none
Mexico	no	no	not reported
United States	no	no	none

Source: Bank Supervision Database, World Bank, Special tabulation, 2001.

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# *Canada and the United States: Convergence and Divergence in Post-9/11 Economic Security*

Greg Anderson

## **The Road to Convergence?**

Only a few short years ago, nearly everyone from political pundits, academic scholars, and even the public at large was talking about the profound impact globalization was having on our economic, political, and social lives. However one defined globalization, there was, by the mid 1990s, an overwhelming sense that as a process, the integration of markets, the deepening of ties and linkages between people, polities, and cultures was in many ways inevitable.<sup>1</sup> Perhaps nowhere was this sense of inevitability more palpable than in North America, where two separate and bruising debates over free trade, first in Canada in 1988 over the Canada-U.S. Free Trade Agreement (CUFTA) and then more broadly in 1994 over the North American Free Trade Agreement (NAFTA), had convinced many, if not all, of the virtue and inevitability of ever deeper levels of market and political integration. Whether we as individuals approved of every aspect of deeper integration or not, all of us had grown accustomed to talking about, and basing our decisions upon, the new rules of trade embodied by the CUFTA and the NAFTA.

Yet, since the terrorist attacks in the United States in September 2001, trade has become inseparable from security in the lexicon of North American integration. In response to the attacks, the United States has undergone the largest reorganization of executive branch agencies since World War II, passed sweeping anti-terror laws that include changes to many aspects of border management,

including immigration policy, food safety and anti-bioterrorism measures, and inspection regimes at land borders, airports, and sea ports throughout the United States. These dramatic changes have contributed to a shift in the debate over deeper North American integration, particularly amongst Canadians, that has focused more keenly on security than trade alone. In fact, whereas the public policy debate amongst scholars covering the merits of customs and monetary unions, for example, was entirely academic and would, if brought to fruition, have required a major preparatory political effort, the addition of security to the equation has dramatically moved the politics of North American integration from fanciful speculation by academics and policy wonks to a kind of defensive posture that seeks to preserve an open, porous forty-ninth parallel through the kind of aggressive policy change unthinkable just a few years ago.<sup>2</sup>

Merely suggesting that major geopolitical events like September 11<sup>th</sup> tend to stimulate structural policy changes is not earthshattering news. Yet, missing from this broad discussion of post-September 11<sup>th</sup> policy changes has been the central role of institutions and institutional change in shaping the incentives we now face when talking about North American integration. Anyone can pick up a newspaper, read that the U.S. Department of Homeland Security has drafted new rules for the U.S. Border Protection Service to be applied along the forty-ninth parallel and conclude that the border is becoming less porous or,

as the *National Post* argued in one editorial, that we were witnessing the “Mexicanization” of the forty-ninth parallel.<sup>3</sup> Less evident from these kinds of conclusions, though arguably more important, is that the kinds of institutional changes either being undertaken or contemplated by public policy officials are both dramatically and subtly altering the incentives confronted by economic decision makers. The collective set of post-September 11<sup>th</sup> institutional changes affecting the forty-ninth parallel represents a set of constraints that present both incentives and disincentives for economic decision makers; everyone ranging from individuals to public policy officials, to the heads of both small and large businesses.

If the kind of institutional change we have seen over the past couple of years, as well as that still being contemplated, is generating both incentives and disincentives for a range of economic decision makers, then we might also question whether this same kind of institutional change is facilitating convergence or divergence with respect to patterns of North American integration. This paper is about those institutional changes and the impact, potential or already evident, they are having on patterns of economic activity in North America, but particularly between Canada and the United States.

This paper will be organized into three separate parts beginning in Part I with an explanation of what institutions actually are, where we can find them, their impact, and how they change over time. Part II will involve a detailing of many of the post-September 11<sup>th</sup> institutional changes that are now affecting Canada-U.S. economic relations, and their particular impact on the forty-ninth parallel. Part III will consider a few of the many recent policy proposals that have been advanced in Canada and the United States aimed at both securing North America’s borders while also preserving the kind of openness that has made the Canada-U.S. economic relationship among the most integrated anywhere. However, in considering these proposals in the context of institutions, Part III will also lay out a kind of future research program aimed at assessing the economic impact (potential or real) of the kind of rapid institutional change we have seen since September 11<sup>th</sup>. Specifically, what kinds of evidence are we looking for? How will we know if changes in economic performance are the result of institutional change? Where will the impact of institutional change be felt the most? And, how might the defensive proposals for customs or monetary unions alter the mix?

## Part I: The Constraints

The neoclassical economic model is comprised of many elements, but at its core it is all about choice under constraint.<sup>4</sup> Whether we are talking at the level of individual consumers, the decisions of large firms, or even those of public policy makers, each faces a range of constraints that shape the choice sets and structure the decision making of each. The constraints that shape our economic, social, and political decision making are nearly everywhere we look and amount to a kind of soft institution; rules or practices rather than the images of bricks and mortar buildings the term “institutions” commonly evokes. According to Douglass North, institutions are the humanly devised constraints that structure economic, political, and social interaction. They consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, and property rights).<sup>5</sup>

The definition of institutions borrowed from Douglass North is useful in terms of directing our efforts at understanding economic activity toward the many humanly devised constraints that structure that activity, but is vague in terms of providing us with a clear explanation of what institutions are, what they are not, or where exactly to look for them. In fact, North’s definition of institutions as informal constraints (sanctions, taboos, customs, traditions, and codes of conduct) and formal rules (constitutions, laws, and property rights), seems to suggest that institutions might be found everywhere. They are. In fact, institutions are everywhere shaping our economic decision making. That they are such a ubiquitous, and influential, part of our economy argues strongly for including them more explicitly along side neoclassical theory as tools for explaining our economic system.

However, before we can simply assert that institutions are important and pervasive elements in modern economies, we need a fuller understanding of what institutions are, what they are not, where they are, and their relationship to standard neoclassical economic theory.

### *From the Autarkic Farm to Industrial Capitalism*

#### *Autarky?*

Imagine for a moment a small family farm in the middle of Alberta, circa 1870. Suppose that it is run by a family of five and that they are among the first settlers to the Canadian West. The closest farms are miles away and the location of their farm is far removed from any of the primi-

tive transportation routes in existence in 1870 Western Canada. Our family of five essentially lives in an autarkic world in which all that the family consumes it will also have to produce or acquire on their own. Our farmers will likely try and grow a range of products, perhaps raise a few cattle, trap a few animals, and cut down trees for fire wood. Alone in the vastness of the Canadian West, the family is quickly faced with a range of choices upon which decisions about their survival will depend. They must make difficult choices about what and how much to grow and make decisions about how much labor to expend doing so to ensure their survival through the winter and into the next growing season. Because of available resources, and certainly because they number only five, our isolated family cannot possibly hope to have everything it might want, but will ultimately prioritize and allocate scarce resources to produce as many of the things the family needs as possible. In essence, by confronting a range of choices under constraint, our family has become a quintessential economic unit within the neoclassical model.

#### *The "Market" for Institutions*

But wait a minute, there was no "market" to speak of in Alberta circa 1870. True, in the scenario I have laid out, the family farm operates largely untouched by the markets of the outside world. There are no outlets for trading the excess from a bountiful harvest, nowhere to trade for new livestock, and no readily available pool of labor with which farm production could be expanded. How can the family farm be counted as an example within the neoclassical model? There are three basic reasons.

First, markets are everywhere. Frequently forgotten in the discussion of economic decision-making is how significant even the smallest of decisions can be for economic activity, regardless of the nature of the particular market in which they operate. The popular concept of "the market" is often vague, and seldom explicitly defined. In business reports, the market refers narrowly to buying and selling on the world's stock exchanges. More broadly, the concept of the free market, or a free market system is liberally tossed around to refer to the broader macro-economy. Yet markets, as important as they are, can be defined simply as anywhere in which a group of people are willing to buy and sell things. The market for sugar is anywhere sugar is bought and sold. It could be on the trading floor at the Chicago Mercantile Exchange. It could be in the midst of a phone conversation between two people, thousands of miles apart, as they negotiate the sale of sugar. Local markets abound as well. The market for housing in Wash-

ington, D.C. is confined to Washington, D.C. just as the market for shooting marbles at public school No. 125 in New York City is confined to public school No. 125. There are also numerous examples of economic choices (market choices) that take place apart from the presence of "markets" as we are accustomed to thinking of them. Governments, firms, even families, can be dominated internally by the "invisible hand" of conscious planning, rather than by anonymous instructions from the market.<sup>6</sup> The "invisible hand," whether it operates within a closed market such as the family or a firm, or in one characterized by easy entry and exit, such as that for housing in Washington, D.C., is still one that functions within a framework of choice under constraint. Choice under constraint, regardless of the form those constraints take, is the primary obsession of the neoclassical model.

Second, markets are influenced by institutions that help shape the choice set decision makers are confronted within the market. The dynamic of our small family farm operating in an autarkic environment is no different than the dynamics internal to firms or governments. None is unaffected by the constraints imposed on them by the outside world. All have internal, if consciously planned, markets that are shaped by those constraints and have their own set of institutional structures to help deal with those constraints. How are the mechanisms for exchange, say of labor, managed within the family unit? Institutions! Let us go back to the definition of institutions put forward by Douglass North, institutions as the humanly devised constraints that structure political, economic and social life. On the family farm it will largely be informal constraints such as sanctions, taboos, customs, traditions, and codes of conduct, all enforced by kinship, that help shape their economic choice set thereby influencing their economic decision making process. Such informal institutions affect our economic behavior in many ways. In modern societies, they may come in the form of religious beliefs that shape our decisions regarding shopping for necessities on Saturday or Sunday. They might come in the form of traditions sanctioning duels as a gentlemanly form of dispute resolution, even if actually outlawed by formal law.<sup>7</sup> Or, they may even come in the form of extensions of formal Constitutional rules, such as those in the U.S. Congress governing seniority and committee chair selection.<sup>8</sup> However, it is the ties of culture and family that undeniably exert the strongest informal constraints on our economic choice sets.<sup>9</sup> Such powerful ties form the basis of many family-run businesses who can be assured that family ties will mitigate many of the problems of agency normally associated with impersonal exchange.

The bounds of kinship within the family provide a reliable means of monitoring and enforcement of responsibilities amongst them that ensure the survival of them all.

Thirdly, it is important to be cognizant of the fact that markets, where ever they occur, are themselves institutions. Markets facilitate exchange, reduce transaction costs and, where they are present, facilitate the specialization of economic activity that feeds productivity increases and a rising standard of living within an exchange economy.

### *Simple Exchange*

However, imagine a slightly more complex economic system emerging around the Alberta farm? Suppose relatives move into the area and begin farming only a few miles away? Suppose that one farm specializes in cultivating crops while the other raises cattle and that a simple exchange economy develops between them in which they both pool and exchange their scarce resources. The fact is that the specialization of labor presupposes exchange, since only exchange can achieve the distribution of rewards necessary to sustain specialization.<sup>10</sup> In a simple model of exchange, the choice set facing the family would still largely be governed by a set of informal institutions such as customs or taboos, all of which would be enforced by kinship ties that prevent opportunistic behavior. But, suppose what was once a single family farm becomes a group of six farms, but that everyone is related. Imagine that it is now 1885 and the completion of the Canadian Pacific Railroad has brought the outside world a little closer to our farmers, other communities have sprung up in the area. If a slightly more complex exchange economy between our extended family of farmers and other local communities develops, whereby excess production from the family farms is exchanged with products produced in other communities, the impact of informal institutions on the decisions of the family remains strong. The customs, traditions, and taboos that govern farm life among our collection of family farms would hold when a subset of them were sent off to negotiate the exchange of goods with another community. In such simple exchange economies, transactions costs (the cost of doing business) are relatively low and informal institutions governing exchange might develop between communities that include such things as “gentleman’s handshakes,” verbal agreements, or even IOUs.

### *Transactions Costs and the Mitigation of Uncertainty*

Like markets, transactions costs are everywhere, and are one of the main preoccupations of those who study the impact of institutions on economic performance. But saying that transactions costs are everywhere is, unfortunately, as specific as the concept of utility curves as expressions of individual preference sets in micro-economic textbooks. We may know they are everywhere, but knowing they are is akin to assuming them out of the model altogether because like utility curves, transaction costs have long been ignored by economists within the neoclassical model, despite more recent empirical work that has suggested transactions costs may account for fifty to sixty percent of net national product in advanced economies.<sup>11</sup> In effect, the neoclassical world of textbook economics is actually, though unrealistically, a transactions cost-free world as well. The reason markets and transaction costs go hand in hand, even within the context of a single firm or, in the case of our autarkic Alberta farmers, within the family, is that transactions occur whenever there is specialization, the division of labor and exchange that flows from them.

Adam Smith’s classic example of the manufacture of a pin illustrates the point perfectly. “One man draws out the wire, another straightens it, a third cuts it, a fourth points it, a fifth grinds it at the top for receiving the head...”<sup>12</sup> As Williamson has observed, “a transaction occurs when a good or service is transferred across a technologically separable interface. One stage of activity terminates and another begins.”<sup>13</sup> Where there are transactions, there are also transaction costs.

One of the biggest sources of transactions costs is uncertainty, always an important problem along the forty-ninth parallel and one post-September 11<sup>th</sup> institutional changes may be altering. Although the neoclassical model emphasizes choice under constraint, the constraints that economic actors work under are seldom finite or clearly defined. Although we are confronted on a daily basis with a range of economic choices, we also confront considerable uncertainty about those choices and choice sets. Most of that uncertainty involves the imperfect nature of the information at our disposal to help us make decisions. Economic decision makers much prefer risk to uncertainty. Institutions help mitigate the uncertainty within our choice sets by transforming uncertainty into risk. Productivity depends upon specialization and with it increased complexity in economic exchange, fraught with increasing uncertainty and numerous transaction costs. Were it not for the development of institutions to help guide economic activity, economic actors would be com-

pletely lost in a world where the cost and uncertainty of obtaining information upon which to base economic decisions would virtually prohibit economic exchange. Institutions, therefore, necessarily evolve along with economic specialization and serve to transform the uncertainty associated with imperfect information into risk, thereby reducing transactions costs, and facilitating the capture of the potential gains from trade.<sup>14</sup> If neoclassical economic theory is the economics of choice under constraint,<sup>15</sup> then it is institutions that help narrow and define the choice set by which we make economic decisions. Institutions are analogous to road maps in that while they do not dictate where we choose to drive, nevertheless structure the choices available to us on our trips.

### *Complex Markets*

Organizations like firms or family units often form to economize on transactions costs and reduce uncertainty, but we first need some appreciation of the impact of those costs once the division of labor expands, complicates the choice set confronting economic decision makers, and significantly raises the cost of each transaction. The problem to be resolved is at once simple and fraught with all kinds of problems. Specialization and the division of labor permit economies of scale in individual production and, along with it, the potential for significant gains from trade. But with trade comes the uncertainty of impersonal exchange and associated transactions costs. Whereas familial ties form bonds of trust and obligation in the conduct of commercial activity, there are no such bonds tying people of different social groups, regions, or nationalities together to guard against shirking or other opportunistic behavior. Put more simply, how can our family of farmers ensure that transactions conducted with communities with whom they have few personal or familial ties will be conducted to the benefit of both sides? How can the uncertainty of market exchange be transformed into manageable risk? More colloquially, how can both sides ensure they will not be ripped off? In modern industrialized societies, such a question seems moot. Could not the farmers simply reach an agreement on the terms of sale for what ever was being exchanged? In other words, agree to a sales contract? It is an obvious suggestion today, but one that in past eras was not so simply arrived at. The fact that in modern societies the whole notion of contractual arrangements to facilitate impersonal exchange is taken as a given is suggestive of both the importance and subtlety of institutions in a modern society. Here I have sketched a quasi-historical tale of the evolutionary path that institutional

development might have taken in the nineteenth century Canadian Prairie West. Yet, in nearly any time period, a tale can be found of the evolutionary and path-dependent advance of institutional structures designed to facilitate the process of impersonal exchange. One classic example recounted by North is that of the development of long distance, sea-faring trade.<sup>16</sup> According to North, the development of long-distance trade required a sharp break in the characteristics of past economic activity. It entailed the specialization of exchange by individuals whose livelihood became centered around trading and the development of trading centers, not unlike the situation in our emerging nineteenth century prairie towns. However, the development of long-distance trade poses two particular transaction cost problems. The first is agency which, in a simple economy, is satisfied through the bonds of kinship. Having your brother travel to barter in a local market as your representative is fraught with fewer adverse selection and moral hazard problems than having someone you do not know act as your agent. The second issue that needed to be resolved was the negotiation of agreements that could also be enforced at a distance. According to North, where traditional means of negotiation and enforcement were once ensured through the force of arms and associated high transactions costs, the development of coercive and voluntary institutions such as standardized weights and measures, units of account, mediums of exchange, notaries, consuls, merchant law courts, made long distance trade possible for a greater number of merchants. In essence, the development of a mixture of voluntary and semi-coercive bodies, enabled long-distance trade to occur.<sup>17</sup>

### *Cognition and Institutions*

However, even with a basic set of institutions helping to reduce the negative impact of market exchange fraught with uncertainty and high transactions costs, the problems of exchange inevitably persist even in the most advanced market economies. In the zero transactions costs world of neoclassical economics, decision makers operate under conditions of perfect competition characterized by instantaneous access to perfect information about prices, goods, preferences, and technology that permits supply and demand to instantly reach a market clearing price and quantity. In technical terms, the conditions of perfect competition reduce economic decision making to one of logically optimizing the allocation of scarce resources—essentially a mathematical problem rather than one involving difficult choices.<sup>18</sup> In such a zero transactions cost environment,

economic agents could instantly and costlessly contract with one another for virtually every form of economic exchange. Yet, the simple optimization of resources is not the problem economic decision-makers face. Instead, decision makers, like our family farmer, are faced with myriad uncertainties about the market conditions he or she faces that make such contracting, at best, costly, often problematic, and at worst prohibitively expensive.

Research into decision making by psychologists and cognitive scientists has provided numerous insights into human reasoning and rationality. Among the most basic of findings has been the tendency for humans to try and order their complex world through simplifying heuristics, or rules of thumb, about the world around them.<sup>19</sup> In economics, this function is partially served by the many institutional structures that help guide economic decision making in what would otherwise be a world characterized by pervasive uncertainty and opportunism. Institutions such as the price system, an effective system of property rights, and the rule of law provide us with rules of thumb through which we process the imperfect information around us. Under the neoclassical model, we frequently talk about the “profit maximizing” firm under conditions of perfect competition. If competition were perfect, the precise structure of economic organizations like firms would be irrelevant for economic performance. We would be back in our zero transactions cost world where markets instantly established market clearing price and quantities for supply and demand and we could instantly contract with each other for virtually all forms of exchange. However, because we live in a world characterized by high transactions costs, imperfect information, and considerable uncertainty, in spite of institutions to help structure our decision making, it makes little sense to talk about the “profit maximizing” firm. One overriding assertion of this study is that institutions matter for economic performance. Yet, the same assertion can be made for the organizational forms that congeal around those institutions.

Our economic models of rational consumer choice, for example, tell us that every individual is motivated by self-interest and has known preference sets as represented by utility curves.<sup>20</sup> Such curves are said to be everywhere, and the assumed rationality postulate of analysis is that self-interest will drive decision makers to make choices that will allow them to reach a higher ordinal of utility. The problem is that the use of ordinal utility curves tells us very little about the actual preference sets of decision makers because they are left undefined by the model. The reality of the human condition is that individuals have limited

computational capacity, and are able only to selectively search through all possible alternatives or evaluate their consequences. In addition, the search for information is incomplete, often full of inaccuracies, based upon partial ignorance (i.e. the role of prior knowledge or levels of expertise), and often terminated with the discovery of satisfactory, not necessarily optimal, courses of action.<sup>21</sup> Simon has argued that the self-interest assumption in human rationality breaks down amidst the range of other motives for human decision-making, including significant, even necessary, levels of altruism.<sup>22</sup>

Neoclassical rationality combines well-defined choice set and known preference sets which are then fed into simple optimization models. However, psychology and cognitive science have suggested that differences between reality and perception in reasoning stem from the omissions and distortions that arise in both perception and inference about the information we actually possess, much less that which we do not. “The decision-maker’s information about his environment is much less than an approximation to the real environment.... The decision-maker’s model of the world encompasses only a minute fraction of all the relevant characteristics of the real environment, and his inferences extract only a minute fraction of all the information that is present even in his model.”<sup>23</sup> Studies of human reasoning have even identified instances in which information relevant for making self-interested assessments is ignored (although not intentionally), instances in which differences in the mere presentation of information influence our decision processes. Further, under conditions of uncertainty, human decision making is strongly influenced by preconceived stereotypes, beliefs, and personal experiences into which we regularly try and place new and imperfect information. In short, the use of heuristics (rules of thumb) allows us to simplify a complex world, but the use of such heuristics can also lead to important errors of bias in the decision making process.<sup>24</sup> By themselves, the limitations cognitive processes suggested by psychology and cognitive science give us pause to reconsider the rationality postulate of the neoclassical model. These limits render human decision making “intendedly rational but only limitedly so.”<sup>25</sup>

Institutions go a long way toward expanding those limits by providing additional rules of thumb by which we attempt to order the complex, and imperfect process of exchange. Such institutions help us make exchange decisions by transforming significant, although by no means all, amounts of uncertainty into much more manageable risk.<sup>26</sup>

*Modern North America*

Detailing the constraints under which a nineteenth century Alberta farmer had to work might seem worlds away from twenty-first century public policy surrounding Canada-U.S. relations, security along the forty-ninth parallel, or even bilateral economic relations as governed by the NAFTA. However, the stylized Alberta farmer has much more in common with the problems of contemporary public policy than may at first meet the eye. We have seen how institutions matter for the Alberta farmer, but through an extension of that basic discussion we can also see how institutions, and particularly institutional change, matter for economic decision makers in 2004 as well. Transactions costs, uncertainty, contractual relations, and property rights—all the domain of institutional economics—all, whether or not we always appreciate it, underlie contemporary discussions of economics and security in North America. Apart from the stylized discussion of a late nineteenth century Alberta farmer, there is an important and burgeoning literature on economic development growing out of the analysis of institutions that posits simply that institutions matter for economic performance.<sup>27</sup>

Institutions matter, and in North America none has mattered more for international trade than those contained in the North American Free Trade Agreement (NAFTA). In fact, the entire text of the NAFTA is, at bottom, a set of institutions (rules) as they have been defined here. The emergence of new institutions over the past decade and a half as important drivers of international affairs, and economic performance in particular, has been alternately lauded and assailed as being either the instruments of efficiency enhancing harmonization that would bring economic benefits to large numbers of people or as mechanisms embodying the forcible homogenization of what were once vastly different cultures.<sup>28</sup>

The signs of this kind of institutional change were scattered throughout the 1990s. The NAFTA, the completion of the Uruguay Round of the GATT and the creation of the WTO, along with the high profile role of the international financial institutions, the World Bank and the International Monetary Fund, and, of course, the ever deepening integration of Europe, were during the 1990s all seen as part of a kind of inexorable process of solidifying, the economic and political openness thought to breed and sustain both prosperity and freedom. There was even renewed interest in and optimism about oft-forgotten parts of the developing world such as Latin America as signified by President Bush's 1990 Enterprise for the Americas Initiative and then later, the Summit of the Americas process and the launch

in 1994 of talks aimed at concluding the Free Trade Area of the Americas—in effect, a process aimed at re-writing formal institutions governing economic relations in the Western Hemisphere.<sup>29</sup> Emerging markets were all the rage in other parts of the world as well, many experiencing a flowering of both economic activity and seeming democratic reform.<sup>30</sup> As a prescription for such economic success, the so-called “Washington Consensus” emerged with its emphasis on fiscal discipline, a reassessment of public expenditure priorities, balanced budgets, debt reduction, deregulation, tax reform, and privatization—a kind of institutional policy prescription for a country's prosperity.<sup>31</sup> In short, the post-cold war global political economy seemed to be increasingly driven by and preoccupied with economics. As American political strategist James Carville famously quipped, “It's the economy, stupid.”

At nearly the same time as the inevitability of deeper economic integration and the realities of a smaller, more open political and social world began to sink in, voices of doubt began to emerge, possibly beginning with the onset of the Asian Financial Crisis in 1997. As the details of the Asian Crisis began to emerge, it became apparent that the very same economic, political, and social processes that were driving the inexorability of globalization were also generating social and political cleavages that threatened to pull it apart. Instead of globalization as a process that could bring prosperity and freedom through economic and political openness, critics were increasingly disposed toward seeing the negative side effects of globalization.

While the critiques of globalization were questioning whether the process had “gone too far,”<sup>32</sup> or was wreaking havoc on critical segments of civil society that threatened to undermine the very openness that was fostering complex and integrated market exchange, much of what we have observed over the past decade or so in terms of institutional change did not happen over night and had an incremental, path-dependent quality to it that some commentators overlooked. Douglas North, for example, argues that most institutional change takes place on the margins and, except in times of war or revolution, is rarely in the form of wholesale change the broad institutional structure of a society.<sup>33</sup> Furthermore, even in the case of wars and revolutions, which herald in what appear to be dramatic, “discontinuous” institutional change, North argues that even these changes retain a fundamentally incremental and path-dependent quality to them.<sup>34</sup>

What, then, have we observed taking place in terms of the development of North American institutions since the terrorist attacks of September 11<sup>th</sup>, 2001? We frequently read that post-September 11<sup>th</sup> changes have made security

and economics virtually inseparable as issue areas. But can we say the changes implemented in the United States constitute a form of “discontinuous” or radical change to the institutions governing North American economics and security? At a minimum, can we say that the various changes implemented since September 11<sup>th</sup> have altered the choice set confronting economic decision makers in North America, similar to the manner in which the NAFTA itself altered the choice sets of many, and similar to the way our nascent nineteenth century farm family navigated through the uncertainty of their existence and developed institutional constraints to help govern their economic relations. That is the subject of Part II.

## Part II: The Institutions of September 11th

That institutions affecting Canada-U.S. economic and political relations have changed since September 11<sup>th</sup> is well known. What is less well understood is just how profoundly post-September 11<sup>th</sup> changes to American security are altering the choice sets now confronting economic decision makers in North America. Further still, whereas just a few short years ago nearly everyone ranging from members of the general public, to those in the business community, or public officials, were talking about the inevitability of deeper integration in North America (in other words, convergence), the institutional changes brought about by September 11<sup>th</sup> cast some doubt as to integration’s inevitability along previously conceived pathways driven by sets of economic rules like the NAFTA. As institutions have changed, so too has the calculus of convergence in North America along social, political, and particularly economic lines. In fact, as we will see below, the new calculus of North American integration is comprised of a range of new incentives fostering both convergence and divergence in a new North American integration environment that now blurs the distinctions between security, economics, and migration.

Some of the most important, and wide ranging, institutional changes to affect Canada-U.S. relations materialized rather suddenly in October 2001 in the form of the *USA PATRIOT ACT* (PL 107-56). While the *PATRIOT ACT* has famously altered significant portions of America’s domestic legal institutional apparatus in the name of giving greater latitude – civil libertarians argue too much latitude – to law enforcement and officials in the new Department of Homeland Security to combat terrorism, the ACT also entailed critical changes to how America manages its borders, but particularly its border with Canada. While America’s southern border (the U.S.-Mexico border) has

arguably been somewhat militarized for many years and the product of a range of unique issues, not the least of which is illegal immigration, the U.S.-Canadian border has historically been almost completely undefended with the exception of a hand full of U.S. customs and immigration agents sparsely positioned along the border’s 5,525 mile length. The *PATRIOT ACT* began the process of changing that by mandating the tripling of Border Patrol, Customs, and Immigration officials, not along the southern border with Mexico, but along the forty-ninth parallel specifically.<sup>35</sup> Other provisions of the *PATRIOT ACT* also heralded in important institutional changes that almost immediately signaled changes to the ease with which people flowed back and forth across the border. Specifically, Section 414 of the *PATRIOT ACT* added urgency to the development of an integrated entry and exit data system to track those foreign nationals who enter the United States; a process that was actually initiated by Section 110 of the *Illegal Immigration Reform and Immigrant Responsibility Act* of 1996.<sup>36</sup> When originally proposed in 1996, the provisions of Section 110 were cause for considerable concern among Canadian officials,<sup>37</sup> primarily because of their potential, depending on how they were implemented, to significantly increase border crossing times. The period since passage of the *PATRIOT ACT* has seen the partial implementation of Section 110 as ports of entry have been outfitted with fingerprinting and digital photographic equipment and nationals of many countries are screened, finger printed, and in some cases, interviewed prior to entry. Thus far, Canadian citizens have been exempt from the requirements of the U.S.-VISIT program, as were citizens from Australia, Great Britain, Germany, France, and Japan; members of a group of so-called visa waiver countries through their inclusion among those nations to whom U.S. authorities extended immigration preferences. Yet, as of 30 September 2004, the U.S.-VISIT program was expanded to include those previously exempt visa waiver countries.<sup>38</sup> Canadian citizens remains largely exempt from the most significant requirements of the U.S.-VISIT program, yet Congress has mandated that the U.S. immigration system be capable of accounting for all foreign nationals while they are in the United States. Whether Canadians will remain exempt and continue to be allowed to enter the United States with little more than a driver’s license for identification remains an open question, but the impact of tighter post-September 11<sup>th</sup> immigration procedures is already being felt. For example, as American anti-terrorism measures have been implemented, considerable delays in processing and approval of immigrant applications have occurred. According to the Department of Homeland Se-

curity, just slightly over 700,000 people became permanent U.S. residents in 2003, down from more than one million the year before,<sup>39</sup> and only 463,000 people actually became U.S. citizens in 2003, a twenty percent decline from the previous year.<sup>40</sup>

Recall that the issue being pursued here is not simply that institutional change since September 11<sup>th</sup> automatically translates into a series of delays, all of which hinder the free flow of goods, services, and people across the forty-ninth parallel. From evidence in areas such as immigration flows and statistics regarding border waiting periods, we can see in action the assertion that institutions matter for economic performance. Yet, they do not always necessarily matter in the detrimental fashion depicted above. The more important proposition here is that institutions alter the incentive structures that decision makers confront in ways that can either hinder or facilitate economic activity. As a result, in the case of immigration controls, post-September 11<sup>th</sup> institutional changes have brought about, or threatened to bring about, significant delays in the movement of people across borders. However, in other areas of policy, new measures are actually making it easier to monitor intellectual property protections because in-bound cargo is being more rigorously screened.<sup>41</sup> Some portion of new rigor in screening cargo entering North America can be attributed to the rapid increase in the exchange of customs data, the establishment of joint U.S. and Canadian customs and immigration facilities,<sup>42</sup> and joint teams of container inspection teams at key sea ports such as Halifax, Vancouver, Seattle, and Newark as called for in the Canada-U.S. Smart Border Accord.<sup>43</sup>

In some sets of policy areas we are witnessing institutional change that is facilitating significant convergence of U.S. and Canadian institutions and practices, in a manner not inconsistent with the predictions of analysts regarding deeper North American integration driven and guided by economics and agreements like the NAFTA. Yet, at the same time, other post-September 11<sup>th</sup> changes have the potential to generate a kind of cross-cutting divergence that could halt, or at least slow that inexorable procession toward deeper levels of integration as many thought of it on 10 September 2001.

### ***Convergence and Divergence, But Where?***

The two examples offered above, immigration and cargo screening, offer contrasting, albeit anecdotal, evidence of how institutional change in North America is fostering deeper integration—as in the sharing of information, or the establishment of joint facilities or inspection teams—

that might not ordinarily have taken place were it not for the addition of security as an inseparable component of the Canada-U.S. bilateral trade relationship. In some areas, we are witnessing integration by other means; security. Yet, as the post-September 11<sup>th</sup> institutional changes concerning the movement of people suggests, the liberalization of the flow of people may be further from realization than ever. Prior to September 11<sup>th</sup>, greater labor mobility within the NAFTA bloc was one of several logical next steps for many who envisioned a deeper, more integrated North America, closer in form to the European Union.<sup>44</sup> Mexico in particular, which had immediately prior to September 11<sup>th</sup> been engaged in serious talks with Washington regarding a possible guest-worker program along the southern border to perhaps address some of the realities there which the NAFTA agreement itself had done little to address.

Numerous analysts have identified the nexus of security and economics as the center of a new set of realities in relations between the NAFTA's partners<sup>45</sup> and many of those have singled out a range of initiatives as indicative of this change, among them the *PATRIOT ACT*, the provisions of the Smart Border Accords with Mexico and Canada, or programs within them such as the FAST (Free and Secure Trade), C-TPAT (Customs Trade Partnership Against Terrorism), the NEXUS frequent traveler program, or the Integrated Border and Marine Enforcement teams that have been established. There have also been a range of lesser known, or at least less well-publicized, measures that have altered North America's institutional structure and therefore are also changing the choice sets confronting economic decision makers.

Particularly noteworthy are the advance reporting provisions of both the U.S. *Trade Act* of 2002 and the U.S. *Public Health and Bioterrorism Preparedness and Response Act* of 2002.<sup>46</sup> Under both laws, shippers of goods to the United States will be subject to a range of advance reporting requirements depending on the mode of transportation being used to ship them. Specifically, as of January 2005, shipping of any kind to the United States required that electronic manifests be shared with the U.S. Customs and Border Protection Service and with advance times of as much as 24 hours in the case of ocean-going vessels, four hours if shipments are made via air, two hours by rail, down to as little as 30 minutes for trucks participating in the FAST program.<sup>47</sup> However, the *Bioterrorism Act* of 2002 goes even further in mandating that foreign shippers have a designated agent or representative in the United States, register with the U.S. Food and Drug Administration (FDA), and provide advance notification of food shipments of two hours by road, four by rail or air, and

eight if arriving via water.<sup>48</sup> We can intuitively understand that rules such as these designed specifically with security in mind could have a potentially detrimental impact on cross-border economic activity, particularly those supply chain management systems that now have to incorporate the new rules into their business models, particularly in the context of scholarly work on tax and regulatory changes and their effects on economic activity.<sup>49</sup>

However, we need to take what amounts to an intuitive understanding of regulatory changes and their impact on economic activity, coupled with the basic identification of post-September 11<sup>th</sup> institutional changes and their impact on North American integration, and suggest that we ought not to be looking just at their impact on border waiting times, delays in the movement of people across the border, but rather in terms of the incentives for economic activity they are generating that may have a longer term impact than mere waiting times. A more concrete explication of what we are looking for and where in terms of post-September 11<sup>th</sup> institutions and their impact on economic activity is the subject of Part III.

### **Part III: Indicators of the Impact of Post-September 11th Institutional Change**

One of the great problems with an institutional approach to understanding economic performance centers on the difficulties of measurement familiar to many social scientists. We can offer numerous anecdotal and intuitive examples that are suggestive of the ways in which institutions shape our choice sets, alter incentive structures, and guide our decision-making. Yet, how do we know whether it is in fact institutions and institutional change that are responsible for observed economic outcomes? For instance, there has been no shortage of scholarly ink expended trying to figure out the precise impact of the NAFTA on North American economic activity, and that agreement is now more than a decade old. Competing sets of figures and statistics have been bandied about by both proponents and opponents of the agreement, all depicted as evidence of the agreement's success or failure to live up to expectations.<sup>50</sup> As part of their own advocacy efforts, governments too have waded into the debate. For instance, the U.S. International Trade Commission and the U.S. Trade Representative spent considerable time on this issue in support of the effects of the NAFTA and have even gone so far as to claim that the combined effects of the NAFTA and the Uruguay Round of the GATT have been responsible for annual gains of between \$1,260 and \$2,040 for the average American family of four.<sup>51</sup> Yet, their

own methodology implicitly acknowledges that many assumptions and extrapolations had to be made to arrive at these figures,<sup>52</sup> all of which is suggestive of the numerous problems researchers confront when doing empirical research in the social sciences. The debate over the NAFTA is one that could easily be replicated in trying to assess the impact of post-September 11<sup>th</sup> institutional change on integration in North America. In many areas, the changes we have seen have simply not been in operation long enough to have acquired the kind of data necessary. The U.S.-VISIT Program, for instance, is not scheduled to be fully operational until 31 December 2004 while the advance reporting provisions of the 2002 *Bioterrorism Act* have only been in effect since 1 January 2004.

Many of the most important efforts to articulate the importance of institutions and institutional change have also involved contrasting institutional structures in the developed world with those found in the developing world as explanations for relative differences in economic performance.<sup>53</sup> A recent World Bank study on institutional differences across countries squarely pins divergent economic performance between the developed and developing world on regulatory burdens.<sup>54</sup> In fact, concludes the World Bank, the payoffs from the harmonization of regulatory burdens in the world's poorest countries with those in the world's richest would result in approximately two percentage points growth in those countries' GDP.<sup>55</sup>

However, while the kinds of institutional difference depicted in comparisons between countries of the developed and developing world are useful in terms of casting the study of institutions and institutional change in sharp relief, understanding the impact of institutional differentials and change among countries of the developed world, all of which are more subtle, is more of an empirical challenge for researchers. We do have examples of rather dramatic—Douglass North might say “discontinuous”<sup>56</sup>—institutional change in North America in trade, beginning with the Canada-U.S. Free Trade Agreement which came into force in 1989 and then the North American Free Trade Agreement in 1994. Although consensus on the precise effects of these agreements has been elusive, most scholars and public policy officials agree they have had a dramatic impact in a range of areas. Is it possible that the period immediately following September 11<sup>th</sup>, 2001, given the range of institutional changes that took place, amounts to another kind of discontinuous institutional change in North America? If so, how would we know given we are talking about changes to a bilateral relationship of relative institutional similarity?

In highlighting some of the post-September 11<sup>th</sup> institutional changes to border security and immigration under the 2001 *USA PATRIOT ACT*, or those affecting food shipments to the United States under the 2002 U.S. *Bioterrorism Act*, we have only scratched the surface in terms of the range and breadth of institutional change that have only just begun to affect patterns of integration in North America. In addition, the many defensive proposals that have been put forward, primarily by Canadians, for an even more dramatic economic and security arrangement to build a “zone of confidence” in North America,<sup>57</sup> are really proposing more discontinuous change in North America’s institutional structure that will in turn shape the incentives and choice sets of economic decision-makers. These changes, both those that have occurred and those that are being proposed, will shape the inexorability of North American integration that just a few short years ago seemed to palpably inevitable. Whereas just a few years ago, labor mobility seemed to be one of the last major frontiers to be broached and conquered in terms of setting up a genuine North American community,<sup>58</sup> security concerns have forced the reconsideration of all aspects of immigration policy and generated more obstacles, more scrutiny, and more delay rather than the other way around. In short, rather than the inevitable convergence once thought to be so obviously inevitable in the North American economic space, security has driven a kind of wedge into the institutional structure governing labor mobility in North America that has hardened, instead of loosened, the barriers to labor mobility among NAFTA partners. In other words, prior to September 11<sup>th</sup>, all signals were pointing to continued convergence in economics with a new focus, particularly between the United States and Mexico, on labor mobility. In the period since, we have the ingredients for a kind of divergence in terms of the North American labor market.

In terms of border security, the imperatives of post-September 11<sup>th</sup> security cooperation between all three governments (information sharing, integrated border enforcement, shared customs and immigration facilities, and joint patrols of select port facilities) have generated a kind of convergence in areas which prior to September 11<sup>th</sup> would have been politically unthinkable. A large body of research strongly suggests that borders matter in economic terms, and are difficult enough to overcome within integrated national economies, much less between sovereign jurisdictions.<sup>59</sup> This remains a salient issue in the post-September 11<sup>th</sup> period for the NAFTA area. While for much of the past twenty years the importance of borders in the economic lives of Canadians, Americans, and

Mexicans seemed to be on a path toward continuous decline, borders seemed to suddenly thicken after September 11<sup>th</sup>. Are the boundedly rational perceptions about institutions which help shape our preferences, choice sets, and incentive structures contributing to a new kind of divergence in the North American economic space? Is it universal, or could it be restricted to a select set of policy areas such as immigration, whilst convergence continues apace in others such as cross border flows of goods, services, and investment? Where might we be looking in order to find out?

### *What Are We Looking For and Where?*

The importance and challenge of sorting out the range of measurement issues related to this line of analysis for North American integration cannot be overstated. As the basic debate over the impact of the NAFTA has demonstrated, evaluations of the economic impact of a set of institutions like the NAFTA can be lost in competing sets of statistics. Determining how much of the economic boom of the 1990s was a product of the NAFTA itself may never be known. Yet, as with the debate over the NAFTA, we can look to a series of indicators for clues as to how post-September 11<sup>th</sup> institutional change is affecting economic activity and patterns of convergence and divergence in North America.

### *Just-in-Time Production*

Just-in-time manufacturing procedures, especially those used by North American auto companies, are well known tools of supply management that generate tremendous efficiencies for modern production techniques. However, among the keys for just-in-time production are a reliable transportation network and predictable patterns of delay as parts cross from one jurisdiction to another. As the closure of the Canada-U.S. border on September 11<sup>th</sup> demonstrated, the current depth of North American integration can quite readily disrupt the predictability required by modern supply management techniques. We have already witnessed unexpected delays at border crossings related to periodic increased in the U.S. Department of Homeland Security’s color-coded terror alert system which automatically triggers increased vigilance at border crossings. Just-in-time manufacturing processes are sophisticated enough to be adjusted to account for such delays, but for how long will firms wish to continue building such adjustments into their production streams as opposed to simply sourcing a growing share of their inputs

such that they do not have to cross borders and face such potential delays. This basic rationale is behind calls for the creation of a “zone of confidence” or customs union in North America that would ensure such border crossings within the NAFTA zone are unnecessary. Going forward, social scientists will need to grapple with what could be subtle changes to production patterns in North America. We know, for example, that a huge share of the cross-border trade in goods is in the form of intra-industry trade. Is it possible that as a result of the thickening of the border we might be able to detect a shift in the composition, if not perhaps also volumes, of intra-industry trade wherein firms source fewer and fewer of their most critical components from outside national boundaries?

### ***Patterns of FDI***

A related area of focus for determining the impact of September 11<sup>th</sup> on institutions and the incentives they generate in North America is with respect to patterns of Inward Foreign Direct Investment (IFDI). Since 1989 and the implementation of the Canada-U.S. Free Trade Agreement (FTA), Canada’s share of all North American IFDI has been in secular decline.<sup>60</sup> The question many economists continue trying to answer is ‘why?’, particularly given that part of the Canadian rationale for the 1989 FTA was to make Canada a relatively more attractive destination for IFDI in North America.<sup>61</sup> While that particular mystery remains to be completely solved, we could reasonably add another question to be investigated in the wake of post-September 11<sup>th</sup> institutional changes; have post-September 11<sup>th</sup> institutions imposed a kind of “terrorism premium” on inflows of FDI in terms of the targets of new investment capital? For instance, has a hardened Canada-U.S. border made Canada even less attractive as a destination for FDI, or perhaps made it more-so because of the seemingly heightened threat of terrorism in the United States? Has the financial calculus of firms come to include a rational that channels FDI so as to avoid having to deal with the border altogether. In other words, are firms now seeking to ensure a presence in the largest North American market while then servicing the less significant Canadian and Mexican markets, border permitting? Or is it possible that firms are increasingly viewing the threat of terrorism in the United States, and associated costs, in contrast to the incentives offered by either Canada or Mexico?

### ***Immigration Patterns***

We have already detailed some of the institutional changes affecting the movement of people to and within North America; namely delays in processing and new, some would argue burdensome, procedures being imposed on visitors under programs such as U.S.-VISIT. There is substantial anecdotal evidence regarding the issuance of U.S. Green Card applications, as well as the processing of citizenship applications. In addition, American universities, many of which have historically been the destination for a range of the world’s most promising students and researchers, now face a range of bureaucratic hurdles that have discouraged some foreign students from attending. Could Canadian universities increasingly become the beneficiaries of U.S. immigration restrictions that are dissuading foreigners from entering the United States? Will America’s human capital loss become Canada’s gain, eventually augmenting the status of Canadian universities around the world as first-class research institutions? Can we find evidence of a similar flow of highly skilled or educated persons wishing to permanently emigrate to Canada or the United States? Could the mere perception of additional restrictions in the United States result in a kind of “brain gain” for Canada as would-be immigrants of all stripes select Canada as their preferred destination?

### ***Reporting Requirements***

In a similar vein to the kind of evidence we seek with respect to IFDI, we might also ask whether the new, and in some cases arduous, reporting requirements for goods shipments to the United States might ultimately result in a kind of consolidation of more and more North American production in the United States itself. Transactions costs are a significant, and as a result of many post-September 11<sup>th</sup> institutional changes, increasing component of many businesses’ overall cost structures. Mechanisms such as CT-PAT and FAST, as called for under the Canada-U.S. Smart Border Accord are designed to minimize the impact of transactions costs associated with advance reporting requirements. Nevertheless, in each of these, it is government that has passed on much of the responsibility for advance reporting, tracking of financial transactions, or the certification of security procedures to the firms themselves—in essence a kind of unfunded mandate that has been imposed on firms by U.S. authorities. Will firms operating in either Canada or Mexico continue to be willing to absorb this responsibility and cost, or will they eventually opt for wholesale relocation to the U.S. market

to avoid the vagaries of border policies increasingly shaped more by the threat of terrorism than the arguments of economists who advocate in favor of integrated markets and the reduction of barriers to trade.

### Conclusions

This paper has sought to highlight the importance of institutions and institutional change for North American economics and security since September 11<sup>th</sup>, 2001. Popular and scholarly treatment of North American integration has tended to focus on the inevitability of deeper integration as driven by the NAFTA and various proposals for that agreement's deepening. Yet, with the addition of security as inseparable from economic issues among NAFTA partners, the focus of assessment necessarily needs to shift to a consideration, not only of large agreements like the NAFTA, but also to the range of institutional structures related to security that now shape choice sets and incentives on the continent. Institutions matter for economic performance, and since September 11<sup>th</sup>, that set of institutions includes those security measures that are having a direct impact on economic performance. While we can readily observe divergent outcomes resulting from institutional differences between the developed and developing world, we as yet lack sufficient evidence suggestive of the impact of these differences between parts of the developed world. After all, we are still trying to sort out the precise impact of the NAFTA, itself a set of institutions, on North American economic activity.

Thus far, we also lack the kind of evidence necessary to evaluate the impact of the many post-September 11<sup>th</sup> institutional changes that have occurred and are now affecting, albeit anecdotally, economic activity both within the NAFTA area and between NAFTA partners and the rest of the world. Acquiring this kind of evidentiary record is important for evaluating the range of proposals for creating a "zone of confidence," customs or monetary unions, harmonizing tax regimes, or engaging in negotiations aimed at regulatory harmonization. Are post-September 11<sup>th</sup> institutions generating new incentives for even deeper levels of integration in North America? Can North America's new security imperative drive momentum toward a North American customs union? Are calls for dramatic reconsideration of North American economic relations mere political opportunism, or have the incentive structures put in place by the institutions of September 11<sup>th</sup> really altered the economics of a Canada-U.S. border that had over the past twenty years become less and less important as a physical barrier to exchange? A dramatic

reorientation of the NAFTA area in favor of a customs union might suggest that the institutions of September 11<sup>th</sup> have generated incentives for greater convergence in North America, considerably greater than that envisioned by the NAFTA or by the publics of all three countries prior to September 11<sup>th</sup>. However, is it not also possible that the incentives generated by the events of September 11<sup>th</sup> and the institutions they spawned are actually pointing toward a kind of divergence in North America as well? Is it possible that we are headed toward a NAFTA region that is becoming less permeable to outside influences and to those from each other. We may be in the midst of a transition from a path of progress on the road to convergence to one where integration essentially stalls with a focus simply on consolidating the secure flow of goods.

However, without efforts to assess the impact of the new institutions that have arisen out of September 11<sup>th</sup>, we will be unable to say much more about the impact of changes along the border than that waiting times are higher, there are more customs and immigration officials at checkpoints, or that the forty-ninth parallel seems to be getting less and less friendly. All of that might be true, but it is this paper's conclusion that until we engage in the kind of search for evidence that will back up assertions in favor of, or against, an even more dramatic shift in the institutional structure of North America, we will lack the evaluative tools necessary for public policy officials to direct further institutional change in North America. Such direction is necessary because whereas the institutions of September 11<sup>th</sup> were made by public policy officials, they were made very quickly, and largely without much foresight regarding their impact on economic activity in North America, driven as they were by security.

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# *Restricted Immigration of Foreign Students to the United States*

Richard E. Mueller

## **Introduction and Background**

Since the terrorist attacks on the United States on September 11<sup>th</sup>, 2001, there has been a concerted effort in the U.S. to restrict access to foreign nationals who are deemed to pose a threat to U.S. security. Although foreign students who enter the United States are not restricted by numerical limits, they have been subjected to much greater scrutiny (Szelenyi 2003), and foreign students generally perceive the academic environment in the United States to be inhospitable (Altbach 2004). Furthermore, students from the Middle Eastern countries, especially those which are predominantly Muslim and from countries most closely identified with terrorism may be more closely scrutinized upon entering the United States. This certainly will have an impact on permanent immigration to the United States, but will most profoundly affect those seeking admission on short-term (or non-immigrant) visas, such as students (Camarota 2002). The likely outcome is that fewer foreign students are admitted to the country. Universities in many Western countries are actively involved in attracting foreign students, and students are aware that a number of options are available to them. Increasing the cost of entry to the United States almost certainly has had an impact on the number

of foreign students desiring to study in the United States, but has this potential loss in foreign students been a gain for Canada? In other words, have students who might have studied in the United States chosen instead to come to Canada to further their education? If so, what are the potential gains to the Canadian economy?

Generally, it is thought that foreign students are beneficial for the host country.<sup>1</sup> Foreign students increase diversity on university campuses. Graduate students conduct research and staff laboratories and classrooms. Upon graduation talented students might elect to stay in and contribute their talents and education to the host country.<sup>2</sup> If they return, they may be important contacts that facilitate trade and goodwill between countries. Foreign students also bring in large amount of foreign currency to the host country; the Institute of International Education (2003) estimates that nearly 75 percent of all international students' funding comes from sources outside the United States. Further, it notes that the U.S. Department of Commerce describes higher education as the country's fifth largest service export and the half-million-plus foreign students add over US\$12 billion annually to the U.S. econ-

omy. In Canada, the equivalent figure is roughly Can\$4 billion (Drolet 2004).<sup>3</sup>

Not only do foreign students tend to benefit the national economy, but it is also likely that the most productive students come from foreign countries. Research has indicated that an increasing number of doctoral degree recipients in the United States are from foreign countries (Aslanbeigui and Montecinos 1998; Groen and Rizzo 2004).<sup>4</sup> And a sizeable number of these foreign graduate students in the United States intended to stay in the country after obtaining their doctoral degrees (Johnson and Regets 1998; Finn 2000). Furthermore, it is well documented that scholars and professionals educated in the United States often facilitate further migration to the U.S. through the networks that are created between foreign nationals and foreigners educated in the United States (Cheng and Yang 1998). Finally, U.S. colleges and universities tend to hire a large proportion of U.S.-trained PhDs, including foreign nationals (Groen and Rizzo 2004).

Given the importance of these highly trained and skilled foreign nationals in the new knowledge-based economy, the increased border restrictions in the United States since September 11<sup>th</sup>, coupled with the fact that Canada has not imposed the same restrictions means that Canada may be the beneficiary of the increased migration of foreign students.<sup>5</sup> Insofar as these students find that Canada is a reasonable substitute for a U.S. education, and they have the same intention of staying in Canada as they would have in the United States, this could represent a significant net human capital gain for Canada. Indeed the Association of University and Colleges of Canada (AUCC) reported that international student enrolment was up 15 percent across the country, and by as much as 20 percent in some provinces, based on early enrolment figures from the fall of 2003 (CEC 2004).

A recent online survey by the Institute of International Education (2003) shows that there has been a decline in students coming from predominantly Islamic countries. This could be blamed on the perception that the new visa procedures make it difficult to enter the country, as well as the increasing competition for foreign students from other countries, including Canada. Altbach (2004) notes that students from developing countries – especially Islamic countries – reported being treated with disrespect by U.S. officials in their home countries. Coupled with the increased delays, new visa fees, and the implementation of a computing tracking system, the U.S. seems to be both less hospitable and more costly destination for a number of foreign students. Indeed, it would appear that Canadian universities have been beneficiaries of the new U.S.

visa requirements as foreign applications have increased at most Canadian universities since 2001.<sup>6</sup>

Since September 11<sup>th</sup>, 2001, the United States has been tightening its procedures to reduce the probability of admitting suspected terrorists. In May 2002, the *Enhanced Border Security and Visa Entry Reform Act* (EBSVERA) was enacted. Under this Act, the U.S. State Department has increased its scrutiny of visa applicants from certain countries, including checks with FBI and CIA data bases of suspected and known terrorists before visas are issued. Previously, consular officials simply checked visa applicants against a “look-out list” containing some six million names. Although the list of countries is classified, it is suspected that the list is composed of nations who are seemed to be “state sponsors of terrorism” and predominantly Muslim countries. Furthermore, it seems that is men in the 16-45 age group that are the most scrutinized; the same age group that intends to enrol in U.S. post-secondary institutions. The result has been a huge increase in the backlog of applications being processed by U.S. Citizenship and Immigration Services (USCIS) and a commensurate increase in the length of time necessary to approve visas.

In 2002, the National Security Entry-Exit Registration System (NSEERS) was implemented and required all male visitors from “politically sensitive areas” (again, likely predominantly Muslim countries) to register with the then-Immigration and Naturalization Service (INS).<sup>7</sup> The NSEERS has been phased out and replaced by the U.S.-VISIT program which requires that non-immigrant visitors to the U.S. be photographed and submit digital fingerprints upon entry to the United States, as well as registering their departures. This regulation applies to foreign students as well. In addition, in January 2003 a new Student and Exchange Visitor Information System (SEVIS) was implemented whereby accredited schools have to supply electronic files to the State Department on all foreign students currently enrolled or risk losing their accreditation to host foreign students.<sup>8</sup>

At the same time the United States has been increasing its entry requirements for foreign students, Canada has been reducing them. Undoubtedly this is due to the increased emphasis on border security in the United States, while Canadian immigration policy continues to stress the economic benefits of immigration and commitment to providing a safe destination for refugees. As such, the *Immigration and Refugee Protection Act* (IRPA) was implemented in June 2002. The new act, *inter alia*, stipulates that foreign students registered for courses of six months or less, do not require a study permit. This has likely increased the number of foreign students in Canada,

although CIC has stopped gathering statistics on these student flows, so there is no way of knowing for sure.<sup>9</sup> As of 2001, there were over 130,000 foreign students in Canada (about 44 percent at the university level), more than double the number only 11 years earlier (Iturralde and Calvert 2003). The establishment of Canadian Education Centres in 17 countries, which promote study in Canada, has undoubtedly helped this increase.<sup>10</sup>

Thus, the questions we are trying to answer are:

- Has there in fact been a decrease in the number of foreign students in the United States at the undergraduate and graduate levels?
- If so, have these declines been more pronounced amongst students from predominantly Muslim countries?
- To what extent have these students been diverted to Canada?

The following section will discuss the U.S. and Canadian data sources used, followed by analysis of these data. The final section concludes and discusses some of the implications of these results for Canadian education and Canadian immigration policy.

## Data

### *U.S. Data*

Since no data source is available that can adequately address the questions we are trying to answer, we utilize a variety of data source. First, data for foreign students admitted to the United States comes from the United States Citizenship and Immigration Service. Each year, this department compiles a lengthy document of the various types of legal permanent and temporary admissions (or immigrant and nonimmigrant admissions).<sup>11</sup> These statistics, however, only represent the gross flows of students into the United States since it is entries that are counted and not persons. The second source of data is from the Institute of International Education (IIE). This institute surveys universities in the United States regarding the number of foreign students enrolled in their programs by level of study each year. This is a much better source of information since we can track changes in students enrolled in programs in the United States and not simply the number of entries. The IIE survey has a response rate of about 90 percent, so it is considered the most authoritative data source on foreign students in the United States. The most recent data are for the academic year 2003/04.

### *Canadian Data*

The Canadian data were obtained from two sources.<sup>12</sup> Citizenship and Immigration Canada (CIC) tracks the number of foreign students in Canada each year. These data contain both stocks (i.e., the number of foreign students in Canada), as well as flows (the number of foreign students entering Canada). Second, perhaps the best source of data comes from individual university websites. Each year, most Canadian universities compile a “factbook” which generally contain a plethora of statistical measures, including the number of students enrolled by visa status, country of citizenship, level of study, etc. Furthermore, these data are often publicly available on each university’s website. Since obtaining data from all Canadian universities over a period of time is rather impractical, we limit our search to include only public institutions from British Columbia, Alberta and Ontario. This is because these are the three largest English-speaking provinces and likely contain the universities that are most well known to foreign students. In other words, these are the provinces containing the institutions that we think will be considered substitutes to American universities by foreign students. Furthermore, we limited our search to include only those universities listed as medical/doctoral or comprehensive by the annual *Maclean’s* magazine rankings. This was for two reasons: since these are Canada’s largest and best known universities and because they likely to contain significant numbers of both undergraduate and graduate students.<sup>13</sup> Our final sample consists of six universities: British Columbia, Simon Fraser, Alberta, Calgary, Carleton and Waterloo. The other institutions simply did not have data over the appropriate time period or were too aggregated to be of use. Still, the sample is of sufficient size to be representative of what is happening throughout Canada.<sup>14</sup>

Finally, since we wish to address the extent of foreign student flows from countries that have a predominantly Muslim population and how this compares to the inflow of all students, we limit the detailed analysis to these countries. The Islamic states chosen are essentially the same as those in Camarota (2002).<sup>15</sup>

## Results

Are there fewer foreign students entering the United States since the events of September 11<sup>th</sup>, 2001? Table 1 lists the number of nonimmigrant students admitted to the United States in each of the fiscal years from 1999 through 2003.<sup>16</sup> The total number of students admitted from Muslim countries increased by 29.6 percent between 1999 and

RESTRICTED IMMIGRATION OF FOREIGN STUDENTS TO THE UNITED STATES

Table 1. Nonimmigrants Students<sup>1</sup> Admitted to the United States by Country of Citizenship

Country	Fiscal Year					% change	
	1999	2000	2001	2002	2003	1999-2001	2001-2003
Afghanistan	20	17	31	16	28	55.00	-9.68
Algeria	214	159	224	144	74	4.67	-66.96
Bahrain	755	852	808	589	477	7.02	-40.97
Bangladesh	2,213	2,451	2,517	1,490	1,382	13.74	-45.09
Egypt	1,646	1,926	1,796	1,137	979	9.11	-45.49
<i>Iran</i>	<i>401</i>	<i>624</i>	<i>852</i>	<i>295</i>	<i>255</i>	<i>112.47</i>	<i>-70.07</i>
<i>Iraq</i>	<i>36</i>	<i>35</i>	<i>36</i>	<i>10</i>	<i>13</i>	<i>0.00</i>	<i>-63.89</i>
Jordan	1,968	2,253	2,522	1,670	1,492	28.15	-40.84
Kuwait	4,374	4,445	4,146	3,110	2,434	-5.21	-41.29
Lebanon	1,443	2,015	2,709	1,741	1,437	87.73	-46.95
<i>Libya</i>	<i>16</i>	<i>10</i>	<i>9</i>	<i>1</i>	<i>3</i>	<i>-43.75</i>	<i>-66.67</i>
Mauritania	224	325	253	127	92	12.95	-63.64
Morocco	1,913	2,455	2,668	1,982	1,826	39.47	-31.56
Oman	702	824	906	685	466	29.06	-48.57
Pakistan	4,588	5,761	7,496	5,274	5,433	63.38	-27.52
Qatar	686	761	844	515	363	23.03	-56.99
Saudi Arabia	7,356	8,286	8,765	5,080	2,869	19.15	-67.27
<i>Sudan</i>	<i>246</i>	<i>290</i>	<i>310</i>	<i>82</i>	<i>57</i>	<i>26.02</i>	<i>-81.61</i>
<i>Syria</i>	<i>444</i>	<i>510</i>	<i>630</i>	<i>328</i>	<i>231</i>	<i>41.89</i>	<i>-63.33</i>
Tunisia	420	487	594	326	315	41.43	-46.97
Turkey	12,293	16,165	17,624	15,434	15,178	43.37	-13.88
United Arab Emirates	4,015	4,528	3,957	2,408	1,578	-1.44	-60.12
Western Sahara	--	--	--	3	--	--	--
Yemen	428	432	436	168	104	1.87	-76.15
<b>Predominantly Muslim Countries</b>	<b>46,401</b>	<b>55,611</b>	<b>60,133</b>	<b>42,615</b>	<b>37,086</b>	<b>29.59</b>	<b>-38.33</b>
% change over previous year		19.85	8.13	-29.13	-12.97		
<i>State-sponsored Terrorist States<sup>2</sup></i>	<i>1,143</i>	<i>1,469</i>	<i>1,837</i>	<i>716</i>	<i>559</i>	<i>60.72</i>	<i>-69.57</i>
% change over previous year		28.52	25.05	-61.02	-21.93		
<b>All Other Countries</b>	<b>520,745</b>	<b>603,470</b>	<b>638,462</b>	<b>603,401</b>	<b>587,831</b>	<b>22.61</b>	<b>-7.93</b>
% change over previous year		15.89	5.80	-5.49	-2.58		

Notes: 1 Includes both F1 and M1 visa holders admitted during the relevant fiscal year, but does not include spouses and children of visa holders.

2 Over this time period there are seven of these states, so declared by the U.S. Department of State. In addition to the five listed above, Cuba and North Korea are also included. Iraq has been removed from this list as of 7 May 2003.

Source: INS, Immigration Yearbook, and Office of Immigration Statistics, Yearbook of Immigration Statistics.

2001, compared to an increase of 22.6 percent amongst the group of all other countries. These numbers, however, decreased between 2001 and 2003 by 7.9 percent for all other countries, but by 38.3 percent for predominantly Muslim countries. We note again that these numbers are only for admittances, and do not count actual students.<sup>17</sup> Thus, they may simply reflect the fact that some students

are not leaving and then re-entering the United States as the costs of re-entering have increased (i.e., longer waiting times at airports, increased scrutiny, possible refusal of re-entry, etc.). Regardless, it is interesting to see the large decline in the number of students admitted to the United States.<sup>18</sup> It should be noted too that this change has been most dramatic amongst the individuals from the subgroup

Table 2. Foreign Student Totals by Place of Origin, 1997/98 to 2002/03

Place of Origin	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03
Afghanistan	90	77	110	75	92	102
Algeria	210	219	214	220	196	177
Bahrain	399	421	542	562	601	451
Bangladesh	3,458	3,650	3,845	4,114	3,935	3,596
Egypt	1,831	1,834	1,964	2,255	2,409	2,155
<i>Iran</i>	1,863	1,660	1,885	1,844	2,216	1,834
<i>Iraq</i>	155	159	112	155	147	127
Jordan	2,027	2,039	2,074	2,187	2,417	2,173
Kuwait	2,810	3,013	3,298	3,045	2,966	2,212
Lebanon	1,321	1,315	1,582	2,005	2,435	2,364
<i>Libya</i>	41	47	38	39	42	33
Mauritania	41	58	62	73	79	87
Morocco	1,168	1,419	1,607	1,917	2,102	2,034
Oman	595	649	661	702	623	540
Pakistan	5,821	5,905	6,107	6,948	8,644	8,123
Qatar	339	409	416	463	461	441
Saudi Arabia	4,571	4,931	5,156	5,273	5,579	4,175
<i>Sudan</i>	328	326	354	366	378	431
<i>Syria</i>	534	570	641	713	735	642
Tunisia	277	300	344	385	458	381
Turkey	9,081	9,377	10,100	10,983	12,091	11,601
United Arab Emirates	2,225	2,524	2,539	2,659	2,121	1,792
Western Sahara	5	6	5	2	8	4
Yemen	341	329	372	411	436	375
<b>Predominantly Muslim Countries</b>	<b>39,531</b>	<b>41,237</b>	<b>44,028</b>	<b>47,396</b>	<b>51,171</b>	<b>45,850</b>
% change over previous year		4.32	6.77	7.65	7.96	-10.40
State-sponsored Terrorist States	2,921	2,762	3,030	3,117	3,518	3,067
% change over previous year		-5.44	9.70	2.87	12.86	-12.82
<b>All Other Countries</b>	<b>441,749</b>	<b>449,696</b>	<b>470,695</b>	<b>500,471</b>	<b>531,825</b>	<b>540,473</b>
% change over previous year		1.80	4.67	6.33	6.26	1.63
<b>Other</b>	<b>50,494</b>	<b>43,705</b>	<b>59,293</b>	<b>54,941</b>	<b>57,168</b>	<b>58,344</b>
% change over previous year		-13.45	35.67	-7.34	4.05	2.06
<b>Undergraduate degrees</b>	<b>223,276</b>	<b>235,802</b>	<b>237,211</b>	<b>254,429</b>	<b>261,079</b>	<b>260,103</b>
% change over previous year		5.61	0.60	7.26	2.61	-0.37
<b>Graduate degrees</b>	<b>207,510</b>	<b>211,426</b>	<b>218,219</b>	<b>238,497</b>	<b>264,749</b>	<b>267,876</b>
% change over previous year		1.89	3.21	9.29	11.01	1.18

Notes: Includes all foreign individuals on nonimmigrant visas enrolled in programs leading to associate degrees, bachelor's degrees, and graduate or first professional degrees, and others which includes language schools, vocational training, etc. Source: Institute of International Education, Open Doors, various years.

of nations labelled as “state-sponsored terrorist states” by the U.S. Department of State.

Table 2 uses data from the IIE which counts the number of foreign students on nonimmigrant visas at U.S. institutions of higher education. These data are much more detailed than the INS data, and also much more reliable for our purposes since they count numbers of individuals, and not number of entries into the United States. These data show a less dramatic decline in student numbers compared to the decline in the number of admittances shown in table 1. Still, following four years of steady increases, the number of students from Muslim countries slid 10.4 percent in 2002/03 compared to one year earlier. This compares to an increase of 1.63 percent amongst students from other countries. This figure is well below increases in the 4-6 percent range witnessed over the previous three academic years. Also, the declines have been larger still for individuals from state-sponsored terrorist states. Finally, comparing tables 1 and 2 also provide support for our scepticism in using the INS data; it does appear that a number of students who might have left prior to September 11<sup>th</sup>, 2001 either did not leave and then return again, or they left the country without returning.

The evidence from the two data sources show that the number of students from predominantly Muslim countries in the U.S. has in fact declined. Furthermore, students from other countries are not pursuing post-secondary education in the United States at the same rate of growth witnessed in the period before September 11<sup>th</sup>. Unfortunately, we have no way of knowing from these two sources if it is U.S. policy which is influencing the decision of students, or if it is institutions of post-secondary learning that are admitting fewer of these applicants. Still it is unlikely that the universities themselves, which rely so heavily on foreign students as a source of revenue and talent, are responsible for this decline. Recent evidence suggests that there is growing frustration amongst many universities in the United States regarding restrictive U.S. immigration policy for foreign students; a coalition of five higher education associations in the United States attribute the drop in applications to an impression that the U.S. has an unwelcoming climate for international students.<sup>19</sup>

We have answered the first question posed, namely “Have the number of foreign students entering the United States decreased since 9/11?” The answer appears to be yes. Furthermore, there has been a steeper decline in students originating in predominantly Muslim countries, as we expected. Still, we have to ask are these students then coming to Canada. The global market for higher education is highly competitive, and there are other options for

students from these countries. We now turn to Canadian data sources in an attempt to answer our second question: “Has there been an increase in foreign students attending Canadian universities?”

Tables 3 and 4 contain CIC data on the flows and stocks of foreign students to Canada by country of last permanent residence. The final two columns of each table indicate the percentage increase in the 1999-2001 and 2001-2003 periods (i.e., two years on either side of September 11<sup>th</sup>). In table 3, the increase in students from predominantly Muslim countries was about 34 percent from 1999 to 2001, somewhat lower than the 42 percent increase from all other countries, while student numbers from state-sponsored terrorist states rose by about 24 percent. Between 2001 and 2003, those from predominantly Muslim countries increased by only 6.5 percent while those from state-sponsored terrorist states rose by almost 68 percent. This compares to a decrease of 16.6 percent amongst students from all other countries. It should be noted, however, that these figures for the 2001-2003 period are certainly an underestimate of the true number of students admitted to Canada. This is owing to the *Immigration and Refugee Protection Act* (enacted in June 2002) which has the provision that foreign students studying in Canada for a period of six months or less do not require student authorizations. This pattern, however, is generally reflected in the stock numbers in table 4.

The interesting phenomena in these data is that the Canadian numbers are almost mirror images to those for the United States: The largest increases for Canada over the 2001-03 period are amongst students from state-sponsored terrorist states, followed by predominantly Muslim countries and those from all other countries. For the United States, the pattern is opposite with the largest decreases amongst those from state-sponsored terrorist states followed by those from predominantly Muslim countries and finally all other countries (table 1).

To further investigate and corroborate this trend, we compile data from our sample of six Canadian universities in figure 1.<sup>20</sup> The figure shows the year-over-year percentage increases in the number of students coming from predominantly Muslim countries as well as all other countries. The data show that there has been an increase in students from all countries, but this increase has been especially pronounced for students originating in Muslim countries, and for graduate students from all countries. Although the growth in foreign students began before the events of September 11<sup>th</sup>, clearly the growth in 2002/03 and 2003/04 has been larger compared to the two previous years. Furthermore, this pattern has generally occurred at

Table 3. Flows of Foreign Students to Canada, Selected Countries and Total, 1997-2003

Country	Fiscal Year							% Change	
	1997	1998	1999	2000	2001	2002	2003	1999-2001	2001-2003
Afghanistan				0			0		
Algeria	24	15	23	38	30	44	41	30.43	36.67
Bahrain	9	8	45	43	37	32	45	-17.78	21.62
Bangladesh	85	169	249	176	395	446	408	58.63	3.29
Egypt	63	71	93	147	156	135	158	67.74	1.28
<i>Iran</i>	151	164	201	226	320	437	603	59.20	88.44
<i>Iraq</i>				4	5		0		
Jordan	76	101	98	136	95	98	82	-3.06	-13.68
Kuwait	45	48	78	65	63	82	67	-19.23	6.35
Lebanon	32	60	95	149	260	221	195	173.68	-25.00
Libya	165	210	199	273	159	70	256	-20.10	61.01
Mauritania	10	4	8	7	13	9	16	62.50	23.08
Morocco	336	350	449	485	538	442	455	19.82	-15.43
Oman	16	30	38	24	42	42	49	10.53	16.67
Pakistan	279	358	525	382	374	260	317	-28.76	-15.24
Qatar	4	7	17	21	27	91	38	58.82	40.74
Saudi Arabia	136	164	191	226	276	330	531	44.50	92.39
<i>Sudan</i>			4	6		4	4		
<i>Syria</i>	7	16	22	30	46	28	27	109.09	-41.30
Tunisia	173	224	280	357	587	459	389	109.64	-33.73
Turkey	73	125	280	388	430	438	363	53.57	-15.58
United Arab Emirates	88	156	243	330	364	411	426	49.79	17.03
Yemen		15	12	16	18	28	45	50.00	
<b>Predominantly Muslim Countries</b>	<b>1,779</b>	<b>2,307</b>	<b>3,153</b>	<b>3,529</b>	<b>4,239</b>	<b>4,111</b>	<b>4,515</b>	<b>34.44</b>	<b>6.51</b>
% change over previous year		29.68	36.67	11.93	20.12	-3.02	9.83		
<b>State-sponsored Terrorist States</b>	<b>323</b>	<b>390</b>	<b>426</b>	<b>539</b>	<b>530</b>	<b>539</b>	<b>890</b>	<b>24.41</b>	<b>67.92</b>
% change over previous year		20.74	9.23	26.53	-1.67	1.70	65.12		
<b>All Other Countries</b>	<b>40,767</b>	<b>38,689</b>	<b>47,882</b>	<b>58,487</b>	<b>68,078</b>	<b>63,913</b>	<b>56,778</b>	<b>42.18</b>	<b>-16.60</b>
% change over previous year		-5.10	23.76	22.15	16.40	-6.12	-11.16		

Notes: No data for Western Sahara. Blank cells are the result of data suppression due to too few student permits issued. As a result, column totals may not add. Data are for total student authorisations, although individuals may also hold other immigrant authorisations. Individuals are classified by country of last permanent residence.

Source: Special Tabulations from Citizenship and Immigration Canada.

## RESTRICTED IMMIGRATION OF FOREIGN STUDENTS TO THE UNITED STATES

Table 4. Stocks of Foreign Students in Canada, Selected Countries and Total, 1997-2003

Country			Fiscal Year					% Change	
	1997	1998	1999	2000	2001	2002	2003	1999-2001	2001-2003
Afghanistan	0	0	0	0	2	3	3		50.00
Algeria	67	61	68	87	87	99	117	27.94	34.48
Bahrain	28	37	62	102	114	121	132	83.87	15.79
Bangladesh	140	143	287	412	654	1,049	1,327	127.87	102.91
Egypt	131	159	176	262	355	402	464	101.70	30.70
Iran	831	677	571	575	639	863	1,225	11.91	91.71
Iraq	8	2	5	4	5	3	4	0.00	-20.00
Jordan	124	161	190	236	285	300	307	50.00	7.72
Kuwait	63	104	151	157	193	241	239	27.81	23.83
Lebanon	100	134	186	253	432	569	611	132.26	41.44
Libya	383	308	326	369	298	235	385	-8.59	29.19
Mauritania	25	20	21	22	29	25	30	38.10	3.45
Morocco	810	923	1,090	1,286	1,437	1,455	1,439	31.83	0.14
Oman	34	54	80	92	113	137	154	41.25	36.28
Pakistan	441	659	1,053	1,154	1,238	1,141	1,192	17.57	-3.72
Qatar	6	11	24	40	58	130	134	141.67	131.03
Saudi Arabia	348	368	428	493	596	701	920	39.25	54.36
Sudan	10	8	7	11	10	13	11	42.86	10.00
Syria	23	29	34	52	83	94	101	144.12	21.69
Tunisia	476	521	605	771	976	1,157	1,194	61.32	22.34
Turkey	138	181	328	461	611	777	853	86.28	39.61
United Arab Emirates	134	239	415	621	821	1,019	1,215	97.83	47.99
Yemen	5	12	25	39	55	79	95	120.00	72.73
<b>Predominantly Muslim Countries</b>	<b>4,325</b>	<b>4,811</b>	<b>6,132</b>	<b>7,499</b>	<b>9,091</b>	<b>10,613</b>	<b>12,152</b>	<b>48.26</b>	<b>33.67</b>
% change over previous year		11.24	27.46	22.29	21.23	16.74	14.50		
<i>State-sponsored Terrorist States</i>	<i>1,255</i>	<i>1,024</i>	<i>943</i>	<i>1,011</i>	<i>1,035</i>	<i>1,208</i>	<i>1,726</i>	<i>9.76</i>	<i>66.76</i>
% change over previous year		-18.41	-7.91	7.21	2.37	16.71	42.88		
<b>All Other Countries</b>	<b>72,187</b>	<b>72,875</b>	<b>82,007</b>	<b>96,594</b>	<b>117,305</b>	<b>128,848</b>	<b>139,299</b>	<b>43.04</b>	<b>18.75</b>
% change over previous year		0.95	12.53	17.79	21.44	9.84	8.11		

Notes: No data for Western Sahara. Blank cells are the result of data suppression due to too few student permits issued. As a result, column totals may not add. Data are for total student authorisations, although individuals may also hold other immigrant authorisations. Individuals are classified by country of last permanent residence.

Source: Special Tabulations from Citizenship and Immigration Canada.

each of the six universities considered here (See appendix for individual university details).

### Conclusions and Discussion

Following the events of September 11<sup>th</sup>, there has been an increase in the number of foreign students studying at the university level in Canada; this has coincided with the decrease in international students studying in the United States. We have documented both of these phenomena. In terms of students coming to Canada, we have shown that the growth began earlier than 2001, but has accelerated since this time, especially amongst students from predominantly Muslim countries. This growth has coincided with the drop in students from these same countries entering the United States. It has been argued that U.S. immigration policy is now less hospitable to foreign students, and especially so for students from Muslim countries.

We also note a much more dramatic increase in graduate students registering in Canadian universities. But why are foreign graduate students, especially those from predominantly Muslim countries, increasing their numbers at a faster rate than undergraduate students from the same region? Increasing numbers of students began to enter Canada before the events of September 11<sup>th</sup>. This is likely the result of the increasing foreign demand for university educations, in general, and the prestige of a North American education, in particular. We have evidence from the United States which suggests that foreign students often do remain in that country to work following graduation; this is especially true of graduate students who fill an increasing number of faculty positions at universities throughout the country. If these individuals desire to live in Canada following graduate school, then attending a Canadian graduate program might be the best option.

Although Canadian universities have been trying to increase foreign enrolments, it is unlikely that this alone is responsible for the large increase in foreign students, especially those from Muslim nations. Of the 17 Canadian Education Centres established overseas, Turkey is the only country in our sample which houses one, and growth in the number of foreign students from that country has been about the same as that of all predominantly Muslim countries. While we cannot say definitively that stricter entrance requirements to foreign students entering the U.S. have resulted in some of these students choosing Canada, the data presented do not refute this hypothesis.

This increased flow of foreign students is likely to continue for sometime.<sup>21</sup> There is a general increase in demand for university education worldwide, especially so amongst

developing countries that do not have the capacity at the present time to provide spots to qualified students. Furthermore, the scrutiny of foreign students attempting to study in the United States is likely to increase, not decrease as there may be even more internal pressure in the United States to limit immigration (both temporary and permanent) in the future, especially amongst individuals from Muslim nations.<sup>22</sup> This depends on a number of factors including the outcome (if there is one) of the so-called war on terrorism.

Canada, however, may be the beneficiary of restrictive U.S. immigration policies. Although foreign students are only a small part of total immigration to Canada, the composition of this flow is very important, especially if the number of students coming to Canada continues to increase as expected.<sup>23</sup> There are several economic benefits that can be ascertained, and each is worthy of further research and policy consideration:

- Since evidence for the U.S. suggests that most foreign students finance their education from non-U.S. sources, the economic benefits would now accrue to Canada;
- Foreign students provide an important source of revenue to Canadian universities since these students generally pay higher tuition and fees;
- The impressive growth in the number of foreign graduate students means that Canada is attracting the best and the brightest from these countries, and graduate students will become increasingly necessary to staff laboratories, teach classes, etc. as the demand for university education continues to increase;
- Similarly, an increase in foreign graduate students might help to reduce the impending faculty shortage at Canadian universities;
- Foreign students, especially graduate students, provide a supply of potential permanent residents for Canada; and,
- The lack-of-recognition of foreign credentials has impeded the entry into the labour force of many immigrants. Obviously this will be less of a problem in Canada as these foreign students obtain Canadian credentials.

RESTRICTED IMMIGRATION OF FOREIGN STUDENTS TO THE UNITED STATES

Recently, there has been talk of increasing integration between Canada and the U.S. to include the freer movement of labour between the two countries. In the wake of September 11<sup>th</sup>, this would undoubtedly require some sort of joint border policy which would have implications for the current disparate immigration policies of the two countries.<sup>24</sup> While politically this might be a prudent policy to follow, the economic implications should be fully explored.

**Appendix**

**Table A-1. Foreign Student Totals by Country of Origin, Selected Canadian Universities, 1997/98 to 2003/04**

	Academic Year						
	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
<b>Carleton University Undergraduate Students</b>							
Algeria			1				
Bahrain			1	5	6	3	4
Bangladesh	1	2		1	4	7	10
Egypt	2	2	10	10	15	16	23
Iran	3	1	4	7	11	12	26
Iraq	1						
Jordan	3	4	4	4	6	8	8
Kuwait		1	2	3	3	13	10
Lebanon	1	1	4	8	7	7	8
Libya		1	1			1	2
Morocco		1	1		1		
Oman		3	6	7	8	10	9
Pakistan	6	11	11	7	12	9	19
Qatar		2	2	2	2	1	1
Saudi Arabia	2	3	10	12	8	17	16
Sudan			1	2	3	2	1
Syria			1		1	2	4
Turkey	4	3	6	7	12	13	14
United Arab Emirates	1	2	10	15	12	29	20
Yemen		1	4	2	3	4	1
<b>Predominantly Muslim Countries</b>	<b>24</b>	<b>38</b>	<b>79</b>	<b>92</b>	<b>114</b>	<b>154</b>	<b>176</b>
% change over previous year		58.33	107.89	16.46	23.91	35.09	14.29
<b>All Other Countries</b>	<b>406</b>	<b>367</b>	<b>378</b>	<b>444</b>	<b>567</b>	<b>814</b>	<b>1,116</b>
% change over previous year		-9.61	3.00	17.46	27.70	43.56	37.10

APPENDIX—CHAPTER 34

	Academic Year						
	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
<b>Graduate Students</b>							
Bangladesh	1	1	3	7	13	9	13
Egypt	2	7	6	16	22	23	22
Iran	7	5	13	19	20	37	49
Jordan			2	2	3	3	6
Kuwait							1
Lebanon						1	2
Libya	13	10	5	5	5	4	4
Morocco						1	
Pakistan	2	5	6	1	3	5	5
Saudi Arabia	1	1	1				3
Sudan				1			1
Syria					1		1
Turkey	7	3	5	6	14	18	18
United Arab Emirates					1	2	6
<b>Predominantly Muslim Countries</b>	<b>33</b>	<b>32</b>	<b>41</b>	<b>57</b>	<b>82</b>	<b>103</b>	<b>131</b>
% change over previous year		-3.03	28.13	39.02	43.86	25.61	27.18
<b>All Other Countries</b>	<b>166</b>	<b>164</b>	<b>156</b>	<b>197</b>	<b>188</b>	<b>198</b>	<b>280</b>
% change over previous year		-1.20	-4.88	26.28	-4.57	5.32	41.41
<b>Simon Fraser University Undergraduate Students</b>							
Afghanistan			1	1	1	1	1
Bahrain					1	1	1
Bangladesh			1	1	2	1	4
Egypt				1	2	2	3
Iran			3	5	6	8	14
Jordan			2	2	1	2	4
Lebanon					1		
Pakistan			1	2	6	9	5
Turkey			2	1	3	5	5
United Arab Emirates			1	1			
<b>Predominantly Muslim Countries</b>			<b>11</b>	<b>14</b>	<b>23</b>	<b>29</b>	<b>37</b>
% change over previous year				27.27	64.29	26.09	27.59
<b>All Other Countries</b>			<b>535</b>	<b>694</b>	<b>815</b>	<b>1,028</b>	<b>1,101</b>
% change over previous year				29.72	17.44	26.13	7.10
<b>Graduate Students</b>							
Bangladesh			2		3	5	9
Iran			7	11	10	20	33
Iraq			1	1	1	3	1
Kuwait							1

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	Academic Year						
	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
Mauritania						1	1
Pakistan			3	2	1	2	
Sudan					1	1	1
Turkey					1	3	6
United Arab Emirates						1	1
<b>Predominantly Muslim Countries</b>			<b>13</b>	<b>14</b>	<b>17</b>	<b>36</b>	<b>53</b>
% change over previous year				7.69	21.43	111.76	47.22
<b>All Other Countries</b>			<b>332</b>	<b>350</b>	<b>335</b>	<b>330</b>	<b>382</b>
% change over previous year				5.42	-4.29	-1.49	15.76
<b>University of Alberta Undergraduate Students</b>							
Algeria						1	
Bahrain			1				
Bangladesh						4	4
Egypt					2	2	2
Iran	1	1	1	2	1	2	2
Iraq	1		1	1	2		
Jordan							1
Kuwait	2	3	3	3	3	1	1
Lebanon					2	6	5
Libya					2	3	2
Oman						2	2
Pakistan	1	2	3	10	6	6	10
Qatar	1	2	2	3	3	2	1
Saudi Arabia	22	22	24	29	26	37	42
Sudan				1			
Syria				1	1		
Turkey			3	2	3	4	9
United Arab Emirates	1	3	3	4	8	10	10
Yemen			1			1	2
<b>Predominantly Muslim Countries</b>	<b>29</b>	<b>33</b>	<b>42</b>	<b>56</b>	<b>59</b>	<b>81</b>	<b>93</b>
% change over previous year		13.79	27.27	33.33	5.36	37.29	14.81
<b>All Other Countries</b>	<b>393</b>	<b>469</b>	<b>511</b>	<b>556</b>	<b>628</b>	<b>743</b>	<b>885</b>
% change over previous year		19.34	8.96	8.81	12.95	18.31	19.11
<b>Graduate Students</b>							
Algeria	1	1					
Bahrain		1	1	1			
Bangladesh	8	9	14	15	21	30	33
Egypt	2	5	3	4	4	9	10
Iran	26	22	15	16	11	24	37

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	Academic Year						
	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
Iraq				1	2		
Jordan			1	2	2	2	3
Kuwait	1	1	1	2			
Lebanon	1	1	1				
Libya	2	2	1	1	1	1	1
Morocco	1	1			1		
Oman	1	1	1			2	2
Pakistan	7	9	5	8	7	16	14
Saudi Arabia	3	1	1	2	1	1	2
Sudan		1					
Syria					1		
Tunisia			1	1			
Turkey	4	8	7	8	9	10	13
United Arab Emirates			1	2			
<b>Predominantly Muslim Countries</b>	<b>57</b>	<b>63</b>	<b>53</b>	<b>63</b>	<b>60</b>	<b>95</b>	<b>115</b>
% change over previous year		10.53	-15.87	18.87	-4.76	58.33	21.05
<b>All Other Countries</b>	<b>479</b>	<b>498</b>	<b>491</b>	<b>538</b>	<b>639</b>	<b>743</b>	<b>878</b>
% change over previous year		3.97	-1.41	9.57	18.77	16.28	18.17
Table A-1 cont.							
<b>University of British Columbia Undergraduate Students</b>							
Algeria			1				
Bahrain		3	3	1	1	1	3
Bangladesh		1			1	1	3
Egypt		1					1
Iran		6	5	6	7	6	15
Jordan				1	1	2	3
Kuwait		10	10	11	10	20	15
Lebanon		2	2	2	3	2	2
Libya		1	1		2	2	2
Morocco			1	1			
Oman				1	1	1	3
Pakistan		3	6	5	7	7	8
Qatar						1	6
Saudi Arabia		45	24	29	38	42	48
Sudan		1	1	1	1		
Tunisia						1	
Turkey				1	2	4	8
United Arab Emirates		2	2		1	3	4
Yemen							1
<b>Predominantly Muslim Countries</b>		<b>75</b>	<b>56</b>	<b>59</b>	<b>75</b>	<b>93</b>	<b>122</b>

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	Academic Year						
	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
% change over previous year			-25.33	5.36	27.12	24.00	31.18
<b>All Other Countries</b>		<b>1,093</b>	<b>1,132</b>	<b>1,283</b>	<b>1,573</b>	<b>1,885</b>	<b>2,329</b>
% change over previous year			3.57	13.34	22.60	19.83	23.55
<b>Graduate Students</b>							
Algeria					1		
Bahrain		2	1	1		1	
Bangladesh		1	3	6	10	15	25
Egypt			1	1			2
Iran		28	27	29	29	43	71
Iraq		1	1				1
Jordan		2	2			1	2
Kuwait		2	2	2	2	3	5
Lebanon			1	1		1	4
Libya		7	6	4	3	2	2
Morocco		1	1				
Oman							1
Pakistan		2	3	5	5	8	10
Saudi Arabia		1	1	3	6	6	
Sudan				1	1	1	7
Syria							1
Tunisia		1	1				
Turkey		6	7	9	10	14	18
United Arab Emirates		1	1	1	1		1
<b>Predominantly Muslim Countries</b>		<b>55</b>	<b>58</b>	<b>63</b>	<b>68</b>	<b>95</b>	<b>150</b>
% change over previous year			5.45	8.62	7.94	39.71	57.89
<b>All Other Countries</b>	<b>1,081</b>	<b>940</b>	<b>913</b>	<b>988</b>	<b>1,085</b>	<b>1,263</b>	<b>1,603</b>
% change over previous year		-13.04	-2.87	8.21	9.82	16.41	26.92
Table A-1 cont.							
<b>University of Calgary Undergraduate Students</b>							
Algeria					1		
Bahrain				1			2
Bangladesh		1	3	4	2	3	8
Egypt	2	1		1			
Iran	1	2	3	3	8	10	10
Iraq		1	1	1	2		
Jordan			1	2	2	2	1
Kuwait	8	9	5	4	3	4	3
Lebanon		1	1	1	1	2	2
Libya	2	5	5	4	4	3	2

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	Academic Year						
	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
Morocco					1	1	1
Oman					1	1	1
Pakistan	1	2	5	5	7	7	8
Qatar				7			1
Saudi Arabia	8	13	13	15	18	22	31
Sudan	1						
Syria							1
Turkey	1	2	3	2	2	2	
United Arab Emirates					3	3	2
Yemen		1	7	12	18	23	31
<b>Predominantly Muslim Countries</b>	<b>24</b>	<b>38</b>	<b>47</b>	<b>62</b>	<b>73</b>	<b>83</b>	<b>104</b>
% change over previous year		58.33	23.68	31.91	17.74	13.70	25.30
<b>All Other Countries</b>	<b>408</b>	<b>445</b>	<b>458</b>	<b>484</b>	<b>584</b>	<b>597</b>	<b>726</b>
% change over previous year		9.07	2.92	5.68	20.66	2.23	21.61
<b>Graduate Students</b>							
Bangladesh	2	1	3	6	7	10	12
Egypt	6	4	2	5	13	16	22
Iran	15	11	2	6	27	31	53
Iraq						1	1
Jordan	1	2	3	3	1	3	4
Kuwait					1	1	1
Lebanon			1	2	1		1
Libya	1	1			1		2
Morocco							1
Pakistan		1		1	2	4	5
Saudi Arabia					2	3	11
Sudan							1
Tunisia			2	2			
Turkey		2	2		1	2	2
Yemen							1
<b>Predominantly Muslim Countries</b>	<b>25</b>	<b>22</b>	<b>15</b>	<b>25</b>	<b>56</b>	<b>71</b>	<b>117</b>
% change over previous year		-12.00	-31.82	66.67	124.00	26.79	64.79
<b>All Other Countries</b>	<b>295</b>	<b>251</b>	<b>341</b>	<b>305</b>	<b>318</b>	<b>414</b>	<b>492</b>
% change over previous year		-14.92	35.86	-10.56	4.26	30.19	18.84
<b>Univeristy of Waterloo Undergraduate Students</b>							
Bahrain						1	1
Bangladesh		2	3	4	7	10	13
Egypt					2	2	
Iran		2	2	2	6	8	8

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	Academic Year						
	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
Jordan				1	2	2	3
Lebanon					1	1	2
Libya							1
Morocco						1	1
Oman			1		1		
Pakistan		5	11	16	18	34	51
Saudi Arabia							1
Tunisia							1
Yemen					2	2	
<b>Predominantly Muslim Countries</b>		<b>9</b>	<b>17</b>	<b>23</b>	<b>39</b>	<b>61</b>	<b>82</b>
% change over previous year			88.89	35.29	69.57	56.41	34.43
<b>All Other Countries</b>		<b>252</b>	<b>322</b>	<b>426</b>	<b>584</b>	<b>788</b>	<b>919</b>
% change over previous year			27.78	32.30	37.09	34.93	16.62
<b>Graduate Students</b>							
Algeria			1	1	1	1	1
Bangladesh		2	1	3	8	16	22
Egypt		2	3	14	12	15	19
Iran		11	11	16	23	44	68
Jordan			1	1	1	2	2
Kuwait		2	2	1	1	1	1
Lebanon			2	1	1	3	4
Libya		9	8	5	3		2
Pakistan		1	2	3	5	4	6
Saudi Arabia		1	1	1	2	1	7
Tunisia		3	1	1			
Turkey			1	1		1	6
<b>Predominantly Muslim Countries</b>		<b>31</b>	<b>34</b>	<b>48</b>	<b>57</b>	<b>88</b>	<b>138</b>
% change over previous year			9.68	41.18	18.75	54.39	56.82
<b>All Other Countries</b>		<b>189</b>	<b>212</b>	<b>253</b>	<b>301</b>	<b>379</b>	<b>401</b>
% change over previous year			12.17	19.34	18.97	25.91	5.80
<b>All Selected Universities</b>							
<b>Total from non-PMCs</b>			<b>5,781</b>	<b>6,518</b>	<b>7,617</b>	<b>9,182</b>	<b>11,112</b>
% change over previous year				12.75	16.86	20.55	21.02
<b>Total from PMCs</b>			<b>466</b>	<b>576</b>	<b>723</b>	<b>989</b>	<b>1,318</b>
% change over previous year				23.61	25.52	36.79	33.27
<b>Total Undergraduates from non-PMCs</b>			<b>3,336</b>	<b>3,887</b>	<b>4,751</b>	<b>5,855</b>	<b>7,076</b>
% change over previous year				16.52	22.23	23.24	20.85
<b>Undergraduates from PMCs</b>			<b>252</b>	<b>306</b>	<b>383</b>	<b>501</b>	<b>614</b>
% change over previous year				21.43	25.16	30.81	22.55

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	Academic Year						
	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
<b>Total Graduates from non-PMCs</b>			2,445	2,631	2,866	3,327	4,036
% change over previous year				7.61	8.93	16.09	21.31
<b>Graduates from PMCs</b>			214	270	340	488	704
% change over previous year				26.17	25.93	43.53	44.26
<b>All Selected Countries by PMC</b>							
<b>Undergraduate Students</b>							
Afghanistan			1	1	1	1	1
Algeria			2	0	1	1	0
Bahrain			5	7	8	6	11
Bangladesh			7	10	16	26	42
Egypt			10	12	21	22	29
Iran			18	25	39	46	75
Iraq			2	2	4	0	0
Jordan			7	10	12	16	20
Kuwait			20	21	19	38	29
Lebanon			7	11	15	18	19
Libya			7	4	8	9	9
Morocco			2	1	2	2	2
Oman			7	8	11	14	15
Qatar			4	12	5	4	9
Pakistan			37	45	56	72	101
Saudi Arabia			71	85	90	118	138
Sudan			2	4	4	2	1
Syria			1	1	2	2	5
Tunisia			0	0	0	1	1
Turkey			14	13	22	28	36
United Arab Emirates			16	20	24	45	36
Yemen			12	14	23	30	35
<b>Total Undergraduates from PMCs</b>			<b>252</b>	<b>306</b>	<b>383</b>	<b>501</b>	<b>614</b>
<b>Graduate Students</b>							
Algeria			1	1	2	1	1
Bahrain			2	2	0	1	0
Bangladesh			26	37	62	85	114
Egypt			15	40	51	63	75
Iran			75	97	120	199	311
Iraq			2	2	3	4	3
Jordan			9	8	7	11	17
Kuwait			5	5	4	5	9
Lebanon			5	4	2	5	11

	Academic Year						
	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
Libya			20	15	13	7	11
Mauritania			0	0	0	1	1
Morocco			1	0	1	1	1
Oman			1	0	0	2	3
Pakistan			19	20	23	39	40
Saudi Arabia			4	6	11	11	23
Sudan			0	2	2	2	10
Syria			0	0	2	0	2
Tunisia			5	4	0	0	0
Turkey			22	24	35	48	63
United Arab Emirates			2	3	2	3	8
Yemen			0	0	0	0	1
<b>Total Graduates from PMCs</b>			<b>214</b>	<b>270</b>	<b>340</b>	<b>488</b>	<b>704</b>

Note: Totals include only students registered full-time on student or other visas.

## Notes

- The minority opinion is offered by Borjas (2002) who argues that the benefits to the United States tend to be grossly overestimated and that it is mainly the foreign students and host universities that benefit because of subsidized tuition and cheap labour, respectively. He writes: “Once one stops mindlessly humming the *Ode to Diversity* that plays such a central role in the modern secular liturgy—and particularly so in higher education—it is far from clear that the program generates a net benefit to the United States” (Borjas 2002:13).
- For example, in the U.S., Aslanbeigui and Montecinos (1998) find that 60 percent of their survey respondents planned to work in the U.S. either temporary (45 percent) or permanently (15 percent) following completion of their PhD programs in economics. Similarly, over 50 percent of the individuals who completed their doctorates in the United States in the 1990s stayed in that country (Finn 2001). Furthermore, science doctorates who remain in the U.S. contribute a larger amount to the advancement of science than their native counterparts (Stephan and Levin 2001).
- In 2001, roughly 44 percent (or about 57,000) of the 130,000 foreign students in Canada were studying at the university level (CIC 2003). In the United States, the comparable number of university-level students was about 445,000 out of 586,000 in 2002, or about 78 percent (IIE 2003:2).
- The first of these articles is the result of a 1996 survey of foreign students in PhD programs at the top U.S. programs. Of the total of 2479 applications made to foreign graduate schools, applications to Canadian universities were third (behind the U.S. and the U.K.) and comprised 1.6 percent of all applications. One reason for the attractiveness of U.S. programs (55 percent of respondents) was the availability of financial support. Since this is less of a factor for undergraduate students, we can comfortably speculate that the proportion of applications sent to Canadian universities will be much higher.
- One the surface it seems paradoxical that only a small number of foreign students returned home following September 11th, and many of these returned to complete their studies. However, it is likely that those with a significant university-specific investment in human capital were the ones to return to the U.S. to complete their studies. We are interested in knowing the numbers of new international students entering the U.S. and Canada, since these provide a more accurate picture of international student flows.
- More aggressive marketing of Canadian universities as well as the lower relative cost of Canadian universities are also credited with this increase in foreign students (Drolet 2004).
- The duties of the INS were taken over by the United States Citizenship and Immigration Service (USCIS) on

- 1 March 2003. The USCIS is a part of the new Department of Homeland Security.
- 8 Details can be found in Martin (2004) and Rudolph (2004). Foreign students are expected to pay the US\$95 for this “service.”
- 9 In its brief submitted to the House of Commons Standing Committee of Citizenship and Immigration Canada, the Association of Universities and Colleges of Canada (AUCC) lauded these changes, but suggested that they did not go far enough in facilitating the entry of students into Canada. The document refers to the lack of a coherent and coordinated national policy which is harming Canada’s position in the global competition for students (see AUCC 2002).
- 10 Turkey is the only predominantly Muslim country that is home to one of these centres.
- 11 These can be found at <http://uscis.gov/graphics/shared/statistics/yearbook/index.htm>. Prior to fiscal year 2002, these were titled the *Statistical Yearbook* of the Immigration and Naturalization Service, a branch of the Department of Justice. Since fiscal year 2002, the name has been changed to the *Yearbook of Immigration Statistics*. This move coincides with renaming of the Immigration and Naturalization Service to the U.S. Citizenship and Immigration Services (USCIS) as of 1 March 2003. The USCIS is a bureau of the newly-formed U.S. Department of Homeland Security.
- 12 Another source of potentially useful Canadian data comes from the Council of Ontario Universities (COU). Each year, the COU compiles data on applications and registrations into each of the 18 public universities in that province. These data are useful because they give the researcher an idea about intention to attend university (as reflected in the application numbers) and actual attendance (as reflected in the registration numbers). Unfortunately, the most recent year in this data set is for 2002 and the coverage is limited to new undergraduate students, making the data somewhat limited in usefulness for our purposes.
- 13 The third category in the *Maclean’s* ranking is primarily undergraduate institutions. These institutions are generally smaller and focus on providing education to local or regional students.
- 14 For 2003/04, our results are generally similar to those using results compiled with preliminary data by the AUCC (Drolet 2004). Our numbers tend to be a little higher, but this is expected given that we have chosen some of Canada’s better-known universities. We have no reason to believe, however, that our sample will distort the trends in international students in Canada, and this is the measure in which we are interested.
- 15 The exception is Israel and the Palestinian Authority, which are not included in our analysis. The former because it is not a predominantly Muslim nation and the latter because it is not always appropriately disaggregated in the data. A check of the *CIA World Factbook* (<http://www.cia.gov/cia/publications/factbook/>) confirmed that each of these countries has an overwhelmingly Muslim population.
- 16 The U.S. fiscal year runs from October 1st through September 30th. For example, FY 2002 would be from 1 October 2002 through 30 September 2003.
- 17 See Borjas (2002) for details.
- 18 We also produced a similar table for J1 exchange visitors. These are individuals coming to the United States on academic exchanges, but also include a number of foreign students. We found a similar, albeit less pronounced, pattern amongst this group of nonimmigrant visa holders. According to the IIE (2003:55) in 2002/03, 86.0 percent of undergraduates held F visas, 2.9 percent had J visas, 0.1 percent had M visa, and the remaining 11.0 percent held other visas. For graduate students, these numbers were 87.0, 5.9, 0.1, and 9.9 percent, respectively.
- 19 Recently, according a survey conducted by the Council of Graduate Students, graduate student applications from international sources have fallen by 32 percent for fall 2004 admissions, compared to fall 2003 (itself a poor year). This finding is mirrored by five other agencies concerned with higher education in the U.S. (CEC 2004).
- 20 The complete data used to generate this chart can be found in the appendix.
- 21 Indeed, recent evidence suggests that this trend is continuing. See Dillon, Sam. 2004. “U.S. Slips in Status as Hub of Higher Education.” *New York Times*, 21 December; and, Alphonso, Caroline. 2005. “Facing U.S. Security Hurdles, Top Students Flock to Canada.” *Globe and Mail*, 22 February.
- 22 This scrutiny of Muslims seems certain to increase following the release of the September 11th Commission report in July 2004. The report notes that the threat to the United States is not simply a few rogue Islamic extremists, but rather an ideology which is widespread in the Islamic world and has been given support by young, disaffected Muslims and gained sympathy amongst other Muslims as well (Pipes 2004).
- 23 On 18 April 2005, Minister of Citizenship and Immigration Joe Volpe announced changes to immigration policies that will allow international students to work off campus during their studies and seek employment

in Canada for up to two years following graduation. These, and other changes announced, are aimed at making Canada a more attractive destination for foreign students.

- 24 See Green (2004) for a discussion of this issue and how harmonization of immigration policies (likely towards the U.S. model) would result in costs to the Canadian economy.

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# *Implementing a Safe Third Country Agreement: Canada and the United States Cooperate on Asylum Adjudication*

Michael J. Churgin

In the wake of the tragedy of September 11<sup>th</sup>, 2001, the United States and Canada have engaged in a higher level of cooperation on border control matters than existed previously. In December 2001, the “Smart Border” Declaration 30-point action plan was announced by John Manley for Canada and Tom Ridge for the United States. One of the elements was to be the establishment of a safe third country agreement whereby most asylum seekers would be required to have their cases adjudicated at the first country reached as between the United States and Canada. That was one provision sought by Canada, and it is estimated that it will reduce the Canadian asylum caseload by one-third. In contrast, it is estimated that the effect on the United States will be minimal, and perhaps 200 individuals will be returned to Canada.

This is not the first time such an agreement between the United States and Canada was contemplated. Negotiations took place in the mid 1990s, but ultimately were scrapped at the behest of Canada following the passage by Congress of rather draconian immigration legislation in 1996. In the wake of September 11<sup>th</sup>, a new opportunity arose to establish such an agreement. Canada already has in place the necessary regulations to implement an agreement. In March 2004, the United States Departments of Homeland Security and Justice proposed regulations to carry out the

obligation of the United States. The period for comment closed in May 2004, and final regulations are projected to be promulgated by the end of the year.

The asylum adjudication systems of the two countries are different, and there is concern that persons shut off from the Canadian system will be at some disadvantage. For example, applicants generally are afforded legal aid in Canada, welfare assistance, and a more generous consideration of gender claims. The paper will discuss the agreement, its history, and potential problems.

Canada and the United States have much in common in their histories concerning the admission of immigrants. Both have welcomed individuals from other nations, and at the same time, both have gone through periods of xenophobia when almost all immigration, particularly of certain individuals, stopped. Early on, both restricted the admission of Chinese; immediately prior to World War II, each declined to admit significant numbers of Jews, despite clear evidence of persecution taking place under the jurisdiction of Nazi Germany. During the immediate post-war period, both nations slowly began to accept significant numbers of refugees from war-torn Europe. However, neither agreed to sign the 1951 Convention on Refugees because both wished to do nothing to limit their

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own ability to determine who should and who should not be admitted.

More recently, Canada and the United States have complied with the Convention through their signing of the 1967 Protocol Relating to the Status of Refugees. During the last 37 years, both nations have admitted large numbers of refugees from abroad. Governmental policy is consistent in each case, favoring the ability to pick and choose among refugees from various locations overseas. Simultaneously, Canada and the United States have enacted into domestic law, as part of their respective immigration acts, special provisions providing for the entry of individuals who qualify for what in the United States is called "asylum" status and in Canada called "convention refugee" status. These are persons who, because of persecution or a well-founded fear of persecution, seek not to return to their home countries. The basis for this fear is race, religion, nationality, membership in a particular social group, or political opinion. These provisions, part of domestic law, are consistent with the Protocol and Convention and are adjudicated in each country. In other words, individuals somehow are able to come to Canada and the United States and, once here, present their claims to the governments, seeking to remain.

While courts in both nations traditionally have been rather deferential to the executive and legislative authorities on questions of immigration, judges in both nations have been willing to review decisions concerning asylum or refugee status, particularly now that the process is part of domestic law and not of treaty alone. Today, there are administrative structures in both nations to adjudicate and review asylum/refugee claims. Canada has a somewhat more streamlined system and has committed proportionately (and sometimes in raw numbers) more resources to the process. For example, Canada funds a documentation center which would be the envy of the United States asylum adjudicators. Canada has been more generous in awarding convention refugee status to applicants than the United States, particularly during the early Chrétien years when the rate at one time exceeded 70 percent. In sharp contrast, the rate in the United States rarely approaches 20 percent. (One possible contributing factor to the disparity is that the individuals who make decisions in Canada are not employees of the immigration service as is the case initially in the United States (although ultimately independent immigration judges do decide claims on rehearing).) There had been allegations that the early Chrétien Liberal government initially appointed individuals whose basic sympathies rested with the applicants to adjudicate con-

vention refugee claims, although after being in power for a long time, Liberal enthusiasm waned dramatically.

A further factor is that there are proportionately more support groups for the applicants and lawyers who can represent the applicants in Canada than in the United States. In the United States, grantees of the Legal Services Corporation, the largest source of legal assistance for indigents, are prohibited from permitting their attorneys to represent aliens who do not have status, except under very limited circumstances. In Canada, claimants generally are eligible for provincial legal aid. In addition, unlike in the United States, Canadian applicants are eligible for social welfare assistance when needed while awaiting a decision on their applications. Finally, in the United States there are some significant procedural hurdles that applicants must overcome, such as a statute of limitations on submitting a request for asylum.

During the 1990s, there were divergent approaches to immigration in Canada and the United States. The watershed year was 1996. The previous year, the governments of the United States and Canada were cooperating to establish a common approach to the adjudication of refugee claims. During a visit of President Clinton to Canada in February 1995, part of the post-summit communiqué indicated that an agreement was being developed between the two nations to provide that individuals would have to seek status in the first country entered as between the United States and Canada. Since the movement of individuals is basically northward from the United States to Canada, it was estimated that as many as one-third of the annual Canadian convention refugee applications could be turned away on the basis that they should have been adjudicated in the United States and that these individuals would then be returned either to the United States or their home country. (Canada would have a safety valve policy of reviewing the situation of individuals for whom orders of removal have been issued to determine whether for humanitarian reasons they should be allowed to remain.)

This proposed action by the United States and Canada was part of a larger international movement to establish some method of adjudication in sister countries which would be honored and given full force so that each individual nation would not be "used" and to avoid "forum shopping" in the convention refugee adjudicatory process. Western Europe took some steps in this direction through the Dublin convention of 1990, although largely unsuccessful, and other nations are adopting parallel provisions to provide for similar arrangements. In theory, each nation's adjudication process would be deemed fair enough to be considered sufficient compliance with each

individual nation's own domestic law and treaty obligation under the Convention and the Protocol. The memorandum that was being developed by Canadian and United States officials would have provided for responsibility in that nation where the alien first arrived. However, there would be exceptions for situations where close family relatives lived in one nation and not the other, or where the individual had already obtained status of some time in one country or the other.

However, by the time Prime Minister Chrétien went to the United States in early 1996, no agreement had been signed. Subsequently, the United States Congress passed two rather draconian pieces of immigration legislation. Detention was to be used for asylum applicants who arrived with "bogus" or insufficient documentation, and a special expedited process was to be put in place to make a preliminary decision concerning whether the individual had a "credible fear" of persecution. An immigration inspector would make the initial determination, and if the inspector concluded that there was no indication of an asylum claim, the individual could be immediately removed from the United States. Even if turned over to an asylum officer for credible fear adjudication, a negative determination would result in an appeal within seven days to an immigration judge with no judicial review possible. The Canadian government looked askance at these two new pieces of legislation, and the enthusiasm for a memorandum of understanding waned. In February 1998, Minister Robillard announced the termination of the negotiations.

During 2001, Canada already was reconsidering various aspects of its immigration policy. In February, the government introduced Bill C-11, the Immigration and Refugee Protection Act, in Parliament, to streamline procedures, reduce perceived abuse of the refugee process, and increase the role of security in the balance. In the wake of the tragedy of September 11<sup>th</sup>, the United States government looked north and did not like what it saw along the border. Attorney General Ashcroft referred to the Canadian border as porous, and unnamed sources complained that Canada did not do enough to contain suspected terrorists. Those on watch lists were allowed to be at liberty awaiting refugee hearings, Canadian law provided only for deportation rather than prosecution of these individuals, and requested extradition to the United States sometimes could not be accomplished. Perhaps the most notorious case involved Ahmed Rassim who crossed the British Columbia/Washington border with a car filled with explosives to set off a bomb at the Los Angeles Airport during the millennium celebrations; he was convicted and is in prison in the United States. In the president's

address to a joint session of Congress shortly after September 11<sup>th</sup>, Canada was not mentioned as one of the helpful nations in the fight against terrorism.

Canada reacted quickly. The Chrétien government pledged support to the president's effort and spoke of increased cooperation with the United States. The last thing the Canadian economy needed was miles-long waits at checkpoints for commerce to be admitted into the United States. The government emphasized that none of the identified hijackers had entered the United States through Canada. On the legislative front, then Immigration Minister Caplan focused on the antiterrorism provisions contained in the pending immigration legislation. The Senate hearing in early October heard objections to various parts of the bill, and the committee suggested some changes. However, in the post-September 11<sup>th</sup> atmosphere, none was adopted, and the legislation was passed in November without further change. Michael Greene, an immigration lawyer, commented that there would have been a more vigorous debate and some compromises had September 11<sup>th</sup> not occurred, but that the government now had "little interest in due process and individual rights."

In early December 2001, United States Attorney General Ashcroft traveled to Ottawa to certify Canada's cooperation. A border accord was signed by officials of both nations. Called the Smart Border Action Plan, the initiative contained 30 points. Among the provisions:

1. "Integrating Canadian officials into the U.S. Foreign Terrorist Tracking Task Force and coordinating efforts to bar entry of future terrorists;"
2. "Conducting a joint review of U.S.-Canada visitor visa policies and developing joint visa requirements to control unlawful migration from one country to the other;"
3. "Establishing Joint Passenger Analysis Units to assess passenger information at key international airports in the U.S. and Canada;"
4. "Increasing the number of Canadian and U.S. Immigration Control officers overseas to intercept inadmissible passengers;"
5. "Developing a Safe Third Country Agreement that supports the free exchange of asylum information to help determine the identity and background of asylum seekers. ...Implementing a safe third country agreement would allow either country to return an asylum applicant to the other country for assessment."

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It can be suggested that the Canadian government used the events of September 11<sup>th</sup> and the pressures from the United States to pass and implement a new immigration law that leaves more discretion with the Executive. The law came into effect on June 28, 2002. Proposed regulations were pre-published, and the new restrictions took effect immediately. For example, denied refugee applicants now need permission to appeal to the courts. Previously, an appeal was a right. Initial screening of refugee applicants is conducted within three days, to be followed by action by the review boards, and the detention capacity has been significantly increased. The *Immigration and Refugee Protection Act* provided for a Refugee Appeal Division; since June 2002, the initial decision was made by one member of the Immigration and Refugee Board. However, despite then minister of Citizenship and Immigration Denis Coderre's commitment to implement an appeal system within a year, the summer of 2003 passed without one in place. No administrative appeal system exists yet. The government also has forced applicants from the United States back across the border without adjudicating their claims, knowing that the individuals would be detained in the United States and not able to return to Canada for further processing. This practice is now the subject of a proceeding before the Inter-American Commission on Human Rights of the Organization of American States.

One specific aspect of the Smart Border Accord was created at the behest of the Canadian government. The resuscitated Safe Third Country Agreement would deflect approximately one-third of the current applicants for convention refugee status in Canada to the United States. (Fifteen thousand persons sought asylum in Canada after passing through the United States, whereas 200 did so in the opposite direction.) There also was some suggestion that the criteria for asylum would be harmonized. In response to criticism by convention refugee advocates, then Minister Caplan stated that "Canada will live up to its obligations under the Geneva Convention.... All of these issues will be resolved." What Caplan did not note is that Canadian law provides more extensive benefits under the Convention than the United States.

The Chrétien government took steps to implement the now-signed Agreement. The House of Commons Standing Committee on Citizenship and Immigration issued a report, recommending assurances and changes in the government's initial draft. The minister's Response in May 2003 acknowledged that there are differences between the way the Canadian and United States immigration authorities handle asylum applications, although there is little in the way of formal changes to the implementation plan.

Minister Corderre maintained that he has received assurances that the expedited removal procedure would not be used for those individuals returned to the United States under the Agreement. This assertion of 2003 might not survive the Department of Homeland Security's notice of August 11, 2004 that it intended to expand dramatically the use of expedited removal. The final Third Country regulations, projected for release this month (October), should reveal the answer.

One serious difference concerns the handling of gender-related claims. Canada has been in the forefront in terms of recognizing convention claims based on violence against women. The United States has taken only baby steps in comparison to Canada, and the Bush administration has done nothing to follow through concerning proposed regulations on the subject promulgated by the Clinton administration in its waning days in office. In fact, Attorney General Ashcroft has indicated he would review a decision of the Board of Immigration Appeals after his predecessor Janet Reno had remanded that case back to the BIA to be reconsidered in light of the new (proposed but never promulgated) regulations. Other major differences concern the lack of free legal services for applicants and the lack of social service support in the United States. Furthermore, detention of asylum seekers pending adjudication is far more common in the United States than Canada.

The United States House of Representatives Judiciary Committee held a hearing on the convention in October 2002. During the testimony, it was revealed that there was a side agreement, presumably to "pay back" the United States for agreeing to handle the extra asylum applicants. Canada agreed to accept a certain number of individuals for resettlement in Canada. It is presumed that these will be French-speaking Haitians who would go to Québec.

The great unknown is what will be the attitude of the Federal Court and the Supreme Court of Canada. The Supreme Court's initial foray into the refugee area occurred in 1985 in a sweeping decision which showed the promise of application of the *Charter of Rights and Freedoms* to many issues concerning due process and equal protection rights of individuals. Although a majority of the Court did not rely on the *Charter*, but chose to use the older *Canadian Bill of Rights* legislation, the Court did declare that the policy of the government denying convention refugee status to applicants without granting a personal hearing was unconstitutional (or in violation of the statutory Bill of Rights). Neither group of three judges for each position expressed disapproval of the other judges' approach to the question. Justice Bertha Wilson's judgment demolished the

government's argument for administrative convenience in sweeping terms:

Certainly the guarantee of the charter would be illusory if they could be ignored because it was administratively convenient to do so. No doubt considerable time and money can be saved by adopting administrative procedures which ignore the principles of fundamental justice but such an argument, in my view, misses the point of the exercise under 1. The principles of natural justice in procedural fairness which have long been espoused by our courts, and the constitutional entrenchment of the principles of fundamental justice in section 7, implicitly recognized that a balance of administrative convenience does not override the need to adhere to these principles (Singh 1985:218-219).

The Court generally has continued to be supportive of individual claims in convention refugee cases during the last twenty years. However, in its 2002 opinion in *Suresh v. Canada* (2002), the Court suggested that Canada could send someone back to a country where he might be tortured, in violation of the terms of the Convention Against Torture to which Canada is a signatory.

The events of September 11<sup>th</sup> hastened the passage of the new immigration act in Canada; allowed the government a relatively free hand in implementing administratively the legislation in light of the increased concerns about border security, the "war on terrorism," and the need to cement relations with the United States and brought back to light a Canadian initiative to deflect one-third of its refugee caseload to the United States through the Safe Country Agreement. The implementation of the Agreement has not proceeded swiftly, and it will be interesting to see whether the final regulations to be announced shortly in the United States will be sufficiently in keeping with the Canadian approach to convention.



PART V  
ABORIGINAL CONCERNS

Self-Government, Nunavut, Repatriation, Representation, and Aboriginal Media



# *Converging or Diverging Pathways to Aboriginal Self-Determination? Indigenous Peoples, Self-Government, and the Federation\**

Frances Abele and Michael J. Prince

## Introduction

We suspect that most of the time, most Canadians—including most political scientists—are not watching developments in the field of Indigenous self-government.<sup>1</sup> Given the demographics of the country and the long list of public worries faced by most people, that is not at all surprising. But it is less than ideal, because for some time now there have been both intriguing events and a spirited debate among specialists concerning Indigenous peoples' self-government and the Canadian federation. In fact, the last thirty years have brought momentous changes that urgently require analysis and developmental creativity.

Joined to the long history of treaties, broken promises, assimilation practices by Canadian authorities, and a resurgent Indigenous activism, is the more recent record of land claims, treaty negotiations, constitutional reform, landmark court decisions, and a new generation of Aboriginal scholars and leaders. A vital, participatory politics of fundamental principle has arisen. In the area of Aboriginal—Canada relations, we find a situation rather like that described by Ed Black in his work on concepts of federalism, “Canadians spend as much time or more time as do other peoples in major debates about ends and means, about the rich and the poor, about freedom and equality, and about change and the status quo. But they

do so in the strange vocabulary of the political elites, in terms of changing the structures and responsibilities of their systems of government” (Black 1975:3).

In 1984 and 1986, Roger Gibbins and J. Rick Ponting published three thorough and thoughtful considerations of the implications for Canadian politics and Aboriginal peoples' well-being of the implementation of Aboriginal self-government, including but not limited to the implications of self-government for the federal system (Gibbins and Ponting 1984, 1986; Gibbins 1986). Gibbins and Ponting focused their analysis on southern Canada (excluding the territorial North, Northern Québec, and Labrador) and of course they were writing at a time when considering the impact of self-government required almost a thought experiment: the judicial and political implications of Sections 25, 35, and 37 of the *Constitution Act* (1982) were hardly apparent, and only two modern treaties had then been negotiated, neither in the part of Canada to which Gibbins and Ponting turned their attention.<sup>2</sup> Therefore, while our engagement with Gibbins and Ponting's analysis will be apparent at intervals in what follows, we have been aware that our analysis, which attempts to encompass all of Canada and which is being written almost exactly twenty years after they did their work, is based upon a different empirical situation.

Our inquiry draws attention to the politics of treaty relations, seen as a particular political process in the context of multiple political communities—rather than a fixed template or overarching legal framework based on precedent (Hueglin 1993). The variety of Aboriginal peoples and their governments and circumstances is both a social reality and a rationale for adopting a specific approach to treaty relations.

Within this perspective, we focus on ideas about Aboriginal self-governments associated with a territory or a land base, and consequently, we have excluded from the discussion a specific focus on urban affairs. It is clear that the situation in the cities is dynamic, distinctive, and complex. The proportion of Aboriginal people living in Canadian cities has reached about 50 percent and it is increasing. Some urban Aboriginal people retain important ties to a land-based Aboriginal government. The recent Supreme Court decision on voting rights for off-reserve members is likely to strengthen such ties, as is the process by which Bands are establishing urban reserves.<sup>3</sup> For urban Aboriginal people who live in the cities but retain ties to land-based governments, the models discussed below are relevant. Other urban Aboriginal people, however, live in increasingly integrated fashion among the general population, some with access to Aboriginally specific services and some who choose not to use these. A growing number are in ethnically mixed families. In no case, so far, has a new paradigm of urban Aboriginal self-government emerged that speaks to the people in this second circumstance, and so we leave its consideration to other treatments (see RCAP 1996; Newhouse and Peters 2003; Hanselmann 2001, 2002, 2003; Graham and Peters 2002 among others).

In this paper, we explore the following questions: What are the major pathways to Aboriginal self-determination under consideration today in Canada?<sup>4</sup> What are the significant characteristics of each pathway and how do they compare to one another? What values are involved and what assumptions are made regarding sovereignty, citizenship, and federalism? And who is advocating for or against these pathways? To be sure, these questions have to do with the accommodation of diversity; but they entail the far more fundamental matter of the right of self-determination, the co-existence of Aboriginal and Canadian sovereign communities, as well as political and academic visions of what these relationships should and might look like in the twenty-first century. These questions are highly relevant to political theory and practice around the world (Iveson, et al. 2000).

Political discourse on these questions is deeply contentious, driven by different images of Aboriginal-Canada relations held by varying peoples, political parties, governments, academics, and other interests in economic, spiritual, and social life. There are basic disagreements about the nature of our collective past, present times, and possible future relations between Aboriginal peoples and the federal and provincial governments. We aim to improve understanding of these matters by assembling, explicating and sorting the alternatives, to advance conceptualization and practical policy by putting the alternatives clearly in a consistent analytical framework.

We identify three contending sets of fundamental principles about what Aboriginal-Canadian state relations are and what they ought to be. We refer to these sets of ideas as “models,” following C.B. Macpherson in using this term to mean a theoretical construction with various purposes: explaining prevailing beliefs and the relations between peoples, considering the possibility of changes in those relations over time, and making statements of what is desirable or ethical in a political community (Macpherson 1977). Our three models are distinguished, based on the underlying constitutional status they embody and the relationship between Aboriginal communities and the Canadian political system implied in their realization. The models portray the realization of Aboriginal self-determination as leading to the creation of (1) mini-municipalities, (2) a third order of government, or (3) nation-to-nation or treaty federalism between confederations. We distinguish and investigate the three models in relation to public policy debate and scholarly work to show how they might frame future relations between Canadian governments and the political collectivities of Aboriginal peoples. Thus, we offer a framework for understanding the multiple forms of Indigenous self-government that have emerged and which are proposed and for approaching the scholarly discussion of these.

Our analysis unfolds in three stages. First, we review some of the major political events in Aboriginal-Canada relations of the last thirty years in order to explain the basis of the diversity of forms of self-government that have emerged and to provide a context for considering current circumstances. Then, in the second and longest section, we examine each of the models with reference to current examples and debates. Finally, we conclude with comments on the increasingly pressing challenge of accommodating the extremely heterogeneous Aboriginal order of government into federalism. Specifically, we argue that at some point in the not-to-distant future, Canada will have to make a choice about how Aboriginal self-governments

are to be integrated into federalism, and about what to do about the likelihood those arrangements suitable for one substantial body of Aboriginal opinion may not be suitable for another.

### A Decisive Turn in Aboriginal-Canada Relations

In the several decades following the Second World War, there was a decisive turn in the relations between Indigenous societies and the institutions of the Canadian state. That is evident in even a brief comparison of the state of affairs in Canada in 1953 with conditions fifty years later in 2003.<sup>5</sup>

During the first half of the twentieth century, Aboriginal people were ignored and often actively oppressed, sometimes protected, but never treated as equal political beings. For example, status Indians were still denied the vote in federal elections; those who wished to vote were compelled to accept “enfranchisement”: they ceded their legal status as Indians (and all the rights attending this) in exchange for the rights of Canadian citizenship. It was illegal for status Indians to raise funds for the purposes of political representation, and they were often compelled to obtain a “pass” from the resident Indian Agent before they were permitted to work off reserve. Inuit, in contrast, were living mostly on the land, with only occasional and limited contact with agents of the state. Many lacked access to schools, medical care, social programs, and, again, the federal franchise (in this case for practical reasons). Métis were hardly recognized by the state or the Canadian public as a distinct people, and many lived in extreme poverty without a land base.

By 2003, in contrast, Indigenous people as individuals and as collectivities had organized themselves into a variety of political organizations and were widely active in community development and in formal Canadian politics—although exercise of the franchise is controversial among some First Nations, and, as a whole, Indigenous people are still underrepresented in elected bodies and executive federalism (Alfred 1999). The egregiously discriminatory provisions of the *Indian Act* have been removed: status Indians may vote, move freely off reserves, and organize politically.<sup>6</sup> Gender discrimination was also removed from the *Indian Act* in 1984. As a result of a sustained campaign by Indigenous organizations, the “existing Aboriginal and treaty rights” of First Nations, Inuit and Métis are entrenched in the Canadian constitution. At the same time, an important revival of traditional forms of governance and a rethinking of the place of Indigenous collectivities in the modern world is underway.<sup>8</sup> One

aspect of this major developmental process is the current elaboration and assessment of various approaches to Aboriginal self-government, which we discuss in more detail in the next section.

The changes that have occurred in the relations between Indigenous people and their societies, on the one hand, and the rest of Canadians and Canadian public institutions, on the other, are deep and wide. The sources of the change are many. The most obvious observation is that the changes in institutions and policy have been the result of democratic political activism by organized Indigenous people and their non-Indigenous allies, a development that in turn was assisted by changes to the *Indian Act* for status Indians and the availability of federal funding and opportunities for consultation for all Indigenous groups.

Why these changes became possible, in turn, likely has something to do with the general transformation in Canadian society that was a part of the global coming to terms with the impact of the Depression and the Second World War. We would identify the following factors:

1. The race-based horrors of the Second World War led to revulsion in most of the countries that participated in the War against all policies that discriminate based on race and against racism itself. This very widely spread feeling was probably one factor in the early 1950s revision of the *Indian Act* to remove the punitive measures designed to control politically and transform Indian societies.
2. With the changes to the *Indian Act* and other developments in Canada, it became more feasible for Indians and other Indigenous people to organize for common political goals, including rehabilitation of the treaties and negotiation of treaties or land agreements where none had been negotiated.
3. The postwar expansion of the welfare state, in part a response to fears that another great Depression might follow the return of the soldiers from the war, had its effect among all poor people, including Indigenous people in Canada. For example, in Nova Scotia, Micmac were “centralized”: encouraged to move onto reserves from their homes elsewhere, ostensibly to improve the delivery of services, and in the territorial North, Indigenous people in the North were drawn into communities to live in

social housing, their children were encouraged and compelled to attend school, and medical and other social services began to be provided.

4. Indigenous veterans returning from War were, on the one hand, not treated as well as non-Indigenous veterans (Prince 2000; RCAP 1996) and, on the other, having risked their lives for the country of Canada they often returned with an understandable sense of entitlement and worth. As in the Civil Rights movement in the United States and in the mobilization of Indigenous people in Australia and New Zealand, some of the returning veterans in Canada became important activists for Indigenous rights.
5. In the general context of global decolonization, as the old European empires crumbled everywhere and as the Commonwealth replaced the Empire as Canada's international context, Indigenous people in Canada and their non-Indigenous comrades began to work for decolonization within Canada (Manuel and Posluns 1975; Monture-Angus 1999; Battiste 2000).

### Many Paths to Self-Determination

It is almost impossible to avoid overgeneralization in writing about Aboriginal-Canada relations, given the extreme heterogeneity in the circumstances of Aboriginal nations and peoples. There are approximately forty to sixty historic Indigenous societies in Canada; some of these are now fragmented. For example, members of First Nations live in over 600, generally small, reserve-based communities as these were created by federal administration of the *Indian Act* many decades ago. Some Métis live in communities dominated by or reserved to Métis, but many others live among the general Canadian population. Inuit participate in public government in four provinces and territories: Labrador, Nunavik (Northern Québec), Nunavut, and the Northwest Territories.

Besides relatively straightforward differences due to economic circumstances, geographical location, and demographics, there are of course large differences in political history, ideology, and practice among the various Indigenous nations and peoples. One indication of the depth and salience of this diversity is the fact that the realization of Indigenous self-determination in Canada has led to many forms of self-government.

On the one hand, there are the "public government" models favoured in those parts of northern Canada where Inuit form a large majority of the population. The most well known example of the public government model is probably the new territory of Nunavut where Inuit form 85 percent of the population. There are other examples of "mixed" new forms of governance, featuring both institutions that are exclusively open to members of particular nations along with some hybrid institutions to provide necessary links between specific Indigenous peoples and their neighbours. Variations on this theme may be found in the Yukon, the Northwest Territories and, with the *Nisga'a Treaty*, in British Columbia. On the other hand, there are nations such as the Haudenosaunee, who consider themselves good neighbours to Canada rather than part of it, and who guard their ethnically exclusive membership tightly. There are Métis who are living on settlements created by agreement with provincial governments, and many who live in the general population with attachments to Métis political organizations. And, of course, many status Indians are still governed by straightforward *Indian Act* institutions in various stages of renovation (Barron and Garcea 1999; Hylton 1999; Henderson, et al. 2000; Scott 2000; Chartrand 2002; Cassidy and Bish 1989).

### *Aboriginal-Canadian State Relations: Contending Models*

Although there are a plethora of forms of self-government now under construction (and it is likely that even more variations will be developed as the process of negotiating a new relationship with Canada continues) it is possible to sort these into three broad models. We think it is important to do this because the categories are mutually exclusive: choosing one path would seem to rule out choosing another, at least within the timeframe of one or more generations. The three models, as mentioned earlier, are differentiated by the constitutional status of Aboriginal governments and communities and their political relationship to the Canadian state system. The models view Aboriginal self-determination as mini-municipalities, as a third order of government, and as sovereign communities with nation-to-nation relations with the Canadian federation.

Each model is a set of ideas, preferences, and practices about Aboriginal governance and Canadian federalism; and contains different choices, possibilities, and constraints for self-determination for Indigenous peoples. To examine models of self-determination, therefore, is to examine the beliefs of people who want it and what they

think it might be and should be, as well as the beliefs of those who reject or challenge a certain vision.

We examine several elements in each model: notions of sovereignty and the sources of law making powers, the formal basis of Aboriginal-Canada relations, the nature or purpose of the relationship and the “ideal” structural arrangements for that relationship, the demarcation and scope of powers between Aboriginal and Canadian governments, the citizenship of Aboriginal peoples, the conception of the Canadian polity and federalism, and, the proponents for and opponents of each model. This obviously is quite a tall order, and here we only begin to explore some of these dimensions of the three models. One of our aims is to encourage others to give consideration to this issue and to these models.

#### *First Nations as Mini-Municipalities*

The option we refer to as the mini-municipality model envisages Aboriginal governments as being in essentially the same position as municipalities: as is the case for cities and towns, the powers of these governments would be defined by delegation from another level of government, in this case either the provincial or federal level. Their powers and reach would be similar to those of cities in most Canadian jurisdictions; their sizes are likely to be smaller than the average town, hence our use of the term “mini.” In our usage, mini-municipalities, like Canadian local governments, provide a range of services to relatively small populations, have a representative electoral system, and possess a modest power of taxation and own source revenues.

Under the *Indian Act*, band councils have even fewer powers and less independence than do the elected representatives of Canadian towns and cities: they are, if you will, “minus-municipalities.” This “minus” position may partly explain the attraction of the mini-municipality model, particularly to some mainstream politicians, bureaucrats and their supporters.<sup>10</sup> Thus, in an extremely modest and relative sense, the mini-municipality option presents an advance over the status quo of band councils exercising delegated authority under relatively close federal supervision, primarily from the Department of Indian Affairs.<sup>11</sup>

This model was clearly explained in a document tabled by the minister of Indian Affairs in 1983 before the Special Parliamentary Committee on Indian Self-Government. The minister foresaw granting band councils an increased ability to pass by-laws, to enter into agreements with other bands and other government agencies for the provision of

services on reserves, and the power to levy taxes on residents within their jurisdictions. Since Indian band governments would continue to operate under federal control, an important role remained for the Department of Indian Affairs. In the words of the departmental document: “band governments established under federal legislation would be junior governments, much like municipal governments are junior to the provinces which create them, the federal government would continue to play some kind of supervisory role, by which is meant that it could have the authority to review and reject band by-laws if necessary” (House of Commons 1983). The Special Committee itself noted that “Parliament has, through the *Indian Act*, legislated in a manner that has regarded Indian communities as less than municipalities” (House of Commons 1983:46). Almost all other witnesses, whose main objection to it was that any power granted to Indian bands was through a process of delegation rather than recognition of sovereignty, rejected the municipal-like model of government.

Twenty years later the mini-municipality model was revived by the government of British Columbia in the Treaty Referendum held in May 2002. British Columbians were asked if they agreed that the Provincial government should adopt several specific principles to guide its participation in treaty negotiations, including a requirement that Aboriginal self-government should have the delegated powers of local government. In the face of a boycott by Aboriginal organizations, only about one-third of eligible voters participated in the referendum. Among the minority who did vote, most voted yes to every one of the government’s questions, including the one endorsing the municipal model.

We have encountered no Indigenous nations, no matter how small, who have identified the mini-municipality model as their ultimate goal.<sup>12</sup> There are a few instances across the country where an Indigenous nation or people has chosen to negotiate something like a municipal model, though we believe that almost always the municipal “stage” is seen as transitional, a step on the road to constitutionally entrenched self-government with the full range of governing powers. On the other hand, many *Indian Act* bands have accepted a path of gradual augmentation of their powers, as that has become possible because of changes in the willingness of the Department of Indian Affairs to devolve responsibilities and resources. The negotiation of these arrangements, especially as they become more advanced and involve aggregation of Indian Bands, is frequently problematic and fraught with informal departmental resistance. For many First Nations communities, self-government reforms as promised and practiced by the

federal government are experienced as marginal changes, the letting go by a little bit by Indian Affairs. Nevertheless, change is occurring in this way. One example is the granting of natural person powers to First Nation band councils. That does not grant or expand jurisdiction; instead, it gives band councils the legal ability to enter into and negotiate contracts and engage in related financial transactions. This allows band councils some much needed freedom to act, but it is within the ongoing regime of the all-encompassing and intrusive *Indian Act*.

Probably most of the Indigenous nations who choose this route see enhanced powers under the current *Indian Act* or, if it becomes law, the First Nations Governance Act, not as an endpoint but rather as modest, capacity-building progress in the right direction. Most native leaders, scholars, and organizations, however, see the First Nations Governance Act very critically and suspiciously as a device for converting Bands into mini-municipalities, taxing their members in order to provide essential services. The criticism is that that legislative reforms still leave band governments as junior governments subject to certain common standards of governance, even if the range of delegated powers is expanded and the degree of federal supervision is eased.<sup>13</sup>

The case of the Métis settlements in Alberta represents a prime example of a transitional case. During the 1980s, Métis negotiated a political accord with the Provincial government to confirm the ownership and governance of Métis settlement lands (Bell 1999). The 1990 *Metis Settlements Accord* was subsequently implemented by provincial legislation, understood somewhat controversially as an amendment to Alberta's constitution. Métis in Alberta acquired a secure land base, established local and regional governments, confirmed ownership of surface resources and a share in subsurface resource revenues, some control over resource development on their lands, and access to a dispute resolution tribunal for arbitration concerning their own laws (Bell 1999:347).

Does the mini-municipality model have a future? The early history of federal-provincial relations is somewhat suggestive, though the analogy is not of course perfect. The formal rejection of the original view at Confederation that provinces should be seen as large municipalities came about largely as a result of a number of leading constitutional decisions by the Judicial Committee of the Privy Council of the British House of Lords in the 1880s and 1890s. In brief, the court rejected the view that provincial legislatures were inferior bodies, subordinated to the federal government like municipal institutions. The Judicial Committee asserted that provinces were supreme

within the limits of their prescribed jurisdictional areas of responsibilities with the same kind of authority and autonomy as the federal Parliament (Smiley 1963).

In a roughly comparable way, various court decisions of the last twenty years, buttressed by the *Constitution Act, 1982*, are having an analogous effect of challenging the vision of Indigenous governments as merely modified municipal institutions. The accumulating jurisprudence is giving significant support for the notion of Indigenous governance as an inherent right that must be institutionalized as a third order of government within the Canadian federation (Macklem 2000; Borrows 2002; Monture-Angus 1999).

### ***Indigenous Governance as a Third Order of Government: Trilateral Federalism***

The gradual elaboration of a third, Indigenous order of government in Canada, taking its place alongside the provincial and federal orders in the Canadian system of federal-provincial-territorial relations, with the full participation of Indigenous governments in federalism at all levels, has been envisaged by a number of public deliberative bodies (Abele and Prince 2002, 2000).

Lloyd Barber, when Commissioner of Indian Claims, noted in 1974 that, "Native people are seriously talking about a distinctly different place within Canadian society, an opportunity for greater self-determination and a fair share of resources based on their original rights. No doubt this will require new and special forms of institutions which will need to be recognized as part of our political framework" (House of Commons 1983:40). In a presentation to the Special Committee on Indian Self-Government in 1983, the Nishga Tribal Council (as it was then called) advanced suggestions "for creating a new order in the Canadian/Aboriginal relationship" (House of Commons 1983:40). And in a like manner, the Assembly of First Nations spoke in their submission of "putting into place a separate order" of government in Canada (House of Commons 1983:42).

The report of this Special Committee of the early 1980s (called the Penner Report after the chair, MP Keith Penner) was the first at the federal level to recommend that First Nation governments be recognized with jurisdictional powers appropriate to a distinct order of government within the Canadian federation. The Penner Report also suggested that First Nation governments may have, "implicit legislative powers that are now unrecognized" and "an inherent right to self-government" expressed in

the *Royal Proclamation, 1763* and guaranteed in the *Constitution Act, 1982*.<sup>14</sup>

First Nation self-government, for Penner, meant an extensive set of powers—for making laws and policy, delivering programs enforcing laws, and for adjudicating disputes. In several areas of law making, First Nation governments would have exclusive jurisdiction. The jurisdictional powers actually to be exercised by First Nations would be decided through negotiations by the parties concerned. The process to attain this third order model Penner saw as a transitional course of the transfer of certain provincial and certain federal legislative powers to First Nation jurisdiction. During this transition, while First Nation powers expanded in a staged fashion, existing non-Aboriginal laws would continue to apply. Along with the reordering of jurisdictional powers among the three orders of government, the joint control of some activities would be required where jurisdictions overlap. Resources management on lands covered by treaties or claims would be one such example. Agreements on the division and sharing of jurisdictions would be encoded in legally binding and enforceable agreements. The Special Committee also anticipated that some First Nations might wait before opting for self-government negotiations. Overall, the pattern across the country would be of varied arrangements for self-government and continued *Indian Act* style band governments (our model 1).

Penner's vision of a third order of self-government was that of a parliamentary committee, not of the federal government. An authoritative governmental expression of the third order model did not appear until over a decade later in the mid-1990s. Along the way there was the unsuccessful attempt at constitutional reform with the Charlottetown Accord, which was the virtual high-water mark for the recognition of Aboriginal governments as a third order of government. From meetings of first ministers and Aboriginal and Territorial Leaders, a draft legal text proposed the establishment of a treaty process for inclusion in the Accord. Governments never formally approved these provisions before the national referendum in 1992, out of which, for various reasons, most Canadians rejected the Accord. With respect to the third order model, one political scientist has written that "no one at the time was able to offer a satisfactory explanation of how it would work in terms of quasi-states within national boundaries" (Pal 1996; RCAP V.2:55-6). An attempt to offer a fuller explanation came with a change in government from the Mulroney-Campbell Conservatives to the Chrétien Liberals.

In 1995, following up on an election promise, the Chrétien government issued, *The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* (Canada 1995). In this federal policy guide, the federal government declared its recognition of the inherent right to self-government as an existing Aboriginal right found in section 35 of *Constitution Act, 1982*, as well as in treaties and in the Crown's fiduciary relationship with treaty First Nations. The jurisdictional scope of this right is spelled out in far more specific detail and in a more bounded way than in Penner.

In regard to the scope of negotiations over jurisdiction, the federal guiding principle is that there are three categories of subject matters:

- One category includes a range of matters that the federal government would see as the exclusive or primary jurisdiction of Aboriginal governments;
- A second group of matters include subjects on which the federal government is prepared to negotiate some measure of Aboriginal jurisdiction or authority, but primary law-making powers would remain with the federal or provincial governments, as the case may be, and the federal or provincial laws would prevail in the event of a conflict with Aboriginal laws; and,
- A third category of matter, dealing with Canadian sovereignty, defence and external relations, and other national interest powers are not open to negotiations, although, in specific cases, administrative arrangements might be considered (Canada 1995:5–8).

What we can see here, for the Government of Canada, are *the elements of an emerging theory of the division of powers and authorities among Aboriginal, federal, and provincial governments*. The federal government's standpoint is that "the Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources" (Canada 1995:3–4). At the same time, the inherent right of self-government does not mean, in the words of the federal government, "a right of sovereignty in the international law sense, and will not result in sovereign independent Aboriginal nation states. On the contrary, implementation of self-government should enhance the participation of Aboriginal peoples in the Canadian fed-

eration, and ensure that Aboriginal peoples and their governments do not exist in isolation, separate and apart from the rest of Canadian society” (Canada 1995:3–4). To help ensure this integration, the federal government’s position is that Aboriginal governments will operate within the Canadian constitutional framework, including the *Canadian Charter of Rights and Freedoms*.

In a similar vein, the Royal Commission on Aboriginal Peoples, recognized the inherent right of self-government and drew the clear conclusion that “If Aboriginal peoples are to exercise their self-governing powers within the context of Canada’s federal system, then federal and provincial governments must make room for this to happen. Instead of being divided between two orders of government, government powers will have to be divided among three orders. This is a major change and one that will require goodwill, flexibility, co-operation, imagination and courage on the part of all concerned” (RCAP V.2:5). Commissioners accepted that recognizing Aboriginal peoples have an inherent right to self-determination meant restructuring the jurisdictional nature of Canadian federalism and modifying the nature of intergovernmental relations, with new agreements negotiated with a variety of self-governing Aboriginal nations.

As a third order of governance embedded within the Canadian federation, it is expected that provincial and territorial governments will be direct parties in negotiations, along with the federal government and Aboriginal government, over the actual nature of jurisdictions and authorities to be realized. The view of public power contained in this model is that the totality of legislative powers is vested with the federal and provincial governments, and that through treaty negotiations, interim measures and other administrative arrangements, and policy innovations, a certain number of jurisdictions and authorities can be transferred to Aboriginal governments and institutions. It is also assumed there will be a need to develop cooperative measures between governments with respect to jurisdictions, laws, and services. Elements of this renewed partnership approach are further outlined in the 1998 *Gathering Strength: Canada’s Aboriginal Action Plan*, the federal government’s response to the Royal Commission on Aboriginal Peoples; a response that writers from varied backgrounds have called belated, cautious, evasive, and minimal, perhaps most notably by avoiding use of the third order of government discourse (Canada 1998; Land 2002; Cairns 2000; Flanagan 2000).

The third order model builds upon the historical status of Aboriginal nations, as well as on their current constitutional position. Band councils and other Aboriginal forms

of governance are viewed as a part of the constitutional structure of Canada in a similar manner to the federal and provincial orders of government. Thinking on, and support for, this perspective has grown gradually since the 1970s, seen as offering a new and better relationship between Aboriginal peoples and the Canadian state. Reasons for favouring the incorporation of Indigenous governments as a new order into Canadian federalism are quickly stated: the new relationship “would eliminate the tensions, the inefficient use of funds and the unacceptable social conditions that keep Indian peoples from contributing to the country’s progress. In a democratic age, it is incongruous to maintain any people in a state dependency. Ending dependency would stimulate self-confidence and social regeneration” (House of Commons 1983:41). The third order governments would enjoy the same financial stability and regularized access to common sites of inter-governmental decision-making enjoyed by the other two orders. That would improve immediately and significantly their capacities for long-term planning, internal development, and cooperation with other levels of government in Canada.

Of course, there are critics of this model. A number of Canadians believe that a third order of government represents the formation of “race-based governments” or “ethnic enclaves,” evoking analogies with apartheid. Others in the private sector and in municipal government worry about the loss of resource development prospects or property tax revenues if lands are transferred to Aboriginal governments or placed under a co-management arrangement. A few critics make the political and constitutional argument that section 35 of the *Constitution Act, 1982*, which recognizes the existing Aboriginal treaty rights of Aboriginal peoples of Canada, was not intended by the first ministers to provide a constitutional basis for a third order of government in Canada for Aboriginal self-government, are concerned about the workability of its expression as a third order in the federal system (Ponting and Gibbins 1986:187–180, 209–216). And, as we shall show in the next section, proponents of the nation-to-nation model would likely reject the third order model because, whereas it might proceed from recognition of the original sovereignty of Indigenous nations, it does not build that sovereignty into contemporary constitutional arrangements.

Both critics and supporters of trilateral federalism will recognize some of its costs. On entering federalism, the third order governments would become subject to the same pressures and requirements as the other two orders of government. In all likelihood, it would be necessary for

them to adopt the accounting practices of other levels of government and to maintain public records at the same level of accountability and transparency as do the other governments. With that is the attendant risk that Indigenous ways of working and thinking will be compromised or, more seriously, discouraged totally. Along with opportunities for participation in peak decision-making forums and more mundane officials-level discussions, comes the requirement that ministers and officials be prepared for, and travel to such meetings, in order to be effective. These are not insignificant transaction costs for small authorities, remote from most cities and capitals.

There are other challenges as well. In consideration of all available evidence, it seems extremely unlikely that there will be a near term convergence of forms of Aboriginal self-government. Enduring institutions are being created and these institutions carry with them certain determining features concerning how they will fit into federalism. For the purposes of federalism, the Government of Nunavut is a territorial government, and it will relate to the provinces and the federal government from that position. These examples at least establish that there will be no one model of how indigenous governments, as part of the third order, will join the Canadian federal system.<sup>15</sup>

### **Dual Federations: Nation-to-Nation**

Another model of the future exists. This is the Nation-to-Nation approach, in which bilateral relations exist between an Indigenous nation and either the federal or provincial governments in right of the Crown. Most often, Indigenous nations will have “double bilateral” relations with, simultaneously, the federal government and the provincial government. That immediately reveals a fundamental difference between the third order approach and the nation-to-nation approach: in the third order approach, Indigenous nations “join” federalism, become subject to the Constitution, and in these respect governments in right of the Crown. In the third order model of self-determination, Aboriginal governments are more than mini-municipalities but for the practical reasons outlined earlier and in light of the already elaborated and fixed character of the federal system, would seem to be less than full and equal partners to provinces. The number therefore is to the point; Aboriginal governments are the *third* order, coming after the federal and provincial orders and fitting into the existing federation. In the nation-to-nation approach, the relations are *between* the sovereign Indigenous nation or confederacy and the Crown in Canada.

Rather than three sets of negotiated sovereign powers and rights of governance existing within the Canadian political system, the fundamental premise of the nation-to-nation model is that there exists a historically grounded set of indigenous nations with distinctive traditions and practices of self-determination, including governance. These powers of self-determination, both the capacity and the legitimacy, derive outside and prior to the Canadian state. There are, then, two sources for the exercise of legitimate power over community affairs and between communities in Canada, an indigenous basis and the Canadian. This is a conception, given formal expression in the *Royal Proclamation, 1763*, of two worlds of political communities co-existing in a territory and relating to each other with mutual respect.<sup>16</sup>

Aboriginal peoples were not involved in the negotiations that led to the formation of Canada and, as Roger Gibbins notes, “The nation-to-nation underpinnings of the 1763 Royal Proclamation were not explicitly imported into the 1867 Act” (Gibbins 1999:265). That historical point is pertinent to the vision of Canada as a dual federalism. “The insistence of an existing right of self-government stems from the view that the Aboriginal-Canadian relationship was never transformed from a confederal one among sovereign nations to a federal one under centralized constitutional authority with residual powers” held by the Canadian government (Hueglin 1993:9).

James Tully has sketched many of the elements of the nation-to-nation model or what he calls a two-confederation view of Canada. Others analysts, including Taiaiake Alfred and James (Sakej) Youngblood Henderson, use the term treaty federalism for a similar concept (Henderson 1994). Tully writes: “Canada should be seen as comprised of two confederations rather than one. The first ... is the treaty confederation of the First Nations with the Crown and later with the federal and, to some extent, provincial governments. The second ... is the constitutional confederation of the provinces and federal government” (Tully 1999:234). Authoritative documents and artifacts of treaty confederation include the *Kaswentha* (Two Row Wampum), *Royal Proclamation, 1763*, section 91 (24) of the *Constitution Act, 1867*, and sections 25 and 35 of the *Constitution Act, 1982*; and, for constitutional confederation, they include the *Constitution Act, 1867* and *Constitution Act, 1982* among other documents and laws.

The principles of respect for diversity, autonomy, and co-equal friendship between nations were represented in the *Kaswentah* (or *Gus-wen-tah*) or Two Row Wampum. The Haudenosaunee Confederacy explained the Two

Row Wampum to the Penner Committee in the following words:

When the Haudenosaunee first came into contact with the European nations, treaties of peace and friendship were made. Each was symbolized by the Gus-Wen-tah or Two Row Wampum. There is a bed of white wampum, which symbolizes the purity of the agreement. There are two rows of purple, and those two rows have the spirit of your ancestors and mine. There are three beads of wampum separating the two rows and they symbolize peace, friendship and respect.

These two rows will symbolize two paths or two vessels, traveling down the same river together. One, a birch bark canoe, will be for the Indian people, their laws, their customs and their ways. The other, a ship, will be for the white people and their laws, their customs and their ways. We shall each travel the river together, side by side, but in our own boats. Neither will try to steer the other's vessel.<sup>17</sup>

Aboriginal communities are viewed as diverse and different, yet equal to Canadian political communities, coexisting and self-governing nations subject to agreements reached through honourable treaty negotiations. The image of Canada here is as a political association of two confederations, not just one. Traditional organizations across Canada, such as the Mi'kmaq confederacy, the Haudenosaunee (Iroquois or Six Nations) confederacy, and the Blackfoot confederacy comprise an important part of this image. Tully acknowledges that this "post-colonial paradigm" is just emerging, overshadowed by what he regards as colonial perspectives that still hold to the first model and, to a degree, the second model.

The *Kanien'kehaka* (Mohawk) scholar, Taiaiake Alfred, has presented a compelling and radical image of rebuilding the treaty confederation of indigenous nations. Alfred notes that the current First Nations Governance Act initiative may have some benefit, but he argues that:

In terms of solving the problems, it is not so much the types of rules that govern the band council that are the problem; it is the whole band council system itself. What it does is serve as the main obstacle to the recovery of our power, which is born out of the unity of our people and is most accurately expressed in our traditional forms of government.

We need independent representation. We need an association of all the traditional governments and traditional people within our communities and

within our nations and that means not taking any money from the government and it means having our legitimacy and our authority come from our own people (Hutchison 2002:13).

On the status of Canadian citizenship for Aboriginal peoples, Alfred has said, "I'm not a Canadian. I don't believe in that. I think that if you're strong in your nation, then that's what you are. If you have a good relationship with Canada, fine, so much the better" (Alfred 1999:19). For Alfred, Canadian citizenship is something that was eventually given to Aboriginal peoples, not something that they asked for or necessarily wanted.

Treaty federalism gives formal recognition through some process of diplomatic communication to the mutual rights, autonomies, and obligations of sovereign communities in relation to the Canadian state. Hueglin offers a useful interpretation of what treaty federalism can actually mean in future Aboriginal-Canadian relations that is worth quoting at some length:

The Aboriginal idea of "treaty federalism" is not at all alien to the European tradition from which Canadian federalism emerged. Translated into the jargon of modern political science, a "treaty" relationship essentially means that the political, social and economic relations among sovereign nations are based on diplomatic agreements between the governments of these nations, and not on majority decisions based on the demographic weight that each nation possesses. There is no central government but only negotiated and contractual agreement *among* governments.

... Within such a union, then, "treaty federalism" may indicate that the decisions affecting the vital interests of one particular member of that union cannot be made without the consent of that member, and that such a member has a right of withdrawal from the union, if such decisions are made nevertheless. In this sense, the Aboriginal peoples' insistence on "treaty federalism" as the sole basis of their relationship with Canada might aim at something that is not entirely different from the *de facto* relationship between Ottawa and the provinces which has also been characterized as quasi-diplomatic in nature.

However, the crucial difference would be that the political status of Aboriginal peoples within such a union or "confederacy" would not be defined by a central constitution—leave alone a constitution written and implemented without Aboriginal consent. Instead, it would have to be redefined and re-

written as some form of “sovereignty-association,” acknowledging both the autonomy of Aboriginal peoples in determining their own affairs, and the unique historical, geographical and, probably, socio-economic relationship with Canadian society (Hueglin 1999:37).

Hueglin concedes that this operational understanding of treaty federalism is still “excruciatingly vague,” but suggests such efforts can begin to find common ground between Aboriginal and Canadian visions of co-existence.

Does the nation-to-nation approach mean, as some writers claim that our future would be as coexisting solitudes? The worry presented is that the dual federation vision emphasizes differences between Aboriginal and non-Aboriginal peoples, giving insufficient attention to the middle ground, thus weakening mutual responsibility and sharing connected with a common citizenship (Cairns 2000; Flanagan 2000). In response to such apprehension, proponents of the two-federation model argue that it is not a vision of separation and isolation. Both Aboriginal scholars like Alfred, Borrows, and Henderson, and non-Aboriginal scholars like Asch, Hueglin, and Tully reason that there is a considerable middle ground, a shared political space, with interactions and interrelationships between Aboriginal and Canadian governments and their institutions (Hueglin 1999; Tully 1995; Asch 1997). In advocating for a revival in self-conscious indigenous traditionalism, Alfred points out that “The notion of traditionalism I am promoting demands cultural give-and-take with non-indigenous people—respect for what both sides have to contribute and share” (Alfred 1999:xviii). To underscore his point, Alfred adds that “Indigenous peoples do not seek to destroy the state, but to make it more just and to improve their relations with mainstream society” (Alfred 1999:53). That relation will be a revived interdependence based on egalitarian principles of mutual recognition, mutual consent, and the continuity of each party’s independent nationhood. These, suggests Tully, are the common conventions that inform Aboriginal constitutionalism and Canadian constitutionalism.

Implementing this model of self-determination will require a significant degree of institution building. There will need to be political and administrative institutions within Aboriginal nations and communities, parallel institutions within each of the Aboriginal and Canadian federations to deal, for example, with matters of budgeting, financial management, and other modern policy and administrative techniques, and shared institutions between Aboriginal and Canadian governments in recognition of actual inter-

dependencies, shared jurisdictions over resources, and the practical benefits of cooperative arrangements.<sup>18</sup>

According to Tully, “most Canadians wish to affirm the Aboriginal presence in Canada and most Aboriginal peoples wish to affirm both their status as equal, co-existing and self-governing peoples and their participation in Canadian society” (Tully 1995:425). Our own sense is that the majority of Canadians do wish to affirm the Aboriginal presence, although many Canadians, perhaps most, would shy away from, if not reject outright, the two confederations model as the way to endorse Aboriginal rights. That is not to suggest that public opinion is static. Alongside the obvious continuity of the *Indian Act*, Aboriginal-Canadian relations over the last 50 years have demonstrated changes: changes in public discourse, in jurisprudence, in some government policies, and in scholarship by and for Aboriginal peoples.

### Concluding Observations

Pathways to Aboriginal self-determination involve a politics of fundamental principle that includes three basic models of the preferred constitutional relationship between Aboriginal governments and Canadian governments. Our task in this essay has been to provide a preliminary sorting out of these models for structuring future political relationships. We believe the three models, as outlined here, capture much of the main political issues and contribute to a better understanding of this fundamental question of accommodating diversity and multiple states in Canada. Far more research remains, of course, to describe and explain adequately these models and the associated politics of Aboriginal self-determination and Aboriginal-Canada relations. Still, we can offer some concluding observations.

Each model is a different stance with constitutional implications for what Aboriginal self-determination and self-government should mean. Table 1 provides a synopsis of fundamental features of each model. The unit of analysis of the first model tends to be local communities, typically bands and perhaps tribal councils, often with small populations in single localities. For the other models, the objects of analysis are Aboriginal nations—cultural and treaty nations—which the Royal Commission described as substantial bodies of Aboriginal people sharing a national identity and forming the largest population in a territory or territories. While we have endeavoured to summarize the models, we want to stress that each model has an internal diversity of ideas, perspectives, and reform possibilities.

**Table 1. The Three Models of Aboriginal Self-determination: An Overview**

Features/Models	Mini-Municipalities	Third Order of Government	Nation-to-Nation
Notion of sovereignty	Shared between two orders of Canadian government	Shared between three orders of government within Canadian federation	Parallel set of two sovereign confederations in a given territory
Origin of law making powers	Canadian constitution	Canadian constitution and some Indigenous laws and customs	Co-equal sets of Canadian and Indigenous rules and practices
Basis of Aboriginal-Canada relations	Constitution Act, 1867 Indian Act, 1876 Other federal laws	Constitution Act 1867 and 1982, Historic and Modern Treaties Inherent Right Policy	Royal Proclamation, 1763 Historic and Modern Treaties Constitution Act, 1982
Nature of the relation	Assimilative Neo-colonial	Integrative Aboriginal governments as semi-sovereign	Co-existing Distinct yet cooperative self-governing nations
Source, scope and nature of Aboriginal government powers	Delegated Limited By-laws mainly over local concerns	Negotiated Mix of jurisdictions and authorities over internal, cultural and external matters	Inherent and negotiated Comprehensive Separate and shared powers
Citizenship status of Aboriginal peoples	A continued uncertain and tenuous common Canadian citizenship	“Citizens plus” Possibly a negotiated form of dual citizenship	Distinct citizenship regimes
Concept of Canadian polity and federalism	BNA Act Federalism Centralist if not colonialist relations	Three-sided Federalism Administrative/cooperative relations	Association between two federations: Treaty Federalism and BNA Act Federalism

Each model has adherents as well as antagonists distributed unevenly across Aboriginal communities, governments, academia, and the general Canadian population. Our sense is that support for each model also varies somewhat by age, region, and political orientation, as well, perhaps as by gender, ethnicity, and socio-economic status.

The mini-municipality model has few supporters within Aboriginal communities, and none among Aboriginal scholars in Canada, although it remains favoured by some provincial governments and non-Aboriginal academics and commentators. Despite advances in policy discourse and action in recent decades, some amount of colonial beliefs and assimilation thinking persists in Canadian society and our political party system (Tully 1999:415–24; Flanagan 2000; Cairns 2000:70–75).

The model implicitly endorsed by the federal government (and by the Penner Report and the Royal Commission on Aboriginal Peoples) is the image of a third order of government, with a certain set of jurisdictions embedded within the Canadian federation and constitutional framework. At least one non-Aboriginal political scientist, Tom Flanagan, has suggested that acquiring a portion of

the sovereign powers of the Canadian state is the goal of most Aboriginal leaders (Flanagan 2000). Cairns, by contrast, thinks that probably the most widespread picture of future Aboriginal governance is the model of parallelism. Flanagan has outlined what he considers the public consensus on self-determination: “Canadians are willing, indeed eager, to devolve substantial self-governing power upon Aboriginal communities and to protect their rights in the constitution. They are not willing to endorse a clearly stated theory of Aboriginal sovereignty, but they will accept a murky concept, such as the inherent right of self-government, that seems to preserve the integrity of the Canadian state.”<sup>19</sup> From the multitude of briefs and presentations, the Royal Commissioners found that, despite a legacy of oppression and racism, “deep down the spirit is still there, along with Aboriginal peoples’ determination to assume their rightful place in a new Canadian society where diversity is not just accepted but welcomed and encouraged, and where Aboriginal peoples are recognized not just as one of the founding peoples but as Canada’s First Peoples” (RCAP V. 2:2).

Several Aboriginal scholars and activists and some non-Aboriginal scholars support the nation-to-nation, or dual federation, model. The federal government has explicitly rejected this dual federation model of self-determination in its 1995 policy statement on inherent right and in its 1998 Aboriginal action plan. The Royal Commission on Aboriginal Peoples, through its final report of five major volumes, actually fudged the choice between the third order and nation-to-nation models. Besides the elaborate commitment to nation-to-nation and to the importance of that concept for the principles of recognition, respect, and reconciliation, when the RCAP got down to cases it talks about mechanisms for integration and a third order. Discussions among Commission staff reconciled the matter, at least for some, by saying that at the level of *principle*, Commissioners were arguing for nation-to-nation, whereas at the level of *practicality*, they talked in terms of government-to-government. We are not sure that this actually works, yet we readily concede it is still early days in the post Royal Commission period of interpreting and implementing these ideas.

Over the last 30 years, the mini-municipality concept has declined in legitimacy as the preferred pathway to self-determination and support for the third order of government model has grown, reinforced greatly by key sections in the *Constitution Act, 1982* and by landmark decisions by the Supreme Court of Canada dealing with Aboriginal title and treaty rights. The post-colonial attitudes contained in the dual nations model—including Canada as a political association of two confederations—are just on the horizon for mainstream public thinking, even by Tully's estimation. In our current age, there continue to be many pathways to self-determination. A great national project for the next generation is the revitalization of traditional treaties and the negotiation and implementation of modern treaties. That is the unfinished business of self-determination and the essence of a politics of fundamental principle.

## Notes

- \* A different version of this paper is forthcoming in the *American Review of Canadian Studies*.
- 1 Some important exceptions to this generalization, published in this journal, are listed in the References. See also Howlett 1995; Doerr 1997.
- 2 Section 35 recognizes the “existing Aboriginal and treaty rights of Indians, Inuit and Métis”; Section 25 states that no rights enshrined in the *Charter of Rights and Freedoms* shall “abrogate or derogate from any Aboriginal, treaty or other rights and freedoms that pertain to the Aboriginal peoples of Canada”; Section 37 committed the prime minister and first ministers to hold constitutional conference with representatives of Aboriginal peoples to constitutional matters directly affecting them, including “the identification and definition of the [Aboriginal and treaty] rights.” Three conferences of this nature were held, but the process concluded having made no material change to the constitutional provisions.
- 3 *Corbiere vs. Canada (Minister of Indian Affairs and Northern Development)* [1999] 2 S.C.R. 203 extends voting rights in Band elections to Band members who do not live on reserve.
- 4 We consciously invoke the pioneering work of Leroy Little Bear, Menno Boldt, and J. Anthony Long in using this phrase: Little Bear, Boldt, and Long 1984; Boldt and Long with Little Bear 1985; Boldt and Long with Little Bear 1888.
- 5 Generalizations are necessary but they probably conceal more than they reveal. For more adequate treatments see Miller 1991; Fossett 2001.
- 6 These specific changes occurred in the amendments to the *Indian Act* in 1960 for the franchise and in 1953 for the other provisions.
- 7 In the essay Inuit are the circumpolar peoples (formerly known as Eskimos) whose homelands in Canada are spread over four jurisdictions (Labrador, Québec, Nunavut and Northwest Territories). Métis are a distinct people, with a distinct culture, descended from the early marriages between Indigenous nations and European settlers. First Nations is the term generally used now to refer to all other Indigenous peoples, members of many different nations, such as Haida, Nisga'a, Dene, Innu, and Cree, among many others. We use the term “Indigenous peoples” to refer to all members of these three groups collectively, and we use the technical term ‘status Indians’ where it is important to differentiate

- members of First Nations who have status under the *Indian Act* from the others.
- 8 Most of the rejuvenating, developmental work has taken place in specific communities, involving many people over many years. Manuel and Posluns 1975; Larocque 1975; Cardinal 1977; Kusugak 2000; Jull 2000.
  - 9 The term mini-municipality is used in some European countries to describe very small local authorities. See <http://www.uni-stuttgart.de/soz/axps/papers/Switzerland>.
  - 10 Perhaps the most prominent spokesperson for this model in academia is Flanagan 2000.
  - 11 Interestingly, for a certain period early in Canada's political history, provinces and provincial legislatures were described by some commentators, and treated by the federal government as "large municipalities" and "municipal parliaments." This image conveyed the intention of many founders of Canadian confederation, including Macdonald, that the federal government be dominant, expressed in unrestricted taxing powers and the authority to supervise and control the provincial legislatures through the powers of reservation and disallowance of provincial laws. See Smiley 1963.
  - 12 The very small size of some self-identified First Nations raises questions about their viability as self-governing units. Even the largest only approach the size of large towns or small cities. The Royal Commission on Aboriginal Peoples was concerned with this issue and clearly envisaged re-emergent Indigenous nations that would be much larger than most existing First Nations; for this reason, RCAP refers to the latter as "First Nations communities." Regardless of whether larger Indigenous nations ever emerge, it is likely that many existing governments will continue to form coalitions along the lines of existing tribal councils and many others will continue to contract for services that they cannot themselves provide with neighbouring governments. In these matters, it is important not to confuse self-determination with service delivery capacity. Incentives for the governing authorities of very small communities to form coalitions or contractual relationships would seem very strong, especially once communities have favourable resources to deploy in this direction.
  - 13 See the website of the M'Chigeeng First Nation in Ontario, [www.mchigeeng.net](http://www.mchigeeng.net); the federal government website on the governance legislation, <http://www.fng-gpn.gc.ca>; and Hutchison, Michael. 2002. "Who Wins? Gambling on Governance." *Aboriginal times* 6(9, July/August): 8-17.
  - 14 The *Royal Proclamation, 1763*, recognized the "Nations or Tribes of Indians" in North America by the British Crown and remains an important piece of Canadian constitutional law, having been cited in several leading court decisions over the past 30 years. For more details, see RCAP 1996 V. 2:65-67, 87, and 102.
  - 15 For a good discussion of some of these factors and others, from a somewhat different perspective than that presented here, see Roger Gibbins and J. Rick Ponting, "The Paradoxical Nature of the Penner Report" *Canadian Public Policy* X: 2:221-224.
  - 16 This concept of Aboriginal-Canada relations is not to be confused with the *deux nations* or dual alliance view of Canadian confederation as a political compact between the two founding peoples of English and French. On this concept of federalism, see Black, *Divided Loyalties*, chapter 6.
  - 17 This was excerpted from presentations to the Special Committee by the Haudenosaunee Confederacy and from Wampum Belts by Tehanetorens and printed on the back cover of the final report, *Indian Self-Government in Canada*. For further discussion of the Two Row Wampum, see Alfred 1999; Tully 1995; Hueglin 1999; Borrows 2002:148-50, 159-60; Monture-Angus 1999:36-38, 41, and 81.
  - 18 Tully 1995:118-138. Tully identified the need for separate and shared institutions and we have added the third type of similar institutions. See also, Alfred 1999: 3 on the need of Aboriginal structures to incorporate modern administrative technologies.
  - 19 Tom Flanagan, "Bands, Tribes, or Nations?" 1998, p. 13, <http://www.ualberta.ca/~nativest/pim/flanagan.htm>. For some public opinion polling on this done in September 2002, see Canadian Press/Leger Marketing, "How Canadians View Aboriginal Rights," <http://www.legermarketing.com>.

# Keynote Address on Nunavut: *Convergence and Divergence in North America: Canada and the United States*

Donat Savoie

I am very pleased and honoured to have been invited as guest speaker on the occasion of the 5th Biennial Colloquium of the Association for Canadian Studies in the United States taking place this year at Simon Fraser University.

What attracted my interest in Nadine's short paper was the reference to the concept of "Homelands," and it seems that this concept is of interest also to people in the United States. In the *Background note on Canada*, published by the U.S. Department of State, it is mentioned that bilateral relationship between the United States and Canada is perhaps the closest and most extensive in the world, although Canada views good relations with the United States as crucial to a wide range of interests. But, occasionally, Canada pursues independent policies at odds with those of the United States.

One of the main goals of the Association for Canadian Studies in the United States is to "improve understanding of Canada's history, literature, arts, peoples, cultures, politics, economy and role in the international community." The Association is also there to facilitate the exchange of ideas among Canadianists in the U.S., Canada, and other countries. Canada sometimes is viewed as a vast laboratory. There are many examples of this view found in the political-social-economic environment evolving rapidly in the northern regions today.

Given the foregoing, I think this Colloquium is a good setting to talk to you about a project that I consider *unique and very innovative* at present taking place in Nunavik (The Large Land). Nunavik is a third of Québec and about the same size as France. For three decades, the Inuit of that region have worked steadily for the establishment of a new form of government in that territory so that they could handle their own affairs in several areas and determine their own priorities. *This project is quite a challenge.* The most recent example of a self-government project of this nature was the creation on 1 April 1999 of the new territory of Nunavut (Our Land), territory under federal jurisdiction whose creation I was pleased to contribute to its creation with many other people.

I think it is important now to spend a couple of minutes describing Nunavik and provide some historical background on the arrival of Europeans and governments in Northern Québec. Through the years, people referred to Nunavik as Ungava District, Arctic Québec, Northern Québec, and Nouveau-Québec. It was formerly part of Rupert's Land, the control of which was handed over by England to the Hudson's Bay Company. In 1912, the part of Rupert's Land, located in Québec became part of the Province of Québec.

Its population is 11,000 people (10,000 Inuit) living in 14 communities all located along the coasts of Hudson

Bay, Hudson Strait, and Ungava Bay. Half of the population is under 25 years old and the birth rate is high. There are no roads to Nunavik. Transportation of goods and people is provided by First Air and Air Inuit (both companies owned by the Inuit) and by annual sea-lift.

Prior to World War II, the only non-Inuit visitors to that region were the HBC, missionaries, some mining prospectors, and Scottish and American whalers. *WWII catapulted the North, the Arctic and its inhabitants to the world scene*, not only in Canada, but also in Greenland and Alaska. Strategically speaking, the only route to bring troops and military equipment to England was via the Arctic. The “Crimson Route,” as it was called, was established, and American military bases were created in Frobisher Bay (now Iqaluit, the capital of Nunavut), Fort Chimo (now Kuujjuaq, the regional capital of Nunavik), in Goose Bay, Labrador, and in Greenland.

The same situation occurred in Alaska where, in 1942, the American army constructed the Alaska Highway that runs through the Yukon, and several thousands of troops passed through Whitehorse (capital of the Yukon) during those years. After WWII, the cold war followed. The fear was the threat of the USSR attacking North America via the North Pole. New radar systems were constructed in all regions of the Arctic: the well-known DEW Line was one of these systems.

There were, of course, major impacts of these military initiatives on international and public opinion:

1. Increased interest in the North and the Arctic;
2. Discovery of people (in Canada) without government services;
3. The question of Canadian sovereignty in the Arctic (which is still an issue today).

There was also a major impact on the Inuit:

1. Many families started to live near these military bases;
2. They recuperated some construction material, foods, and clothing;
3. They also worked as labour for the bases.

Because of the foregoing, in 1953, the Canadian government established the Department of Northern Affairs and National Resources with the mandate to administer the

northern regions of Canada (Yukon, Northwest Territories, and Northern Québec). Schools were established and health services began to be provided. Permanent communities started to be established in the Arctic. In Nunavik, the situation was more or less the same as in other Arctic regions: the Canadian government established its presence in each community and provided services.

However, Nunavik experienced in the early 1960s a unique experience, the establishment of the *cooperative movement* which would play a very important role in the quest of self-government by the Inuit. These coops formed the Federation of Coops which has now an annual business of over \$100 million and is active in all 14 Inuit communities in the commercialization of Inuit art, management of food stores, and in construction.

Around that time, by the end of the 1950s and early 1960s, Québec society was going through major changes known as the Quiet Revolution. “*Maîtres chez nous*” (Masters in our own house) was the word of the day. On the economic front, Hydro-Québec was created by expropriating private electrical companies. In that context, in 1963, the government of Québec established its presence in Northern Québec began also to provide programs and services to the Inuit. For a variety of reasons, both levels of governments competed ferociously, and in 1970, they finally agreed to create a joint commission (Neville-Robitaille) with the mandate to consult the Inuit on the possible transfer of responsibilities from the Canadian government to the government of Québec. It was during these hearings of the Commission that the Inuit of Nunavik stated that they wanted to run their own affairs and developed their self-government project. In my view, the situation created by the antagonism between both governments and the strength of the coop movement *were the two main driving forces* which greatly influenced the Inuit in their quest for more self-governance.

Québec was “discovering its North” and also saw the potential of the hydroelectric resources the northern regions could bring to the Québec economy. In 1970, the James Bay Project was announced by the premier of Québec. The project would create 100,000 jobs and bring many economic opportunities to the province.

It is worth noting that around the same time, other mega projects were taking place in other regions of the circumpolar world: the Prudhoe Bay Pipeline Project in Alaska in 1968 and the Alta-Kautokeino River Dam Project in Northern Norway in Sami land. Regarding Alaska, in 1971, a land claim agreement was signed with the Aboriginal people: the *Alaska Native Claims Settlement Act*. This coincided with a pan-Arctic movement of sensi-

tization at the world level about the rights of Indigenous people. Several political organizations were created, including the Inuit Tapirisat of Canada (1971), the Northern Québec Inuit Association (1971), and the Inuit Circumpolar Conference (1977) which represents the 155,000 Inuit of Greenland, Canada, Alaska, and Russia. The ICC creation is due to the early vision of the late Eben Hopson Sr. from Alaska and other Inuit. Its goal is to maintain and foster a strong organization dedicated to Inuit unity and collective international Inuit action.

However, having been made aware of the James Bay Project, Cree and Inuit leaders (through their association, the Northern Québec Inuit Association) got together and sought an injunction from the courts to stop the project on the basis that Québec, when it accepted Rupert's Land in 1912, had the obligation to recognize the rights of the First Nations and Inuit in the territory and obtain the surrender of these rights. As this had not been done, the Court issued an injunction against Hydro-Québec and Québec to stop all work in James Bay. That provoked the undertaking of intense negotiations which lead to the signing in November 1975 of the *James Bay and Northern Québec Agreement* (JBNQA), the first modern treaty, as it is often referred to.

The fledging association, the NQIA, employed the negotiations to pursue its original objective of establishing some sort of regional government. The government of Québec was unsure about concentrating so much power in one body, and the Inuit settled for a land claims agreement that fell short of providing a unified system of governance.

In a nutshell, the JBNQA:

1. Extinguished all Aboriginal rights over the territory (thus the hydro project could proceed);
2. Provided compensation funds to Crees and Inuit of \$90 million to the Inuit, now worth \$191 million (creation of Makivik to manage funds);
3. Establishment of a new land regime and a new regime of environmental evaluation of projects;
4. For the Inuit, creation of a set of public institutions to provide programs and services to *all residents* of Nunavik.

In terms of governance, municipalities were created (there are no Indian reserves), the Kativik School Board was established, the Health Board created to administer small hospitals and provide services in each community, and the Kativik Regional government established with jurisdiction over all the territory north of the fifty-fifth parallel (supramunicipal government). These municipalities and public institutions provide today services to all residents. Although the Inuit were the architects of these non-ethnic bodies, these institutions are open to the participation of all residents of Nunavik, Inuit, and non-Inuit alike. These institutions were all established by Québec legislation, not federal legislation. There are no federal nor Québec bureaucrats today in Nunavik, a situation quite different from that of 30 years ago.

As time passed, the individual organizations took on a life of their own. The region's decision making became fragmented. Several years later, in 1983, the Inuit met Premier René Lévesque (Parti Québécois) and both parties agreed to work together for the eventual creation of a Nunavik elected assembly and government of Nunavik under Québec jurisdiction. There were many delays for a variety of reasons, and finally 10 years later, Québec and the Inuit signed an Agreement to undertake these negotiations. The federal government was invited to participate in matters of its jurisdiction; thus, I was appointed by the minister of Department of Indian Affairs and Northern Development, Federal Representative to the negotiations. There was some progress during these negotiations, but unfortunately the negotiation process was side-tracked by the events surrounding the October 1995 Québec referendum on the possible secession of Québec from Canada. All Canadians know the tight results of this referendum which had quite an impact on everybody's life in Canada, including the Inuit. It was only two years later that the negotiations resumed. Instead of continuing the negotiations per se, the Inuit (having been influenced by the Nunavut experience and the Home Rule Government in Greenland) suggested a different course of action: the negotiation of a tripartite political agreement and the creation of a tripartite Nunavik Commission with the mandate to make recommendations on the design of a public government and assembly in Nunavik.

The Commission held public hearings in every community, consulted federal and Québec ministries, academics, and the private sector. It tabled its report in April 2001 in three languages (Inutituu, French, English). Three months later, the tripartite negotiations started, and in the summer of 2003 a Framework Agreement was signed that set out the process and principles for negotiating

the Nunavik Assembly and government. Negotiations and meetings continue amongst the parties on a regular basis to the point that negotiations for an Agreement in Principle (which is the core document) are nearly completed. In these negotiations, the Inuit want to preserve and promote the use of Inutituut, an important issue in these negotiations.

Highlights of the Nunavik Self-Government Project being presently negotiated:

1. It will be a *public government* under Québec legislation and its authority will cover the whole territory north of the fifty-fifth parallel. In a first phase, the three public institutions will be merged into a single unity and all of its powers, roles and responsibilities, and budgets will be transferred to the new government of Nunavik.
2. It will respect the authority of the Québec National Assembly and of the Canadian Parliament.
3. An *elected public Assembly* will be created with representatives elected at large, which is new (the three present institutions have their own boards),.
4. New flexible financial regimes with Québec and Canada will be developed.
5. It will respect the Québec and Canadian Charters of Rights.
6. The land regime set out in the JBNQA will not be modified. (This is a governance project.)
7. It will respect the rights of other First Nations (Crees and Naskapis) in that territory.

The Inuit believe that it is very possible to achieve a new form of government in Nunavik within the Province of Québec. By negotiating some form of block funding, Nunavik will be in a better position to address priorities according to their own needs.

Allow me to quote one of the current Inuit negotiators, Harry Tulugak, from an interview with the French speaking newspaper *Le Devoir* on 1 April 1989: “The traditions that have governed the daily lives of Inuit are no longer suited to all the new realities of an ever changing world. Inuit are no longer the homogenous community of days

gone by. Traditional methods are no longer adequate to develop the consensus that has long been the foundation of Inuit public life. We need an assembly where opposing viewpoints may be expressed and where solutions for Inuit society may be defined. But this assembly must emulate Inuit traditions as much as possible. For their part, non-Inuit must also have a place in an autonomous government.” Self-governance also entails a fundamental restructuring of how the Inuit people, federal, and provincial governments (in this case Québec) relate to one another. Self-government agreements establish new government-to-government relationships.

In conclusion, I would like to underline that the Nunavik Governance Project is unique, very innovative and challenging. There are no other sorts of initiatives of this kind that I know of present taking place in Canada. If successful, it could have wide impact on other Aboriginal groups in Canada and elsewhere in their pursuit of self-governance. When established, it will be the first time that a government of this nature would have been created within a province of Canada having jurisdiction over such a large territory.

My personal feeling is that this innovative governance project is leading us in a new direction. We are creating a new type of regional autonomous public (non-ethnic) government that is adapted to the realities of the Inuit living in Arctic Québec and in line with the country’s fundamental legal framework. The Canadian government supports the governance aspirations of the Inuit of Nunavik and will continue to work closely with the Inuit and the government of Québec to make these aspirations a reality.

Nakurmik! Merci! Thank you!

# *Shifting the Boundaries of Sovereignty: The Making and Remaking of the Canadian State through Arctic Inuit Identity*

Jessica Shadian

This article is an examination of changing conceptions of Inuit identity. By means of constructivist discourse theory, this article provides a “genealogy” of Canadian Inuit identity construction, particularly the processes connecting Inuit identity construction to larger Canadian and global political processes. Viewing the issue over time, this article explores the transformation of liberal ideas which were once used to justify the extermination of Inuit sovereignty through colonization. More recently, new liberal conceptions have in turn become the impetus by which Canadian Inuit have been successful in justifying their aims to reclaim their sovereignty. Specifically, these rights have been articulated through the idea of sustainable development.

In order to trace these changing discourses of Canadian and Inuit identity, this article undertakes an historical genealogy based upon constructivist discourse theory. Therefore, the first half of this article is an overview of methodology and a discussion of identity research in international relations. Using this framework, the second section of this article examines the strategies behind the making of the Canadian state. Specifically, the focus is on how, through traditional western notions of liberalism, the making of the Canadian state was constitutive of an indigenous Inuit serving to represent the outside ‘other’. By focusing on particular discourses surrounding sovereignty, a narrative emerges demonstrating how the creation of an

increasingly unified and political Inuit entity was constitutive of the modern Canadian state-building project.

Lastly, this article uses several examples to trace how Canadian Inuit strategies, as well as their relationship to the state, have changed over time. In particular, it traces the transformation of two ideas (referred to as “nodal points”): sustainable development and sovereignty. Through the lens of Inuit identity construction, this article offers an alternative narrative of the Canadian Inuit and their relationship to the Canadian state, as well as a means by which to abstract the static nature of sovereignty in international relations.

## **Canadian Inuit: Identity, rhetoric and methodology**

In 1498, Jaques Cartier sailed to present day Québec. Viewing the arctic as nothing more than an obstacle to their fortunes, Cartier and his crew all but ignored the Inuit inhabitants. Four hundred years later, in 1975 in Canada, the *James Bay and Northern Québec Agreement* (JBNQA) was signed by the Cree and Inuit of Northern Québec, the governments of Québec and Canada, the James Bay Development Corporation, the James Bay Energy Corporation and Hydro-Québec.<sup>1</sup> It was the first modern treaty land claims agreement in Canada between the Inuit and the government and became the reference

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point for subsequent initiatives, as well as their framework. Almost two decades later, the *Nunavut Agreement* was signed on May 25, 1993 and put into effect in April 1999, following twenty years of negotiations. Nunavut transferred political control of one-fifth of the world's second-largest country to the Inuit of Canada. Under the Agreement, the Inuit obtained principal rights, which include title to lands (including mineral rights and the harvest of wildlife), the establishment of three national parks, and equal membership with the federal government concerning these lands, capital transfer payments of \$1.148 billion, and five percent of royalties from development of Crown lands. Those Inuit who own land titles have the right to negotiate with industries for impact mitigation as well as for economic and social rights pertaining to non-renewable resource development. Nunavut, as with all other provinces and territories of Canada, has a legislature elected by its citizens, and participation in the political life of Nunavut is open to all who live there.<sup>2</sup>

Yet, the Inuit do not reside only in Canada. They live throughout the Arctic and their collective representation is located within a transnational body: the Inuit Circumpolar Conference (ICC). Furthermore, the ICC maintains permanent status within the Arctic Council (a regional organization)<sup>3</sup> and is a registered non-governmental organization within ECOSOC. More recently, the ICC has garnered both the international and domestic legitimacy to help push Canada's dominant car and oil industries to ratify the Kyoto protocol, as well as being in the forefront of the international agreement to ban numerous persistent organic pollutants. The ICC has also begun to foster socioeconomic cooperation.<sup>4</sup> Although the ICC may be an indigenous NGO, often lacking necessary resources, its role has been far from insignificant. One member state official of the Arctic Council contended that "it was this group and not any Arctic government that was responsible for introducing the principles of sustainable development into the circumpolar forum."<sup>5</sup>

What is the best way to go about examining this transition from the impression of the Inuit as 'noble savages' unable to govern themselves to the belief that Inuit autonomy represents *sustainable development*, a progressive alternative to scientific inquiry, and an increasing means by which some Arctic states assert themselves as democratic and legitimate advocates of the Universal Declaration of Human Rights? One effective way to examine identities is through genealogical analysis.

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and the Power of Rhetoric*

Although this article is a genealogy of Inuit identity, it is not an ethnographic or anthropological study to try and understand who and what the 'Inuit' are. Constructivism, broadly speaking, conceives all entities as constitutive. Accordingly, all identities "are not assumed as independent existences present anterior to any relation, but ... gain their whole being ... first in and with the relations which are predicated of them. Such 'things' are terms of relations, and as such can never be 'given' in isolation but only in an ideal community with each other." Therefore, the notion of identity is not perceived as a *thing* or an *entity*. Instead, any substance (things, beings, or essences)—of which identity is yet one of these—is the fundamental unit of inquiry.

Discourse theory is a method for analyzing the connections between language and social change. It argues that analyzing the meanings of particular ideas and tracing the changes in their meaning over time is necessary in order to comprehend present social conditions. In particular, discourse theory seeks to address those issues which are experiencing transformations in previously "sedimented" centers of authority and modes of power upon which its legitimacy endured.<sup>6</sup> Because the relationship of ideas or meanings does not entail organizing given histories around tracing a 'unit idea,' or what each actor explicitly says, it is instead necessary to trace how certain ideas have transformed and been used differently over time and how their meanings have changed. Consequently, a study of discourse is a study of changing power relations through the construction, reification, and transformation of ideas.

The method this article uses to investigate Inuit identity is to develop a descriptive story. Through a narrative of the Inuit it becomes possible to examine not only the evolution of Inuit identity, but also its relationship to the underlying processes which structure the way in which change emerges and takes shape. As such, it is necessary to investigate the conditions upon which institutions and ideas come to construct their identities or, otherwise stated, to examine the prevailing norms surrounding the issues of the texts, the themes around which they are written, and what they *do* by being written.<sup>7</sup> In effect, it is a study of "the relationship between linguistic and ideological change" and, in the case of this article, Inuit identity, Canadian identity, and the larger global norm changes.<sup>8</sup>

Therefore, in order to problemize traditional conceptions of *sovereignty*, the *state*, or what is meant by *development*, the underlying discourse structuring these

conceptions ultimately entails the processes by which changing perceptions of liberalism have been contested, sedimented, and employed. By doing a genealogy of liberalism through the evolution of Inuit identity and Canadian state identity, two parallel stories emerge. One is the constitutive evolution of Inuit and Canadian self-understandings which eventually became formalized through varying policies. From this, a second story emerges which have the changes in international norms of liberal understandings of sovereignty and the state as it relates to indigenous people struggles for autonomy.

How then, is identifying rhetoric through discourse theory actualized? To begin, it is necessary to discern what was meant when a particular reference is made concerning, for instance, a *'state identity'*, or a *'national interest'*, and to avoid making generalizations concerning these notions as if their meanings remain static. What is a *'NGO norm'*, or *'state identity'*? As Skinner comments, "unless we begin by enquiring into the rationality of the belief concerned, we cannot be sure of correctly identifying what it is that needs explaining, nor its consequence of directing our investigation along appropriate lines."<sup>9</sup>

However, prior to an empirical investigation of a problem and an inquiry into the ideas comprising the problem, at the very least it is necessary to have an indication of what its particular ideas have been used for historically and how they are applied. That includes understanding the range of its context—the circumstances upon which the meaning of a concept holds true. Only subsequently is it then possible to relate the concepts to the wider world-, or larger, social contexts. According to Skinner: "The chief aspiration underlying [this type of analysis] ... is that of enabling us to recover the historical identity of individual texts in the history of thought. The aim is to see such texts as contributions to particular discourses, and thereby to recognise the ways in which they followed or challenged or subverted the conventional terms of those discourse themselves."<sup>10</sup> Essentially, discourse theory is an aim to ascertain a certain degree of objectivity about rival systems of thought and help discover a perspective from which to view the present in a more self-critical way "enlarging our present horizons instead of fortifying local prejudices."<sup>11</sup> In sum, Skinner asserts that this kind of inquiry "offers us an additional means of reflecting on what we believe, and thus of strengthening our present beliefs by way of testing them against alternative possibilities, or else of improving them if we come to recognise that the alternatives are both possible and desirable. A willingness to engage in this kind of reflection seems to me a distinguishing feature of all

rational agents. To denounce such studies is not a defence of reason but an assault on the open society itself."<sup>12</sup>

Therefore, a genealogy of the Canadian Inuit through the lens of constructivist discourse theory serves as an appropriate means to examine the ongoing redefinition of Canada and the international system and the role of the articulation of Inuit identity within this process. By tracing the changes in the meaning of liberalism over time, a story of the Inuit as political actors emerges. Through this exploration of Inuit identity transformations and its relationship to ongoing global norms, it is possible to make sense of changing conceptions of sovereignty, development, and the Canadian state in world politics.

### ***Creating Boundaries: the making of an indigenous Inuit identity***

Around 1000 AD the Inuit began to spread east into Arctic Canada. Within a few hundred years, they had replaced the earlier inhabitants of the region, a now-extinct people known to the Inuit as Tunit. This Inuit migration was not a single mass event, but involved dozens of small parties of perhaps 20 or 30 people moving east in search of a better life.<sup>13</sup> (Today half of Canada's Inuit live in present day Nunavut, with the rest living in the Northwest Territories and Northern Québec.) During this same time period, Leif Ericson became the first European to land in North America. However, it was not until much later that Europeans began to inhabit the land and come into contact with the already established Inuit.<sup>14</sup> In 1497, an Italian named John Cabot sailed west from Bristol, England in search of a new trade route to the Orient. This voyage led to the rediscovery of the eastern shores of Canada. The first known trip to the interior took place the following year. Jaques Cartier and his fleet reached the Indian village of Stadacona, near the present site of the city of Québec.<sup>15</sup>

In the beginning, Europeans did not see the Arctic as a place of value in itself, but as an obstacle blocking their way to the fortunes beyond. During their journeys through the North, European explorers often met Inuit. Few Europeans believed they had anything to learn from the Inuit, but they did trade and exchange gifts. The Europeans brought them iron, which they valued for making tools such as harpoon points and knife blades. Beyond these minimal interactions, it was not until the sixteenth century that European fishing fleets made almost annual visits to the eastern shores of Canada and contact with the Inuit became more interdependent. Accompanying the growth of this fishing industry was a less organized fur trade driven largely by the discovery of new methods

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of processing furs and beaver hats, which were becoming increasingly fashionable in Europe.<sup>16</sup>

Beginning in the late 1800s missionaries began to move into Arctic Québec. Religious incursion had a significant impact on the Inuit, including forceful relinquishing of the Inuit Shaman's powers. Beyond religious consequences were the social and cultural impacts brought about by the missionaries. By the 1850s, Europeans and Americans began to realize the commercial value of the Arctic's animal resources, chiefly whales. Trading posts were established, including those established by the Hudson Bay Company in 1920. The fur trading companies used Inuit labor to help compete for fur. The North Atlantic commercial whaling industry, operating out of Britain and New England, began large-scale operations in Canadian waters where they killed thousands of whales. The Inuit were hired to work on the ships as hunters and seamstresses. Through these interactions, an influx of manufactured goods entered Inuit society. However, alongside these manufactured goods, the whalers also brought infectious diseases. The Inuit had no natural immunities to these diseases, and hundreds to thousands of Inuit died. The population of the western Canadian Arctic Inuit (called Inuvialuit) went from an estimated 2000 to 2500 people in 1850, to 150 people in 1910.

By 1905, the whaling industry was dying as Arctic whale stocks almost completely collapsed. By 1925, the Inuit had become subjects if not quite citizens of the Canadian state. The settlement of missionaries caused many traditional beliefs and practices of the Inuit either to disappear or go underground. Despite their interactions with and (in the case of the fur traders) reliance on the Inuit, the missionaries and fur companies, as well as both the federal government and the Province of Québec, ignored any needs and all interests of the Northern Québec Arctic Inuit. This neglect included the ongoing refusal to take social or judicial responsibility for Inuit welfare. At that time, the Inuit matters were not under the Department of Indian Affairs, and at the end of each year, the Department of Indian Affairs distributed aid. While some of this went to the Québec government, it was also distributed with the understanding that they would be reimbursed by Québec. Québec fought the responsibility and eventually refused to reimburse the federal government. Instead, devoid of any consultation from the Québec Inuit, Québec insisted that the Inuit be assimilated into the *Indian Act* and thus be removed from their jurisdiction. The absence of Inuit engagement in these dialogues is exemplified by the following statement by the President of the Makavik Corporation in Nunavik, Québec: "In the past, people used to live in

gathering areas, or fishing camps, moving all the time.... Then, one day we woke up and heard, 'Now, you Inuit, you belong to Canada.'"<sup>17</sup>

Nevertheless, the fur trade continued on, as well as the growing unequal interdependence between the Inuit and the fur trade. However, by the end of World War II, the state began slowly to acknowledge its relationship to the Inuit (for varying reasons and with conflicting consequences).<sup>18</sup> Coinciding with this, the price of fur dropped dramatically. Subsequently, the Inuit population continued to grow, as did state dependence, for two reasons. The means of Inuit who lived on traditional subsistence diminished. That was coupled with the loss of the fur trade, and many Inuit who had become reliant on the wage economy ended up dependent on state welfare. By 1960, almost all traditional subsistence living had been replaced with permanent housing and a life centered on fishing, hunting, and the fur trade by that of a wage economy.

It was not until after the Second World War (1939–45) that the Canadian government began to take an active interest in Inuit welfare. After hearing reports of widespread misery and even starvation, the government aggressively persuaded the Inuit to give up their nomadic way of life. They created permanent settlements (which for many were resettlements) in order to foster the least complex and expensive way of administering social welfare. Government services and facilities were expanded within these new settlements, including low cost housing, schools, medical facilities, airports, and modern stores. By the mid 1960s the whole of the Canadian Inuit were now concentrated in these new settlements. However, it was a far from ideal solution. The Inuit became more and more dependent on social assistance, job opportunities were very limited and the Inuit, formerly independent suddenly found themselves almost entirely dependent on Canadian society and in the process losing all rights for self-determination. It was these exclusionary practices, relocations, and discriminatory policies that served as the underpinnings for what eventually became an Inuit political struggle.

Throughout its entirety, European conquest of Canada was accompanied by the desire to create a modern white Canadian identity. This construction was articulated through western liberal notions by juxtaposing the white European ideas to non-white and non-modern indigenous populations on issues of government, economics, and sovereignty. Some examples of these juxtapositions created were modern versus traditional habits, territory marked by the state versus unconquered no-mans land, capitalism versus subsistence economy, civilized versus uncivilized

life, the noble savage versus the modern man, and wardship versus self-determination.

In particular, Cairns similarly looks at the relationship between the construction of Western states and the indigenous populations of the states of which they became subjects through the idea of *empire*.<sup>19</sup> The rise of empire brought about the esteemed position of Europeans within the context of world politics. Empire, according to Cairns, was a system of hierarchy based on constructed power imbalances “on a ranking of cultures and civilizations—often equated with race—that gave a surplus of positive recognition to the ruling European peoples, counterbalanced by the non-recognition, or negative recognition of the people they ruled.”<sup>20</sup>

Similarly, Jean Monroe focuses on these inclusionary and exclusionary constructions separating the non-European Canadians from white Europeans. In particular, Monroe looks at how the identity of Canadian Aboriginals<sup>21</sup> were transformed from the “noble savages to helpless victims, from being denizens of the forest to symbols of environmental advocacy, and from impediments to progress to people needing help assimilating.” Subjugating Native Canadians to the status of nothing more than part of the Canadian landscape helped to justify the ‘liberal’ Canadian treaties and policies which ensued.

For example, nineteenth century Canadian development was linked to the development of a Canadian identity. As such, development plans centered on the idea of turning *wild* Canadian land into farmland. The Native Canadians who happened to inhabit these *wild* lands likewise became subsumed under the states’ development scheme. Monroe notes that European Canadians were overtly aware of not being “from” the land but rather “on” it. Therefore, development was an integral dimension of Canada’s nation building project, and, through legislation, the Europeans sought to conquer the land. Land control over Northern Canada then inevitably meant the subjugation of the Native Canadians.<sup>22</sup> That is exemplified by the variety of treaties negotiated between 1871 and 1921, with continual additions made up until the 1950s. According to Native Canadians, these treaties were considered nation-to-nation negotiations. Nowhere in the treaties did it assert that Native Canadians would have to surrender their rights to self-government, religious or other cultural practices.<sup>23</sup> Nevertheless, in light of an ongoing aim to *develop* Canada, territorial conquest of Native Canadian land was also taken as the relinquishing of Native rights, which were both re-appropriated to federal and provincial levels of government.<sup>24</sup> One illustration of that was the Proclamation of 1763. The proclamation

granted the territory west of the Alleghenies as “Indian Territory.” It was put into effect according to assumptions about what it meant to be ‘Native Canadian’ as opposed to overall Canadian identity. The designated Indian territory was chosen over other inhabited lands that were considered more appropriate for commercial enterprise, an activity of which the Native Canadians were considered incapable of being a part (as they were considered more suited for subsistence types of economic activities).

In addition to policies allowing land confiscations, other policies were enacted which had much greater social-cultural effects on the Canadian Inuit. For instance, Julia Emberley contends that the family became the prominent means by which “various technologies of surveillance” were employed to expand colonial governance. These technologies included schooling, welfare policies, health and hygiene initiatives, the manner for controlling epidemics, population growth, environmental management, and Inuit relocations.<sup>25</sup> These divisions of political exclusion also extend into the construction of gender relations as well. In particular, white Canadian men, aiming to help further colonial expansion throughout the Canadian north, secured alliances with Inuit men, which served as a means by which to control the female Inuit population.<sup>26</sup>

Other policies, two in particular, also had an extensive impact on the lives of the Inuit. One was the *Canadian Indian Act* of 1876, which remains in effect today.<sup>27</sup> As a means by which to assimilate the Inuit, the *Indian Act* allocated the federal government total responsibility for Native Canadian social services.<sup>28</sup> The *Indian Act* was designed to give legislative authority to the federal field worker, most notably Indian agents, so they could control the Indian’s political, social, and economic activities and thus hasten their entry into non-native society. The Act completely denied any autonomous activities or rights of the Aboriginal People.<sup>29</sup>

Later amendments to the *Indian Act* were added with the intention of regulating indigenous women through reproductive and kinship regulations.<sup>30</sup> One example of these regulations was the policies of the Kuper Island Catholic School. All parents whose children were to be admitted had to sign waivers stating that they would surrender their guardianship rights over their own children to the residential school principal, who then acquired full legal power and liability over every Native student.<sup>31</sup>

Alongside the *Indian Act* was the *British North America Act* of 1867. A feature of this Act was the idea was that the federal government would assume responsibility for providing social services to the Native Canadian population, but Native Canadians did not receive any tax dollars from

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surrendered Indian land.<sup>32</sup> Instead, the Provincial governments acquired sovereignty over lands, and therefore, the federal government attained control over Indian nations. Because the Native Canadians were construed as “inferior,” they became wards of the state and were denied political autonomy. The Act also instituted the idea of Native Canadians as landless, both territorially and politically.<sup>33</sup>

The “resource” treaties further undermined Native Canadian autonomy in other contexts. One such instance was the treaty’s “common good doctrine,” which stated that a province’s natural resources were to be developed so that all its citizens would benefit from them. Under this doctrine, development contracts were awarded to private entrepreneurs under the pretext that this would create jobs and provide tax dollars, and, that these tax dollars would subsequently be returned to citizens through healthcare services, improved roads, etc.<sup>34</sup> The significant problem, however, was that Native Canadians were considered unable to handle their own affairs. Therefore, they were unable to gain the opportunity to become one of these private entrepreneurs. Furthermore, in accordance with the tenets of the ‘common good doctrine,’ while much of the land was Native Canadian land, Native Canadians were perceived to be incapable of *commercial* entrepreneurship, and therefore, were denied an opportunity to generate their own economic revenues from the commercial development of their own lands. For instance, the resource treaties prevented the Aboriginal trappers and fish harvesters in the North from living according to their traditions.

While assimilation was the explicit goal, an underlying belief in the idea of self-sufficiency did persist, creating contradictory initiatives. For instance, the Department of Indian Affairs made a concerted effort to teach the Native Canadian how to prairie farm. Nevertheless, many of these efforts ended in failure, given that under the *Indian Act*, the agent controlled all sales of Native produce as well as maintaining ownership of most of the cattle.<sup>35</sup>

As part of this process, the Canadian government insisted that all areas designated for Native Canadians that appeared to have potential for mineral or timber development would have their boundaries altered to make portions of these areas available for non-native entrepreneurs. The government further declared that it had a right to appropriate land if “due compensation” was provided.<sup>36</sup> The justification for this depended on the constructed assumption that the Native Canadian population would be unable to operate successfully within the emerging modern capitalist state.<sup>37</sup> Thus, the treaties provided the institutional framework creating a political inside/outside

dichotomy, which meant the exclusion of Native Canadians from the non-native capitalist economy.

These economic implications of Canadian development plans were synonymous with other Canadian policies reifying the myth that the Native Canadians were “stuck in a pre-modern condition.” Rather than having the capacity to adapt to changing societal conditions and develop accordingly, it was believed that the Native Canadians were “doomed to extinction if they were not somehow made to relinquish their religious beliefs, political practices, and economic livelihoods.”<sup>38</sup> Together these policies served much of the basis upon which the Inuit lost their economic, as well as political and cultural, autonomy.

These conceptions of Native Canadian identity and non-native Canadian identity were continually reified by ongoing legislation eventually creating sedimented beliefs of the ‘other’ and path-dependent relationships and patterns of development. For example, Imperial and Canadian court decisions encouraged Native “subsistence” fish farmers, reflecting the conception of the Native Canadian as pre-modern. Granting Native Canadians only a limited recognition of their rights is also illustrated by other legislation such as the *St. Catherines Milling and Lumber Company* case of 1888 and its subsequent outcome. That case involved a dispute between the federal and Ontario governments concerning which level of government was authorized to manage the unsold surrendered Indian lands of the Northwestern Anishnabek of Treaty #3. The Anishnabek were never consulted, they never participated in the case, and therefore they never received compensation for the money garnered from the land sales.<sup>39</sup> The court ruling determined that, in Canada, Aboriginal title was only a title of occupancy and all Aboriginal rights began with the Crown. This denunciation of full title eventually transpired into a loss of control over the land which they inhabited and, consequently, the denial of self-government.

These divisive practices became further entrenched through Canadian culture and education depicting the Inuit as *noble savages*. Once that became assumed knowledge colonialism could be easily justified. That colonial spirit of that time appears in numerous literary writings and films. For example, Emberley critiques Robert Flaherty’s 1922 film *Nanook of the North* to explore how Euro-North American gender relations in the early twentieth century were constructed through the narrative of the family.<sup>40</sup> Emberley argues that it was the process of articulating the distinction between the modern white family and the native Inuit family that helped to justify and cement nineteenth century conceptions of liberalism. By determining

boundaries of inclusion and exclusion, or a logic of difference, the myth of liberalism was constructed through “philosophical anthropology” and came to be defined by characteristics which contrasted the “conventions, habits, customs, and manners” of non-Western (in this case, Inuit and all other existing indigenous people in Canada) culture with Western.<sup>41</sup> The modern, white, liberal identity articulated against the differences of the non-modern, nomadic, and apolitical Inuit cultivated the boundary dividing the politically included (white Europeans) and politically excluded (the indigenous people).<sup>42</sup>

This categorization of the Inuit was further reified through the study of anthropology in the early 1940s and 1950s. Anthropologists would often single out a particular tribe as a unit of analysis. Accompanying these investigations, missionaries sought to address the accompanying conclusions by focusing on particular tribal health customs and religious ‘otherness’ discovered by the study of anthropology. As Cairns argues, “Empire was engaged in voice appropriation before the phrase had been coined.” People everywhere became “spoken for, written about and judged as backward by European intermediaries... [I]mperialism defined hundreds of millions of non-Western people as politically incapable and unworthy of self-rule.”

Ironically, however, it was this marginalization of Native Canadians which planted the seeds for the construction of a future indigenous community. The government’s distinction between the Inuit and other indigenous people helped foster an Inuit identity. According to Jack Hicks and Graham White, the social and economic changes brought about by colonization created a distinction between Inuit and non-Inuit. “[C]onstructing indigeneity as a political project ... assumes that under certain conditions, only imaginary communities are real... Every social community reproduced by the functioning of institutions is imaginary, that is to say, it is based on the projection of individual existence into the weft of a collective narrative.”<sup>43</sup> Its origins began in the 1960s when “Eskimo Co-ops” were established in most Arctic settlements. The Co-ops helped the Inuit keep control of their art sales. They also provided competition to the Hudson’s Bay Company and, thus, helped keep fur prices up and the cost of merchandise down. Shortly following this in 1971, the Inuit Brotherhood, now called Inuit Tapirisat of Canada was founded.<sup>44</sup> Essentially, European contact and colonization, therefore, initiated what would eventually evolve into an articulated Inuit identity. Consequently, regional antagonisms, while they existed and continue to exist, are most often suppressed by a larger Inuit identity and Pan-Inuit unity.<sup>45</sup> That is best summarized by the following statement: “One

paradoxical result of Inuit contact with- and subsequent domination by Euro-Canadian society has been the emergence of a group identity among Inuit. Prior to contact, Inuit identities and loyalties were rooted in local groups and the social organization of extended families. The social and economic change wrought by contact served to differentiate Inuit from non-Inuit and to emphasize commonalities among Inuit, resulting in what has been termed ‘Inuit nationalism.’”<sup>46</sup>

***From the past to the present:  
reconstructing an indigenous Inuit identity***

Indigenous struggles against colonization brought about new ties among previously isolated Inuit communities.<sup>47</sup> Eventually this association took on its own distinctive meaning. By adopting the tenets of the same language once used to justify colonization, Inuit struggles for self-determination began both to accrue institutional legitimacy and to be an agent for new understandings of related liberal concepts. The institutional legitimacy has been represented through the formation of a cohesive Inuit identity accompanied by a larger political project, Inuit self-determination. In turn, this same process has assigned and continues to assign, new meanings, not only to what it means to be Inuit but also, in a larger context, to the ongoing process of overall governance in Canada, in the Arctic, and into global politics.

At the outset, the articulation of any new identity construction, such as the strategies used by white Europeans to construct a modern Canadian identity in opposition to the Native peoples, presupposes agency. Agency, according to Laclau and Mouffe, surfaces during periods of dislocation prompted by the failure of existing institutions to identify with certain social actors. In other words, a dislocation can be defined as an identity crisis, which compels actors to rearticulate the existing structures and better accommodate their social existence. Through this process, new meanings are assigned to conventional understandings of particular ideas and institutions. Derrida refers to this rearticulation as an “iteration.” Because structures are never closed and their meanings are only temporarily arrested, structures then maintain residuals of sameness, yet are transformed and re-appropriated in a new context.<sup>48</sup> Yet, what crisis prompted this rearticulation of indigenous Canadian identity?

The breakdown of the Soviet Union, as well as the current processes of globalization, dislocated traditional understandings of state sovereignty within the international system. The onset of economic globalization, the

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inability of states to adequately to control transnational migration flows, decreased central power brought about by the heightened importance of non-governmental organizations have all served to open a space for new social actors to rearticulate their own identities. Actors at the local, regional, national, transnational, and international level, since this time, have emerged, aiming to redefine their role within this newly intensifying global context. Cairns summarizes this point well: “The globalization of empire was a culturally stigmatizing phenomenon based on the assumption that subject peoples were unfit for self-rule. What generates the perception that the current globalization of developed capitalist democracies is somehow novel is that the West is no longer simply the agent of globalization, but is also now the recipient.”<sup>49</sup>

Political struggles, which define and legitimate new identity constructions, are brought about through what Laclau and Mouffe call discursive strategies. Political entrepreneurs arrest certain ideas or nodal points and link them together to form chains of equivalence that fill an empty signifier with meaning. In this case, Inuit leaders, the larger indigenous community and others in the international community (including UN forums and NGOs), have become engaged in an ongoing process to amass the ideas of liberalism in order to redefine what it means to be ‘*indigenous*.’ For example, certain Inuit political entrepreneurs in particular have worked to rearticulate traditional Inuit ideas, including their traditions, ties to the environment, and the effects of colonial experiences from that in which the Inuit were considered ungovernable, pre-modern and backward to the idea of indigenous as forward thinking, progressive and effectively a defining characteristic of liberalism. As Edward Bruner states “[t]he dominant story [of the 1930s and 1940s] constructed about Native American culture change saw the present as disorganization, the past as glorious, and the future as assimilation.”<sup>50</sup> However, the following decades gave rise to decolonization, the civil rights movement, and new demands for equality. Suddenly indigenous narratives, once explained as “backward peoples with the need to be governed by others,” are being retold “as a resistance movement, the past as exploitation, and the future as ethnic resurgence.” What have been the discursive strategies used by the Inuit for defining this resurgence and in effect being a main component of Canadian identity construction? The rest of this article focuses on two particular nodal points: 1) *sustainable development*—redefining arctic economic development through indigenous rights and sustainable development discourse; 2) *Canadian sovereignty*—the ways in which both Canada and Canadian Inuit use the

discourse of sustainable development in transforming mainstream conceptions concerning sovereignty and self-determination. Together these discursive strategies are not only serving to create new self-understandings of what it means to be Inuit, but it is also rearticulating the traditional notions of sovereignty and the identity of the Canadian state, both domestically and within the larger realm of the global community.

***Defining sustainable development***

We are a marine-and-land-based people who rely upon beluga, narwhal, bowhead whale, seal, walrus, caribou, and many other animal species, and the habitat upon which they depend, to support our age-old hunting, fishing, trapping, and gathering economy.  
— ICC Remarks to the United Nations Commission for Sustainable Development

We cannot live without seals. It's not just that we wear them. We use them. We eat them. Why then, I don't understand why we can't just sell them.  
— ICC Renewable resources and Trade website

The Inuit have influenced what sustainable development means in the Arctic. For them, its meaning begins with cultural survival. Inuit identify themselves by their close connections to Arctic land and wildlife. Self-determination is inherently associated with regaining control of these entities in order to help maintain their existence. Given that, Inuit survival has become inseparable from maintaining control over Arctic development.

Despite the particular historical era in which the Inuit lived nomadically off of the land, interaction with white Europeans has forever stained this traditional lifestyle. Inuit development remains path-dependent on Arctic development and its link to the broader global economy. According to Brian Aglukark, head of the Iqaluit regional office of the Nunavut Planning Commission, Europeans permanently transformed the lifestyle of the Inuit, adding both positive and negative dimensions. The introduction of instant foods, snowmobiles, rifles, wooden houses, and formal education has weakened the Inuit connection with the land while simultaneously fostering more comfortable living standards. “Today the connection between the Inuit and the land has weakened, and Inuit struggle with their identity: the Inuit's latest challenge in a land that has always been challenging.”<sup>51</sup> The notion of sustainable development and its definition, however, has become a primary means by which the Inuit have been able to try to

preserve their cultural identity. In order to understand the ways in which sustainable development is being defined by the Inuit, much less the idea of sustainable development itself, the notion of the idea of sustainable development in the Arctic needs to be examined from a historical perspective, acknowledging the constitutive relationship between the Canadian Inuit and Canada's social and economic policies.

Much of the way in which the Inuit have been successful has been by asserting their issues by transnational means through the Inuit Circumpolar Conference (ICC). This transnational Inuit identity originated as a consequence of larger systemic environmental developments. It was at the first Arctic Conference on petroleum and gas development in Rouen, France in 1969 that the Inuit from all regions met for the first time. Eventually, a transnational institution was set in motion at the Arctic Peoples Conference in Copenhagen in 1973, followed by the first international Inuit Community Conference in 1975, culminating with the establishment of the ICC.

Since the inception of the ICC, the Inuit have been persistently engaged with Arctic discussions concerning the definition of sustainable development. The Inuit have plainly stated that sustainable development does not imply the desire to return to the days of subsistence hunting and gathering. Rather, the ICC has made it clear that Inuit development of the Arctic means joining the international economy. According to the ICC Task Force on Arctic Trade, "sustainable development of Inuit economies depends on free access to markets for Inuit products."<sup>52</sup> Sustainable development has become an amalgamation of both preserving tradition and modern economic development. In particular, Inuit traditions are preserved through the promotion of the idea of *traditional Inuit knowledge*, which also embodies what sustainable development means in the Arctic. For example, one of the activities of the ICC Task Force on Trade is "aimed at globalizing Inuit traditional knowledge, shops, and products, as well as helping the Inuit business sector find trade opportunities in the international markets."<sup>53</sup>

A more substantive example is the mission of the Arctic Council, which is made up of the eight member states residing in the Arctic. The Arctic Council established the category of Permanent Participant to provide "active participation and full consultation with the Arctic indigenous representatives within the Arctic Council"<sup>54</sup> in order to affirm its "commitment to the well-being of the inhabitants of the Arctic, including special recognition of the special relationship and unique contributions to the Arctic of indigenous people and their communities."<sup>55</sup>

Both state and non-state actors comprising the Council are dedicated to the "protection of the Arctic environment and sustainable development as a means of improving the economic, social, and cultural well-being of the North."<sup>56</sup> Furthermore, the tenets of the Arctic Council are predicated on the notion that being committed to *sustainable development* in the Arctic region is in the best interests of the member states. Subsequently, in order to realize this commitment, the member states similarly understand the intrinsic role of indigenous communities, including the idea that "[s]ustainable development must be based on sound science, traditional knowledge of indigenous and local people, and prudent conservation and management of resources, and it must benefit from and strengthen the innovative and educational processes of northern communities."<sup>57</sup>

These efforts of Inuit sustainability at the transnational level have transformed into domestic issues and policies as well. The influence of the ICC on particular states is made evident in that *Inuit traditional knowledge* has also been incorporated directly into the legislation comprising the *Nunavut Act*. That is illustrated by the Nunavut land claims agreement, which allotted the Inuit five lands and resources co-management bodies. Within these bodies, such as the Nunavut Impact Review Board and the Nunavut Water Board, standard scientific methods and traditional knowledge are commonly combined when reviewing proposals for possible impacts.<sup>58</sup> In Nunavut, in conjunction with western science, Inuit knowledge is considered fundamental to research, planning, and management aimed at understanding not "'who knows best' when discussing the relative merits of these two information systems, but rather how to use both systems in a way that will maximize an understanding of the environment and ecosystems of this vast area."<sup>59</sup>

The influences of the Inuit on domestic perceptions of sustainable development are also made evident through the following quotations from its official web site, made in reference to the government's efforts to empower Canadian Indigenous communities concerning land and resource management:

Canada's commitment to sustainable development is based on seven guiding principles articulated in A Guide to Green Government: an integrated approach, continuous improvement, accountability, shared stewardship, an ecosystem approach, a precautionary approach, and pollution prevention.<sup>60</sup>

Sound resource management depends on improved scientific knowledge and the use of advanced

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technologies. The federal government is coordinating the development of a Science and Technology Strategy for its activities in the Canadian Arctic, which includes a commitment to work with Indigenous communities to ensure their knowledge, perceptions, and values form part of this strategy for knowledge-based decision making.<sup>61</sup>

The idea of Inuit traditional knowledge has not only served to define the processes of development within Canada and the Arctic, but furthermore, the notion of *Inuit traditional knowledge* has become a concept of increasing significance within the broader realm of international development. For example, in 1992, the United Nations Conference on Environment and Development expressed the need to develop a means for protecting global biological diversity. Furthermore, the 1999 World Conference on Science in Budapest asserted the need to combine scientific knowledge and traditional knowledge in interdisciplinary projects which address the necessary relationship between culture, the environment, and development for conserving biological diversity, managing natural resources, and other concerns.<sup>62</sup> From these conferences, a group called the Centre for International Research and Advisory Networks, in affiliation with UNESCO, began to collect indigenous information and compile them into published works.<sup>63</sup>

By amassing particular ideas, including access to free trade, Inuit traditional knowledge, Arctic development, and resource control, the Inuit have redefined the notion of *sustainable development* both specifically in the Arctic and within the broader international framework of the global economy. Development is no longer defined by exclusionary boundaries between modern and developed versus backward and subsistent or traditional. Rather, development has been redefined and is legitimated by the notion of sustainability, which includes accounting for indigenous cultures. That includes ideas such as traditional knowledge. Suddenly, incorporating the Inuit and Inuit traditions has become progressive, whereas excluding indigenous concerns is now viewed as backwards and unsustainable.

***Employing the discourse of sustainable development: Creating new conceptions of Canadian sovereignty***

... today in Nunavik, we are redefining ourselves, trying to see who we are, and, what place we have in this world.<sup>64</sup>

... Canada is changing. With the arrival of Nunavut on the scene, there is likely to be an Inuit Premier participating on a regular basis at all the high-level federal/provincial/territorial meetings ... [s]uch changes are natural and healthy if we are to be genuinely committed to the true spirit of democracy and to the universality of human rights and dignity.

*John Kusugak, Inuit leader and principal architect in creating Nunavut*<sup>65</sup>

Several historical processes of the Canadian state-building project were critical for Canadian Inuit identity construction. Following World War II, the Canadian government set up permanent settlements in order to control Inuit life. Many Inuit were forced to move into these settlements, including in some cases relocation from great distances. The Canadian government's motives were better to facilitate control over public services and to foster the assimilation of the Inuit to Canadian ways.<sup>66</sup> The permanent settlements drastically changed Inuit lives. Whereas most Inuit were traditionally united through extended families, the permanent settlements formalized the existence of a distinctive Inuit population clearly different from other Canadian citizens. Most Inuit now over the age of forty were born into Nomadic families and lived in snow houses or tents. Their children now live in permanent communities, watch cable TV, play video games and surf the Internet.<sup>67</sup>

While the average lifestyle of the Inuit drastically changed, in terms of development and economic growth, the majority of Inuit remained excluded from Northern industrialization. Ownership and control over private land in Northern Canada in the past, as well as at present, has remained predominantly in the hands of non-Inuit Canadians. Because of a limited Inuit elite, hierarchies in Northern Canada, rather than being class-based, over the years became overtly ethnically divided. That, nonetheless, only helped initiate new types of political activity by reifying a cohesive antagonistic relationship between the Inuit and white Canadians.<sup>68</sup>

While political awareness began to burgeon in the early 1960s with the onset of the Coops, by the late 1960s and 1970s, a Canadian Inuit educated elite emerged. Through this elite, a formalized Inuit political movement took shape beginning with the *James Bay and Northern Québec Agreement* (JBNQA) and more recently culminating in the passage of the *Nunavut Land Claims Act* which transferred one-fifth of Canadian political control to the Inuit.<sup>69</sup> The latest *Nunavut Land Claim Act* illuminates how this on-

going shift, legitimizing Inuit sovereignty, is similarly also a shift in Canadian identity. Kusugak asserts:

Now the Arctic was no longer a poor deprived place into which the material culture, ideas, and kindness of Canada must be poured from south to north to 'civilise' the unfortunate natives; rather, it was a different world, one where culture, economy, language, and political solidarity flowed east-west, a world about which Canadians and their governments know almost nothing. It was a place of old knowledge and ancient traditions, much older than the Europeans presence in Canada, and yet it was being recognised and reorganised now as a place which had something special to communicate to the world at large, even though Canadians had long shown they were not prepared to listen.<sup>70</sup>

Several examples illuminate the process of this evolution. To begin, plentiful natural resources in Québec helped to maintain an ongoing rivalry between the Québec provincial government and the federal government. The tensions between the two levels of government persisted throughout the 1960s, and the confrontations over the responsibility of Arctic Québec led to a proposition by the federal government in 1970 to transfer all responsibilities for the Inuit living in Northern Québec from the federal government to Québec. The Québec Inuit were not only not excluded from these confrontations, they fell right in the middle. As a consequence, a mixed committee of federal and provincial employees, known as the Neville-Robitaille Commission, was created to consult the Inuit villages in Québec about the proposal. The consultations found that the majority of the Inuit were against the transfer of responsibility of their welfare from the federal state to Québec. Instead, what resulted was political mobilization by the Inuit.<sup>71</sup> In particular two political entities emerged: the cooperatives, which had already been gaining political momentum, and the Northern Québec Inuit Association, which was founded in 1971. Eventually these two movements transformed into the two distinct types of Inuit business ownership that exist at present—the cooperatives and native corporations.<sup>72</sup>

What eventually culminated was the *James Bay and Northern Québec Agreement*. In 1975 the JBNQA was signed by the Cree and Inuit of Northern Québec, the governments of Québec and Canada, the James Bay Development Corporation, the James Bay Energy Corporation and Hydro-Québec.<sup>73</sup> It was the first land claims agreement in Canada between the Inuit and the

government. Not only did it become the reference point for all subsequent initiatives, as well as the framework by which they were shaped, the JBNQA represents the beginning of a shift from traditional state sovereignty to a new form of shared governance between a new 'modern' indigenous Inuit and the larger Canadian state. This is demonstrated by the following statements:

[T]he JBNQA reflects a major change in the political structure of Northern Québec residents, where modernity, represented by public administration, compensation payments, wage jobs, is combined with the preservation of traditional activities and land use. The JBNQA suggest[s] that despite an attempt to maintain a link with their past activities and values, Aboriginal groups are definitely part of the modern society, its means, its institutions, and its symbols.<sup>74</sup>

[S]elf government does not necessarily mean that we are dependent on no one. Originally, governing oneself on a daily basis as an individual and collectivity is what I have come to understand government to be....<sup>75</sup>

Another example is Nunavut. For instance, the word Nunavut comes from Inuktitut and was originally translated to mean "our land" in English. In recent history, however, Kusugak contends that Nunavut has also come to mean "a lands rights settlement" and a "new territory."<sup>76</sup> Creating Nunavut, nevertheless, has not only helped shape Inuit identity, it is transforming Canadian self-understandings as well. For example, while Nunavut comprises a population 85 percent Inuit, it is open to any Canadian citizen who chooses to reside there. Therefore, Nunavut itself is defined according to a broader framework of a shared Canadian citizenship.<sup>77</sup> During the negotiations for Nunavut autonomy, Inuit political leaders made a conscious effort to make all demands fit within the broader Canadian political structure. For example, they purposely avoided the term 'sovereignty-association' which was the language of the separatist Parti Québécois in Québec in order to make explicit that while they were aiming to be autonomous, the Inuit were not seeking secession from the Canadian state.<sup>78</sup>

In another context is the relationship between the Inuit and the notions of sustainable development, an influence that has not only proven beneficial for the Inuit, it has benefited the rest of Canada. In Canada, the recognition of the relationship between the Inuit and sustainable development has become a mutual means by which to sup-

port simultaneously Inuit autonomy while also protecting Canadian sovereignty in the Arctic. Inuit inhabitation of the Arctic land and water has become Canada's strongest argument for asserting its sovereignty in the Arctic. According to Sheila Watt-Cloutier, the Inuit are very supportive of Canadian sovereignty claims over the Arctic islands and the waterways between them.<sup>79</sup> In 1995, for instance, Canada's sovereignty was challenged when a United States icebreaker cruised through the Canadian Arctic waters without permission. The Minister of External Affairs, Joe Clark responded by stating that "Canada's sovereignty in the Arctic is indivisible. It embraces land [sic] sea and ice, it extends without interruption to the seaward facing coasts of the Arctic Islands. These islands are joined and not divided by the waters between them. They are bridged for most of the year by the ice, and from time immemorial Canada's Inuit people have used and occupied the ice as they have used and occupied the land."<sup>80</sup>

Professor Bob Williamson also illustrates the intrinsic nature of this relationship. According to Williamson, Inuit ties to the Arctic land and water is embedded in Inuktitut, the language of the Inuit. Because Inuit identity cannot be separated from the Arctic, Inuktitut, and therefore the Inuit, are "key to the future shape of sovereignty in the Arctic."<sup>81</sup> According to Williamson, in the past decade the role of the Inuit in Canada has drastically changed. And furthermore, sovereignty in the Arctic has become and continues to be largely governed by the Inuit. How this sovereignty is defined is determined by Inuit attitudes to their relationship with the environment. Given that, Williamson asserts that "Over the last 50 years Canadian Inuit have moved from a situation wherein their sense of participation in a nation state was minimal or entirely lacking, to the vital role in the governance of Canada today."<sup>82</sup>

Some argue that the idea of sustainable development, in fact, should be the predominant means by which to assert authority over Arctic development. Franklin Griffiths finds that, rather than laying claims based on security or sovereignty, which he refers to as "old think," Northern countries should promote the leadership of the Inuit.<sup>83</sup> Recognizing Inuit autonomy and the association of the Inuit with the idea of sustainable development, the Inuit are becoming a central means by which Canada is able to assert its authority and influence in the Arctic. Simultaneously, that provides the Inuit with increasing legitimacy and agency to reshape Canadian self-understandings, as well as to determine the course, definition, and shape of Arctic development and the definition of Canada internationally.

### **In conclusion: the broader implications of Inuit identity construction for International Relations**

By tracing the process of Inuit identity construction, this article provides an alternative historical narrative of Canadian state building. It demonstrates how, justified by the ideas of liberalism, Europeans were able to create the modern Canadian state, represented by everything that was opposite of the story they assigned to those whom they were conquering. Since that time of colonization an Inuit polity has evolved. The political agency of the Inuit has become legitimized by amassing the same language of liberalism, particularly through the notion of sustainable development, and is serving to redefine not only Canada but larger notions of sovereignty, territory, and the state in international relations. By looking at the discursive strategies which have assigned ongoing changes in the definition of the "Inuit" and the "modern" Canadian state, this article begins to unveil how indigenous struggles challenge prevailing conceptions of traditional international relations. Therefore, this genealogy is also a descriptive story of how western liberal ideas structure, but also change and become redefined, through political negotiation. Franklin Griffiths addresses these issues for Canada; "The Inuit are not hung up on sovereignty the way southerners are, and I think there is an opportunity for the Inuit to take a lead, to think in terms of sustainability rather than sovereignty when we look to the Arctic waters and Canada's Arctic waters in particular. I think a stewardship approach, which is innate to Inuit, is one that we need, rather than title."<sup>84</sup>

This idea of stewardship, which Griffiths proposes, illustrates the evolution of Canadian discourse concerning the Inuit from landless inhabitants to those in need of assimilation to the most recent notion of stewardship. This discourse of stewardship is most clearly represented in the *Nunavut Land Claims Act* and best illuminates the present spirit of the times. Nunavut demonstrates the culmination to this point of the ongoing constitutive process of identity construction concerning the Canadian state, the Inuit in Canada, and the broader notions of sovereignty and the state in international politics.

## Notes

- 1 Saku, Bone, Duhaime 1998:111
- 2 Dahl, Hicks, and Jull. 2000:12 and Kusugak 2000:20-22
- 3 The Arctic Council is a regional organization made up of all the Arctic states. Its main purpose is to address Arctic development. Consequently, environmental issues and sustainable development dominate the Council's agenda. In addition to the 15 permanent members of the Arctic Council, a category of "permanent participation" has been established, which enables non-state groups, particularly Arctic indigenous groups, to participate in the discussions of the Arctic Council and support the Council's commitment to the well-being of those who reside in the Arctic.
- 4 There is cooperation between Greenland Air and First Inuit Air, owned by the Makivik Corporation of Nunavik.
- 5 Editors:2002.
- 6 For a larger theoretical discussion of discourse theory see Howarth (2000) and Torfing (1999). Both authors outline an in depth analysis for the post-structural discourse theory of Laclau and Mouffe. Also see Jackson and Nexon (forthcoming) and Emirbayer (1997). These authors use discourse theory through their case for relational constructivism. Neuman (1997) and Hall (1999) employ the use of discourses concerning identity formation. Nelson (forthcoming) and Norman (2001) discusses the use of language or what Nelson refers to as rhetoric. Others such as Barcham (2000) and Bartleson (1995) use Foucaultian methods for deconstructing political norms. For more positivist approaches concerning the uses of discourse see Wendt (1999) Finnemore and Sikkink (200), and Green (ed) (2002).
- 7 Skinner 2002:101-102
- 8 Ibid., 87
- 9 Ibid., 34
- 10 Ibid., 124-125
- 11 Ibid., 125
- 12 Ibid., 126-127
- 13 [http://www.civilization.ca/educat/oracle/modules/dm-orrison/page01\\_e.html](http://www.civilization.ca/educat/oracle/modules/dm-orrison/page01_e.html)
- 14 <http://www.linksnorth.com/canada-history/>
- 15 Ibid
- 16 Ibid
- 17 Aatami in Duhaime and Bernard (eds) 2003:218
- 18 For more on this see: D'Anglure in *Handbook of North American Indians* 1984.
- 19 Cairns 1999:25 in *Citizenship, Diversity and Pluralism*.
- 20 Ibid.
- 21 Manroe interchanges, depending on context, the terms Aboriginal, First Nations, and Indians. For simplicity, I use "Native Canadian" in making reference to this article, though it may not be the term used within that particular example. However, it should be noted that the varying terminology does impact on who is and is not subject to certain policies.
- 22 Manroe 1999:178-179.
- 23 Ibid., 179
- 24 Ibid.
- 25 Emberely 1999:100.
- 26 Ibid., 96
- 27 It should be noted that the Inuit were not directly subject to the Indian Act. That does not mean, however, that they were not subjected to other assimilation policies, such as the post-World War II permanent settlements. Additionally, being singled out for exemption from the Indian Act also helped build a cohesive Inuit identity. See Hicks and White (2000).
- 28 Manroe 1999:181
- 29 Ibid., 180
- 30 Ibid., 102
- 31 Archival Documents from the Canadian Department of Indian Affairs (DIA) [http://canadiangenocide.native-web.org/dia\\_archives\\_index.html](http://canadiangenocide.native-web.org/dia_archives_index.html)
- 32 Manroe 1999:102.
- 33 Ibid., 187
- 34 Ibid., 183
- 35 Ibid., 182
- 36 Ibid., 180
- 37 Ibid.
- 38 Ibid.
- 39 Ibid., 185
- 40 Emberley 1999: 96.
- 41 Ibid., 101
- 42 Ibid., 102
- 43 Ibid., 78
- 44 [http://www.civilization.ca/educat/oracle/modules/dm-orrison/page01\\_e.html](http://www.civilization.ca/educat/oracle/modules/dm-orrison/page01_e.html)
- 45 Hicks and White 2000:51.
- 46 Ibid.
- 47 Ibid.
- 48 Howarth 2000:41-43.
- 49 Cairns 1999:36.
- 50 Bruner, in Cairns 1999:30-31.
- 51 Nunavut '99.
- 52 ICC Task Force on Arctic Trade- <http://www.iccalaska.com/commissions.html>
- 53 Ibid.

- 54 Declaration on the Establishment of the Arctic Council-  
<http://www.arctic-council.org/establ.asp> Ibid
- 55 Ibid.
- 56 Arctic Council Home page- <http://www.arctic-council.org/index.html>
- 57 Sustainable Development Framework Document
- 58 Nunavut '99.
- 59 Ibid.
- 60 [www.ainc-inac.gc.ca/pr/pub/indigen/partn\\_e.html](http://www.ainc-inac.gc.ca/pr/pub/indigen/partn_e.html)
- 61 Ibid.
- 62 <http://www.nuffic.nl/ik-pages/about-ik.html>
- 63 Specifically see: *Best Practices on Indigenous Knowledge*,  
<http://www.unesco.org/most/bpikpub.thm>
- 64 Aatami in Duhaime and Bernard (eds) 2003:221.
- 65 Kusugak 2000:28.
- 66 Hicks and White 2000:47.
- 67 Ibid., 48.
- 68 Ibid., 52.
- 69 Ibid., 52-53.
- 70 Ibid., 125-126.
- 71 Anglure in Sturtevant 1984:684.
- 72 Duhaime, Morin, Myers, and St-Pierre 2001:196. The Coops in Québec were generated from a grassroots movement, whereas the Northern Québec Inuit Association, created by the federal government, became the official negotiating body for the JBNQA officially representing all Québec Inuit. For a more in depth discussion of the historical confrontations between the Coops and Northern Québec Inuit Association see Saku, Bone, and Duhaime 1998.
- 73 Saku, Bone, and Duhaime 1998:111.
- 74 Ibid., 119.
- 75 Harry Tulugak, Assistant in Political Development for Makavik Corporation in Aatami in Duhaime and Bernard (eds) 2003:221.
- 76 Kusugak 2000:20.
- 77 Ibid., 22
- 78 Ibid., 24
- 79 Canadian Arctic Resources Committee 2002:7.
- 80 Ibid.
- 81 Ibid., 11
- 82 Ibid.
- 83 Ibid., 13. According to Griffiths, the idea of sovereignty is already cloudy between the United States and Canada and will be severely challenged with the opening of the Northwest Passage. Griffiths also argues that security is also a misconception because it assumes that there is an external threat. In the Arctic, in terms of climate change, the threat is, in fact, internal.
- 84 Ibid.

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# *Indigenous Nationhood Claims and Contemporary Federalism in Canada and the United States*

Erich Steinman

Guided by common ethnocentric assumptions about the assimilation and disappearance of indigenous groups, federal governments in both the United States and Canada dominated these communities well into the second half of the twentieth century. Over decades of evolving interactions, famously oppressive bureaucracies respectively implemented policies actively or passively targeting tribal communities and cultures. However, indigenous communities in both nations not only survived but have advanced a variety of renewed political claims in the last three and a half decades. One element of these claims, the renewal and reassertion of indigenous *nationhood* status, poses a fundamental challenge to aspects of these nations' political structures, political principles, and narratives of self-identity. Although these respective efforts followed identifiable and partly shared trajectories, they have to date produced surprising and divergent results.

In the U.S., even though tribal status has been (and remains) poorly understood and controversial, the status and functional capabilities of tribal governments have been gradually bolstered through a series of federal actions. Furthermore, since the late 1980s, the broad pro-Indian policy of self-determination has evolved into a more explicit affirmation of independent and sovereign or semi-sovereign indigenous governments. In Canada, conversely, public consciousness about Aboriginal rights and political status was greatly elevated in the 1980s and early 1990s. Indeed, in 1992 federal officials affirmed Aboriginal self-government in the final version of a proposed Constitu-

tional referendum on Canadian federalism. However, for other reasons the proposal failed. Since then, significant gains have eluded the majority of Aboriginal groups, even amidst a small number of high-profile outcomes, such as the creation of Nunavut as an Aboriginal-majority territory in northern Canada. Thus while the acceptance of robust indigenous self-government is much more a feature of Canadian public discourse, tribal governments in the United States in general exercise more substantive governmental powers.

These outcomes constitute a puzzle that has not been directly addressed by previous research. Though a growing volume of comparative research discusses these two nations' historic treatment of indigenous populations, much less such research has examined contemporary indigenous political claims and their relationship to the outcomes briefly discussed above. This article contributes to this existing research by documenting and attempting to explain the observed respective changes in terms of both the political status of indigenous groups and federalist political structures. The analysis utilizes a comparative approach that closely examines the two cases regarding a number of factors, and tracks relevant developments over three decades through a method known as "historical tracing" (Campbell 2002:29), or "process tracing" (Jeperson, et al. 1996:67). This includes key events stimulating indigenous nationhood claims, shifting legal and political environments, the impact of historic policies on contemporary developments, the political opportunities available to each set of indigenous groups, and the national

prominence of Indian affairs. I also track links between indigenous efforts, these focal factors, and discrete federal actions relating to the status and powers of indigenous groups. My narrative analysis begins by identifying many common or paralleling developments that have occurred since the late 1960s. I then highlight the emergence of divergent processes since the early 1980s and offer an original explanation for this divergence. Finally, I further discuss the observed changes and comment on current trends and future prospects.<sup>1</sup>

## Parallel Tracks

### *Federal Threats and Indigenous Mobilization*

Threats to the continued existence of their communities as distinct and officially recognized groups sparked contemporary indigenous mobilization in both the U.S. and Canada. Federal government policies or proposals affirming the termination of indigenous groups and the complete assimilation of their members were announced in the U.S. and Canada in 1953, and 1969, respectively. In the U.S. the philosophy of termination first gained ground in the late 1940s (Fixico 1986; Philp 1999). Many federal legislators conceived of Indians as minorities suffering from federal bureaucratic domination. Some compared reservation Indians to the Japanese, who had been forcibly relocated during WWII. The move to “Set the Indian Free” led to two major pieces of termination legislation. In 1953 House Concurrent Resolution 108 affirmed the intent to terminate selected tribes by withdrawing federal recognition and making their members applicable to the same laws and treatment as other citizens. That same year Congress passed PL 280 which transferred aspects of federal or tribal jurisdiction over reservations to a number of state governments. As tribal leaders’ opposition grew, further implementation of the policy became inactive, although over one hundred tribes were terminated before it was finally halted. The emergency response generated by tribal leaders in 1953 was later followed by more deliberative action. In 1961 Indian leaders from across the U.S. met and discussed their future at the American Indian Chicago Conference. This gathering helped fan the flames of more pro-active Indian activism. Over the next decade Indians increasingly asserted treaty rights, claimed land, and affirmed an emergent supratribal Indian identity.<sup>2</sup>

In Canada, termination never became formal policy, even though, unlike in the U.S., it was actively promoted by the chief federal executive. In 1969 the administration of Prime Minister Pierre Trudeau released a White Paper

on Indian affairs arguing that the historical system of separate treatment for Indians held them back (Canada 1969). In its place the White Paper proposed equality and an undifferentiated citizenship through the repeal of the *Indian Act*, which had established the special treatment and status of Indians within Canada. The proposal ignored Indian input gathered prior to the paper’s release and also contradicted a two-volume Indian policy report published in 1966–1967 (Hawthorn 1966, 1967). The negative reaction of indigenous leaders was conveyed through a countering proposal, the Red Paper, titled *Citizen Plus*, in 1970 (Indian Chiefs of Alberta 1970). In the next decade, indigenous political mobilization continued and expanded. A variety of First Nation, Métis and pan-Aboriginal organizations emerged or expanded and talk of Aboriginal rights increased.

### *Federal Policy Responses or Action: Shifting Environment I*

In both the U.S. and Canada, federal actions renouncing previous termination policies or proposals helped change the political environment in ways conducive to indigenous nationhood claims. In 1970 U.S. President Richard M. Nixon announced a new policy of “self-determination without termination” as the guiding framework for federal Indian affairs (Nixon 1970). In Canada, the federal government abandoned the termination policy by withdrawing the White Paper in 1971 (Cairns 2000:65), and by the following year conveyed support for Aboriginal communities by newly funding a number of Aboriginal political organizations (Cairns 2000:69, 230). In each case, these respective actions created environments conducive not just to continued indigenous claimsmaking but to nationalist claims in particular. First, the denunciation of termination significantly freed tribal leaders from an ongoing defensive battle focused on protecting their basic distinctive status. It allowed them more pro-actively to envisage and strategize for the future from a relatively secure basis.<sup>3</sup> Second, the renunciation of termination was not, in either case, accompanied by the full elaboration of an alternative. Although the U.S. self-determination statement was clear in its intent to support tribal communities, it nonetheless conveyed a very broad policy. Additionally, as discussed by Ralph Johnson in his excellent comparison of U.S. and Canadian federal policies, no academics in either country had considered or examined these issues prior to the 1970s (Johnson 1994:521–22). Thus in both countries a relative policy vacuum was created. As discussed in depth by Steinman (2004) regarding the U.S. case in particular, that

allowed indigenous leaders and their political organizations to act as policy entrepreneurs by inserting their own proposals into the Indian policy discourse.

### ***Legal Uncertainty: Shifting Environment II***

Key rulings in federal courts further encouraged indigenous claimsmaking and invited continued federal policy attention to Indian affairs. In the U.S. a number of rulings had upheld tribal treaty rights in the late 1960s and 1970s. Prior to these developments treaty rights were infrequently voiced, commonly contested, and rarely enforced. In 1974 a decision by federal district judge George H. Boldt delivered a particularly historic and substantively controversial decision affirming fishing rights held by tribes in Washington State.<sup>4</sup> The ruling declared that, in contrast to the claims and practices of the state government, tribal members retained a right to 50 percent of the fishing resource. This ruling removed fish from the stock available to sport and commercial fisheries. It also affirmed the governmental powers of tribes. Boldt declared that not only did Indians have user rights, but that tribal governments had the right to regulate tribal fishing independent of the state.<sup>5</sup>

In Canada the 1973 *Calder* ruling challenged previous conceptions of the lack of Aboriginal rights in Canada. Even though the appellant, Nisga'a Chief Frank Calder, failed to win his case, six of the seven Supreme Court Justices agreed that Aboriginal rights existed at the time of first European contact.<sup>6</sup> Unlike in the U.S., neither the Canadian courts nor the Canadian federal government had previously affirmed in binding statements an inherent indigenous sovereignty or Aboriginal rights other than those generated by the Crown. Nor had they, again differing from the U.S. case, affirmed the continuation of these rights. The *Calder* ruling forced upon Canadian officials the real possibility that indigenous groups might have more rights than they had realized. Such a possibility suggested that Aboriginal rights claims, particularly land rights claims, could greatly complicate the status quo across the country in a variety of ways. The decision left open the question, however, as to whether these Aboriginal rights had been extinguished by treaties and legislation (Asch 1999:431–432). Both the U.S. and Canada claimed (and continue to claim) the right to limit and extinguish unilaterally Aboriginal rights.<sup>7</sup> In the U.S. the Supreme Court has stated that tribal rights affirmed in treaties or otherwise pursuant to tribal sovereignty remain active unless explicitly extinguished by Congress. In

Canada the mere existence of *any continuing* rights was uncertain, as well as the nature and extent of these rights.

Both U.S. and Canadian rulings affirmed indigenous rights and yet generated uncertainty. This uncertainty was substantial regarding the potential political status and powers of indigenous groups. In the U.S. the contemporary re-affirmation of tribal rights confirmed, and was reciprocally founded upon, the prior recognition of tribal sovereignty. As a legal principle the concept had endured decades in which laws, rulings, policies, and practices had eroded and diminished the range of the functional sovereignty exercised by tribes. For most of the previous century federal officials dominated Indian reservations, and in general tribal bodies did not perform most governmental functions.<sup>8</sup> In the 1970s, the treaty rights rulings combined with a host of prior legislation and judicial precedent to leave the nature of contemporary tribal sovereignty and the exact distribution of jurisdiction on Indian reservations extremely muddled. In Canada the *Calder* decision left open the possibility that Aboriginal rights contained the right to self-government, the meaning of which was far from self-evident itself.

Thus, even though these rulings boosted indigenous rights and, in the U.S. case, specifically gave some affirmation for governmental conceptions of tribes, they did not specify the political relationship between indigenous bodies and the larger nation-states. Neither set of rulings implied a clear or unproblematic inclusion of Aboriginal communities within federal structures. Indeed in the U.S. case it was clear that tribes were not technically partners in U.S. federalism. Acknowledged as pre-existing bodies, tribes were not created pursuant to the Constitution, and nor had they formally joined the U.S. In Canada, absent tribal sovereignty as a revitalized foundational principle, it was possible, as some asserted, that Aboriginal self-government was defensible *within* Canadian federalism and could be promoted through existing political structures (Asch 1999:432–433; Turner 2000).

### ***1970s: Other Issues Overshadow Indigenous Political Status***

The issue of indigenous political status and the nature of the indigenous-federal relationships were not, however, the focal issues in Indian affairs in the years immediately following these pivotal events of the early 1970s. Throughout the remainder of the decade and the first few years of the 1980s, Indian policy developments in both the U.S. and Canada featured narrow substantive issues and support for indigenous cultural survival. In the U.S. Indian self-deter-

mination was promoted by allowing tribes to take over the administration of federal programs in education and social services through the *Indian Self-Determination and Education Assistance Act* (1975). Additionally, a number of bills were passed respecting Indian religion and cultural continuity in child welfare (Wilkins 2002:116). In Canada, as summarized by Michael Asch, “way of life” issues addressing economics and culture dominated the agenda. This approach to honoring Aboriginal rights typically addressed “the implications for government in terms of financial compensation and economic benefits when proposed large-scale economic developments come into conflict with Aboriginal rights to ways of life in regions where these issues were never resolved” (Asch 1999:432). In both, Indian economic development was also promoted.

Yet indigenous groups raised political status and political relationship issues throughout this period. In the U.S., a number of tribes acted to emphasize national status through symbolic or practical actions in the late 1960s and early 1970s.<sup>9</sup> In 1972 the American Indian Movement (AIM) through its “Twenty Points” manifesto greatly further publicized tribal nationhood claims (DeLoria 1974:43–53). This document, and the theatrical AIM actions accompanying this and other statements, launched a process through which sovereign national status was “disseminated as a new political ideology and basis for rights claims” (Biolsi 2001:178). AIM, and later the affiliated International Indian Treaty Council, would promote international conceptions of tribal nationhood status. Beginning in the mid 1970s the much less radical tribal leaders and the pan-tribal National Congress of American Indians (NCAI) also adopted the language of sovereignty and nationhood status. In general, tribal leaders and the NCAI agreed with the characterization offered by U.S. Supreme Court Chief Justice John C. Marshall in a series of rulings in the 1820s and 1830s: tribes were domestic, dependent nations who had renounced their international status but retained internal sovereignty.<sup>10</sup>

In Canada, indigenous nationalist discourse expanded during the 1970s to ground indigenous status and rights. However, the development of nationalist claims was hindered by the fact that the Canadian state makes distinctions among a number of indigenous groups: First Nations comprised of “status Indians”, the Inuit, a distinct First Nation, Métis (non-status Aboriginals of mixed European-Aboriginal descent), and additional non-status Indians. In the U.S. tribes are either recognized by the federal government or they are not, and the groups in the latter category lack much power in Indian affairs. Compared to unrecognized Indian tribes in the U.S., Métis and other

non-status groups in Canada have comparatively more power, as well as significant numbers. Facts greatly complicated (and continues to complicate) overall nationhood claimsmaking and the possibility for Aboriginal consensus about indigenous political status in Canada. Whereas First Nations might use Aboriginal rights to pursue self-government, Métis are more likely to use them in attempts to acquire recognition as status Indians. Self-government proposals fitting the conditions of First Nations and ascribing to them new powers, for example, would likely exclude Métis and non-status Indians or convey lesser powers and status to them. Although federally-recognized U.S. tribes might not have agreed upon what they meant by tribal sovereignty and nationhood status in the 1970s, they were nonetheless all in the same general condition and could enthusiastically acclaim these concepts. As I have noted, the situation was much trickier in Canada. Additionally, in Canada, but not in the U.S., indigenous women’s groups explicitly and formally expressed concern that they would not receive equal treatment under Aboriginal rights and sought the protection of broader Canadian rights under any potential Aboriginal governments.<sup>11</sup>

## Divergence

### *Historical Roots of Divergence: Policy Feedback*

In the analysis thus far, the developments in these two cases have been strikingly parallel. Other developments in the 1970s would put them on divergent trajectories. These developments reflected the “policy feedback” (Skocpol 1992:47; Pierson 1994) from three distinctive historic choices made by the U.S. and Canadian national governments. Two of these historic differences represent divergences in the otherwise similar historical treatment of indigenous communities, whereas the third is a more fundamental historical divergence: the cessation or continuation of ties with the British Crown. The first historical difference of contemporary import was the U.S. acknowledgement of inherent Indian sovereignty. As noted above, that was most lastingly conveyed by Marshall in his Supreme Court rulings in the early nineteenth century. After the self-determination policy affirmed tribal survival, *Boldt* and other decisions affirmed the contemporary saliency of tribal sovereignty and the governmental nature of tribal status. Because of this combination of factors, tribes could aggressively pursue self-government. All powers not yielded, specifically revoked, or transferred could be developed within the general parameters of federal law. Tribes did not need explicit federal permission or authorization to

engage in nation-building. As vigorously encouraged by entrepreneurial tribal leaders, tribes beginning in the 1970s aggressively developed governmental structures. They created new departments, passed new laws, newly empowered tribal law enforcement officials, and built or expanded tribal courts (Biolsi 2001:143; Lopach, Brown, and Clow 1998:54–56). Notably, they engaged in growing environmental regulatory activity as they newly enjoyed natural resources as guaranteed by treaty. In Canada, although the federal government retained power over Indian affairs, provincial governments held default jurisdiction on Aboriginal reserves, unless otherwise specific in federal policy. Accordingly, Canadian bands could not engage in such aggressive governmental nation-building.

Secondly, beginning with the *General Allotment*, or “*Dawes*” Act, of 1887, the U.S. forcibly broke up tribal reservations through its allotment policy. Meant to de-tribalize Indians and speed assimilation, the policy made individual Indians owners of sections of reservation land. Because they could after a period of time sell these sections, the allotment policy led to a tremendous influx of non-Indians onto reservations. Although the policy was halted in 1934, its effect on reservation populations was later amplified by federal policies relocating reservation Indians to urban area. By the 1970s Indian reservations commonly displayed a “checkboxboard” pattern of reservation land ownership and already exhibited the present demographics in which, on average, far less than 50 percent of residents were tribal members.<sup>12</sup> In contrast, Canada considered but never adopted an allotment policy. Consequently, many more Indian reserves in Canada retain a comprehensively Indian populace and character than U.S. Indian reservations.<sup>13</sup>

The contemporary effects of these two historical choices have been crucial for the indigenous promotion of nationhood claims. They have distinctively shaped the political opportunities available to tribal leaders in the U.S. and Canada. The relative integrity of Canadian First Nation reserves and the lack of a latent “governmental domain” in which Aboriginal nations could develop themselves have each enabled and limited Aboriginal actions. As I shall describe, the effects of these two factors are entwined. The third and broader historical divergence is also important in terms of contemporary opportunities available to promote indigenous nationhood goals. Whereas the U.S. severed its connection with the British crown and adopted its own constitution following its founding, Canada retained that connection. As a result, in the late 1970s Canada was engaged in internal negotiations over the proposed patriation of its constitution from the British Parliament. The

patriation process and its aftermath provided a unique opportunity for Canadian indigenous leaders to promote nationalist claims. Next, in the following sections I examine the contemporary effects of all three of these divergent historical choices.

### ***Resistance and Receding Interest vs Constitutional Patriation and National Self-Definition***

In the U.S. the tribal implementation of expanding self-government in the 1970s supplemented state or local governmental activity in some places, whereas it replaced or challenged it in others. These developments resulted in a grassroots backlash by local citizens in states where tribes were most active (Ryser 1992). These anti-treaty and anti-tribal sovereignty efforts sometimes worked hand in hand with state officials resisting tribal rights claims, such as in Washington and South Dakota. In this movements’ initial crest, Congressional representatives in 1977 and 1978 advanced its goals by introducing legislation that would have abrogated Indian treaties and ended distinctive tribal rights.<sup>14</sup> The bills failed, and the movement would ebb and flow over the next twenty years, never gaining a large following. However, the actions of assertive tribal governments were clearly controversial. Most people did not have any understanding of Indian treaties and the legal basis for tribal activity. No overarching discussion of U.S. political philosophy or federalism had taken place on a national level, and neither Congress or the president had issued clear statements about the political status of tribes. Grassroots Indian militancy of the early and mid-1970s had stimulated attention to Indian issues and to some degree informed Congressional discussion of tribal status.<sup>15</sup> However, after Indian militancy faded and the anti-treaty movement failed, Indian issues largely receded from public attention.

Given the contemporary anti-tribal backlash and a long history of harmful Congressional attempts to fix the “Indian problem,” tribal leaders were not necessarily eager to put tribal status in the public spotlight. The vulnerability of tribal status, stemming from tribes’ extraconstitutional nature and Congressional plenary power, made sweeping attempts to establish a new philosophical approach to tribal status, an undertaking fraught with negative possibilities. Although treaties and law provided for an uncertain tribal sovereignty, these did not necessarily enjoy widespread legitimacy. Any policy initiative addressing tribal status could end up, through legislative processes beyond tribal control, undercutting tribal sovereignty

or treaties. The mixed reservation demographics would undoubtedly make such an initiative a lightning rod for criticism. For Congressional representatives too, the issue of tribal status was a no-win issue. Having committed itself to the self-determination policy supporting tribal communities, Congress had little interest in stirring up widespread controversy, much less general public interest, that might complicate continuation of the widely accepted approach.

In the absence of assertive Aboriginal groups exercising legal but questionable rights, no such Canadian backlash to indigenous national claims appears to have emerged in the 1970s. With the non-indigenous population less directly and imminently threatened, the public discourse was not infused with virulent denials of indigenous status. This allowed a more deliberate approach to be contemplated and pursued. The patriation of the Canadian Constitution provided a process in which this could begin. The process opened up a wide set of issues about Canadian character and history. In 1980 the National Indian Brotherhood, the national organization representing First Nations, organized a public campaign protesting patriation without the participation of Indians in the process. In 1980 and 1981 organizations and individuals representing the whole range of Canadian Aboriginals joined in protests (McFarlane 1993:264–281). These included the high profile “Constitution Express,” trains that originated on the west coast and picked up supporters en route to rallies at the Canadian Parliament in Ottawa. Eventually a deal was struck in which federal officials declared they would include Aboriginal rights in the *Constitution Act*, and most Aboriginal leaders dropped their opposition.

The result of the process was the 1982 *Constitution Act*. Section 35(1) addressed Aboriginal rights. It provided a vague but important outline for the Aboriginal future within Canada society. Among other things, it recognized and affirmed Aboriginal and treaty rights. While an important step, these declarations were not self-evident. Indeed, as one scholar observed, “no one knew what this meant legally or practically” (Russell 2000:5). The section did not provide an answer to the question of Aboriginal political status, but did acknowledge the importance of this and related issues by clearly specifying a process to address them. Section 35 mandated a meeting of first ministers (provincial ministers and the Canadian prime minister) for the “‘identification and definition’ of the rights of Aboriginal peoples” (Russell 2000:4–5). Thus, while the issue of tribal status had receded from the national agenda in the U.S. a few years earlier, it was squarely on the Canadian agenda following 1982. As we shall see, however, being a focal

item on a national agenda may be less advantageous than expected. And, as demonstrated by events in the U.S., the lack of attention may allow new arrangements and ideas to proceed incrementally and without widespread scrutiny as to their implications. As I examine such developments below I move back and forth between U.S. and Canadian cases in successive sections.

### ***U.S. 1983–1988: Creeping, Piecemeal, Ad Hoc Recognition of Tribal Sovereignty and Self-Government***

In 1983 U.S. President Ronald Reagan issued the first federal policy statement clearly addressing tribal political status and tribes’ relationship to U.S. government (Reagan 1983). Acknowledging tribal sovereignty, Reagan stated that tribes had a “government-to-government” relationship with the U.S. through Indian treaties. The statement explicitly affirmed tribal governments *qua governments* in a commonsense understanding of the word. That and Reagan’s vigorous promotion of reservation economic development are widely understood as mechanisms chosen to advance his overlapping agendas of devolving power to local governments and cutting the federal budget (Hart 1986:12; Cook 1996, Franks 2000b:247–249). Tribal sovereignty provided conceptual grounds for the diminishment and release of federal responsibilities, and tribal governments provided a set of local governments on whom responsibilities could be placed. In line with this interpretation, Reagan’s drastic slashing of funding for public sector functions on reservations and limited action to advance tribal *government* development suggest what the government-to-government relationship would mean, or how it would promote the implementation of the relationship (Franks 2000b:255–259).

However, without administration directive to do so, this otherwise rhetorical policy statement was implemented by the federal Environmental Protection Agency (EPA). By 1983 tribes’ new assertions of governmental rights and powers and their independent implementation of environmental regulatory programs were leading to confusion and conflict around the country. In 1984 the EPA issued its own government-to-government policy recognizing tribal sovereignty and declaring that it would work with tribal governments as independent governments rather than as subdivisions of the state (Ruckleshaus 1984). Subsequently, expanding tribal execution of environmental regulation led the EPA successfully to advocate to Congress for tribal inclusion in federal environmental laws (Environmental Protection Agency).<sup>16</sup> Additional support for tribes

qua governments freely able to prioritize their needs and craft appropriate public policies was extended soon thereafter. In 1987, in response to Bureau of Indian Affairs (BIA) scandals, a Congressional subcommittee considered a proposal by the Reagan administration to bypass the BIA and fund tribes directly. Eventually, following the deletion of a provision absolving the U.S. of its ongoing trust responsibility<sup>17</sup> to tribes, a bill passed establishing the Tribal Self-Government Demonstration Project (Wilkins 2002:117; Legters and Lyden 1994:ix-x). Cast as an evolution of the government-to-government relationship, the project further supported the development of tribal governments by allowing tribal governments much greater flexibility in their use of federal funding.

These developments significantly advanced tribal self-government in the U.S., even in the absence of an overarching or public discussion of tribal status. Tribes' demonstration of governmental capacity had gained growing respect. As functional problems or issues came up, federal officials were increasingly likely to ascribe to tribal governments a greater governmental presence. Many of these policy decisions took place in narrow policy domains such as environmental regulation. As a consequence, the decisions and the policymakers implementing them had a relatively low profile, and these actions did not generate extensive public controversy. Indeed, the "government-to-government" approach spread within the federal government, likely without understanding by even a minuscule percentage of the overall population. There was certainly no hint of acceptance of tribes as a third order of government within U.S. governance, either technically inside or externally associated with U.S. federalism. Nonetheless, through the ad hoc, piecemeal federal policy process, the functional scope of tribal self-government widened throughout the 1980s increasingly, tribes could increasingly be interpreted as a plausible third sovereign, albeit with limited powers over those who were not tribal citizens.

#### ***Canada 1982–1993: First Ministers' Meetings and the Charlottetown Accord***

As called for by the 1982 *Constitution Act*, a first ministers meeting to address Aboriginal rights, including the issue of political status, was subsequently held with Aboriginal leaders. Eventually, three additional meetings were held. The discussion of Aboriginal political status and self-government in these meetings was stimulated by *The Report of the Special Committee on Indian Self-Government in Canada*, issued in 1983 (Canada House of Commons 1983).

As observers have noted, the Aboriginal representatives did not coordinate their demands, much less achieve consensus regarding the proposals under discussion (Russell 2000:5–6, 217). Divisions both between organizations and within organizations undercut the possibility of maximizing the potential Aboriginal gains. By the last meeting in 1988, the conferences had proven a failure in terms of generating an understanding of tribal rights acceptable to all parties. However, as Dan Russell reports, Aboriginal peoples "emerged from them with a clarity and fervour not seen before in the history of Aboriginal politics . . . to espouse Aboriginal self-government as the pre-eminent issue" (Russell 2000:6).

Subsequently, the discourse of Aboriginal self-government became commonplace, as federal and provincial officials increasingly utilized the term and accepted it as a goal (Bartlett 1990:178; Weaver 1990). The issue was thrust into the public spotlight when Manitoba MP Elijah Harper, a status Indian, famously derailed the Meech Lake Accord in 1990. The Accord was a set of proposed constitutional amendments designed to induce Québec to accept the 1982 *Constitution Act*. Although the *Act* became law, the province had not affirmed it. The pre-occupation with Québec and diversity within Canadian federalism continued to make Aboriginal issues highly salient to the constitutional process. However, the Meech Lake Accord did not guarantee Aboriginal rights. For this reason Harper famously refused to accept the Accord. As a result of his filibuster, the Manitoba legislature could not approve it. Needing the unanimous consent of all provinces, the accord failed. Just weeks later an armed standoff between Mohawks and the Québec provincial police erupted near Oka, Québec, which left one state police officer dead. The incident led to a 78 day armed standoff in the Montréal metropolitan area in which the army was called in to quell the protest. This combination of events gave Aboriginal issues great visibility (Ramos 2003).

Subsequently, an acceptance of self-governance was bluntly conveyed in the federal government's position in the subsequent Charlottetown Accord. That was another attempt to craft a constitutional framework acceptable to Québec. Federal, provincial, and territorial governments, along with representatives from First Nations, Métis, Inuit, and non-status Indian organizations, participated in the negotiations. The proposal, agreed to by virtually all parties, incorporated a strong affirmation of Aboriginal self-governance. It proposed amending the Canadian Constitution to recognize clearly Aboriginal self-government as an inherent and continuing Aboriginal right under the 1982 *Constitution Act*. It also unequivocally ascribed

to Aboriginal governments the status of a third order of government (Canada 1992; Cairns 2000:81–82). The predominantly Indian demographic of many reservations and the fact that status Indians dominate the populations of such reservations made a third order model appear plausible. Although many reservations did not reflect this “best case” scenario, and Métis and non-status Indians lacked reservations, the model was realistic for a large set of First Nations.

Although these measures regarding Aboriginal status were not the focal point of the Accord, they were not minor points hidden in the text. This formal proposal represented a new height in the federal and provincial recognition of tribal sovereignty. As such, it not only advanced the status of Canadian Aboriginals but in many ways also exceeded the standing of tribes within the United States. However, the Accord failed in the national referendum on its fate, although according to polls, not because of the Aboriginal provisions. As a result, the recognition of inherent Aboriginal self-government did not become part of any formal policy, much less a constitutional accord. After the impressive recognition of Aboriginal self-government conveyed in the policy proposal, no federal action implementing or formally acknowledging this right followed soon thereafter. Nor did any efforts to renew the constitutional process appear on the horizon. The political opportunity presented by the collective re-visioning of Canadian identity and political structure via constitutional patriation and subsequent accord processes seemed to contract significantly. The all or nothing structure of a formal, comprehensive, and explicit policy process with implications relatively clear to all parties had given legitimacy to Aboriginal self-government and Aboriginal governments within Canadian federalism. It had not, however, generated new policies or practices advancing Aboriginal self-government in practical terms. To some degree, these developments were a reversal of the development of tribal self-government in the U.S. There, tribal governments were not legitimate with the broader public, but had gained creeping governmental capabilities through an ad hoc process under the broad rubric of self-determination. Other developments in the 1990s would further amplify the ascendent trend in U.S. federal policy, whereas no major gains would be evident for Canadian Aboriginal groups.

### **Outcomes to Date, Current Trends, and Concluding Comments**

#### ***Consolidation, and Lack Thereof, in the 1990s: U.S. Self-Governance and Individualized Canadian Negotiations***

As noted by tribal scholar David Wilkins, the Tribal Self-Government Demonstration Project inaugurated the “self-government” phase of U.S. Indian policy, which he casts as a transformed extension of the previous self-determination policy era (Wilkins 2002:117–118). The demonstration project was in 1994 made permanent, although still optional for tribes. In 1994 President William J. Clinton, following tribal requests for such an order, issued an Executive Order explicitly directing all executive departments and agencies to respect tribal sovereignty and to establish government-to-government relationships with tribes (Clinton 1994). He further re-affirmed the order in 1998. Accordingly, in the 1990s a growing number of executive agencies began developing and implementing government-to-government policies for working with tribes.<sup>18</sup> Meanwhile, Congress has in a number of instances addressed problems or gaps by including tribal governments in financial or regulatory authorizations otherwise available only to state and local governments.<sup>19</sup> Tribal government development in the 1990s was also aided by growing gaming revenue from tribal casinos. The explosion of tribal gaming was partly a consequence of the economic development strategies narrowly promoted by Reagan in the previous decade. The growing economic power of a subset of tribes reinforced the internal growth of tribal governments and the external influence they could wield in federal and state policymaking. An isolated Congressional attempt to diminish tribal sovereignty and tribal rights did emerge in the latter part of the decade. Promoted by Senator Slade Gorton of Washington, known to many as a longtime enemy of tribes, the effort failed miserably. Self-government, even with jurisdictional limits, firmly appeared to be the default federal policy approach to tribal issues at the end of the 1990s.

In Canada, after the 1992 collapse of the Charlottetown Accord, there was an absence of major policy initiatives addressing overall Aboriginal political status and Canadian federalism. There was, however, an impending report. In 1996 the Royal Commission on Aboriginal Peoples (RCAP) issued a major report that addressed the political status issue (Canada 1996). It proposed three possible models for Aboriginal self-governance: land-based “national” governments accountable to the Aboriginal na-

tion in question, “public governments” in areas where Aboriginals were the majority, and “community-of-interest” governments not controlling land or a territory. Without a clear political force behind these recommendations or an open constitutional process into which they could be introduced, little has since come of these proposals on the national scale. What did continue were negotiations over outstanding land claims. In 1986, the federal government had abandoned its previous requirement that settlements were premised on the extinguishment of all remaining claims. Such land claims negotiations commonly addressed self-government (Franks 2000b:251). Since 1995, a federal policy position has also affirmed Aboriginal self-government, although as many have noted, a policy position is not legally binding (Canada 1995). In the late 1990s negotiations produced the 1998 *Nisgaa Final Agreement* (involving, in addition to the Nisgaa, the federal and British Columbia governments) and the 1999 establishment of Nunavut as a new Canadian territory demographically dominated by the Inuit.

At the same time, negotiations over much more restricted degrees of self-government have proceeded with scores of smaller Aboriginal groups (Franks 2000b:254). Observers note that through these agreements bands generally achieve self-government powers largely akin to municipal governments (Russell 2000: 202). As C.E.S. Franks argued, “self-government as a sort of enhanced municipality living under the laws of the province was scarcely considered as an option” by the RCAP, “despite the indisputable fact that such a municipal type of structure and power has proven to be the norm in self-government as actually implemented” (Franks 2000a:113). Clearly subordinate to provincial governments, the Aboriginal governments recognized in these agreements do not have larger structural implications for Canadian federalism. Nor do they suggest an expanding Aboriginal political status that begins to approach that sought by Aboriginal leaders and accepted in the Charlottetown proposal by federal and provincial governments.

### **Current Legal Trends**

In both the U.S. and Canada recent legal trends have undercut tribal claims to expansive self-government. In the U.S., since the 1986 appointment of William Rehnquist as chief justice (Wilkins 1997; Strickland 1997:49) the Court has increasingly restricted the range of jurisdiction tribal governments enjoy. As one scholar has summarized, a conception of tribes as membership organizations controlling only their members is the ascendant principle in-

forming the Court’s rulings on tribal sovereignty and tribal rights (Aleinikoff 2002:96–114). In Canada the 1996 *Van der Peet* ruling addressed the question of how the Aboriginal rights recognized in the 1982 *Constitution Act* should be defined. The majority decision delivered a significant blow to Aboriginal rights and constitutionally-grounded hopes for self-government.<sup>20</sup> *Van der Peet* defined Aboriginal rights as specific, historically, and culturally grounded rights. Aboriginal rights protected by the Constitution exist only for activities grounded in practices and customs existing prior to European contact, although their subsequent evolution does not revoke their standing. This definition explicitly rejected Aboriginal rights based on general or abstract principles such as self-determination. As Michael Asch has insightfully noted, rather than recognize inherent Aboriginal political sovereignty, this ruling “reconciled” Aboriginal rights and the colonial Canadian state by asserting the unquestioned predominance of the sovereignty of the Crown (Asch 1999:435–440). Aboriginal rights, as “way of life” cultural rights, were protected by the constitutional framework rather than being abstract political rights in conflict with colonial imposition. Although the 1982 constitutional affirmation of Aboriginal rights had provided a possible legal basis for expanding Aboriginal self-government, *Van der Peet* appeared to close that possibility.

### **Conclusion**

U.S. and Canadian developments in the area of Indian affairs and indigenous mobilization were strikingly parallel through the 1970s. For the most part, broad issues of indigenous rights and cultural survival dominated the policy agendas in both countries. Tribes in the U.S. simultaneously utilized the inherent tribal sovereignty acknowledged by federal courts to expand their functional governmental capacity. This option was not available to Aboriginal Canadian communities, in that no such retention of non-alienated rights was acknowledged by any branch of the Canadian government. In the next decade the issue of indigenous political status and its place within, or in relation to, U.S. and Canadian governance grew in importance. In the U.S. the status and functional capabilities of tribal governments were gradually bolstered, though somewhat inadvertently, through a series of federal actions. Such actions recognized the growing tribal demonstration of governmental capability, which allowed the self-determination approach to evolve into a more explicit self-government approach. That took place, however, apart from any sustained national discussion or

consideration of the place of tribal governments. In Canada, conversely, public consciousness about Aboriginal rights and political status was greatly elevated in the 1980s and early 1990s. The process of constitutional patriation and the subsequent development of constitutional accords conveyed a new legitimacy upon Aboriginal self-government. However, the failure of the Charlottetown Accord left little to show for years of growing rhetorical affirmation of Aboriginal self-governance.

Absent of any Constitutional action clarifying tribes' place vis-à-vis U.S. federalism the gradual affirmation of tribal status and powers in the U.S. continued throughout the 1990s. Though lacking broad public understanding or a full elaboration of its implications, the "government-to-government" relationship was becoming a functional reality operative in expanding federal domains. Even amidst conflicting legal trends, tribes were increasingly governmental within the admittedly restricted range of their jurisdictional powers. In Canada, more justification and proposals for Aboriginal self-government was generated through the RCAP report, but no new political opportunities presented themselves. The *Van der Peet* ruling furthermore undercut the potential legal basis for Aboriginal self-government and possible recognition as a third order of government within Canadian federalism. Rather than engage in overarching policy processes, the federal and provincial governments have proceeded to negotiate with individual Aboriginal communities, most commonly acknowledging a very modest range of "municipal" self-government powers in exchange for the extinguishment of Aboriginal land claims.

In both the U.S. and Canada indigenous political status and rights remain fragile. In the U.S. tribal leaders primarily seek to defend acknowledged rights and pursue more widespread implementation of stated U.S. policies. There is little energy for, or interest in, an effort to affix more formally and comprehensively the place of tribes within or in relation to American federalism. In Canada, the current prospects do not appear promising for a formal recognition of Aboriginal national status and self-government. Yet such ideas are in circulation and have been legitimated by a variety of federal actions. If unanticipated political opportunities emerge while these views are still active in political discourse, Aboriginal leaders may be able to insert their goals into formal policies. As the differences between contemporary developments in the U.S. and Canada demonstrate, such opportunities may come from unexpected places.

## Notes

- 1 There is variation between the U.S. and Canada in terms of the language used by both federal governments and indigenous communities to refer to indigenous peoples. In the U.S., "Indians" or "Native Americans" are common inclusive terms. In Canada, "Aboriginal" has come to be used in a similar inclusive manner. Within Canada, there are additional categorical distinctions between various indigenous groups (principally First Nations comprised of "status Indians"; Inuit; and Métis and other non-status Indians). In the U.S. indigenous communities are commonly referred to as nations or tribes. In Canada, terminology of nations and bands predominates. Given this, in an article frequently moving back and forth between these two cases, it is difficult to be both consistent and to use the terminology appropriate to the case being discussed in any particular moment. However, I have tried to do so to the greatest degree possible.
- 2 "By 1963 urban Indians were taking to the streets in protest against BIA policies, initiating a wave of urban Indian protest that lasted over a decade. At about the same time Indians began organizing 'fish-ins' and other demonstrations in the Pacific Northwest, part of a continuing, occasionally violent struggle to retain treaty-guaranteed fishing rights. In 1965, in northeastern Oklahoma, traditionalist Cherokee communities organized a disobedience campaign to defy state restrictions on Indian hunting. In the next few years Makahs, Lummis and Quinaults moved to bar non-Indians from reservation lands in Washington; Indians from California's Big Ben Rancheria forcibly halted attempts to open a logging road across their reservation; Mohawks in New York boycotted local schools until the state allowed them to participate in school board elections; forty-one Mohawks were arrested for blocking a bridge between Canada and the United States in protest against violations of the 1794 Jay Treaty, which guaranteed unrestricted passage; Passamaquoddy Indians forcibly halted logging operations on disputed land in Maine" (Cornell 1988: 189).
- 3 However, pro-assimilation views have remained in circulation and constitute a continuing political threat (Ryser 1992; Cairns 2000:71-73).
- 4 *U.S. v. Washington*, 384 F Supp 312 (1974).
- 5 *Ibid.*, 240.
- 6 *Calder et al v. Attorney-General of British Columbia* (1973) 34 DLR (3d) 145.

- 7 The situation is more complicated in Canada. Section 35 (1) of the 1982 *Constitution Act* constitutionalizes Aboriginal rights in Canada but does not remove the federal government's right to enforce other rights which may override Aboriginal rights. In the 1990 *Sparrow* ruling (*R v Sparrow* (1990) 70 DLR (4<sup>th</sup>) 385 (SCC)), the Supreme Court required Parliament to have justification for such diminishment of Aboriginal rights and declared automatic judicial review of legislation affecting Aboriginal rights. However, that does not inherently rule out actions diminishing Aboriginal rights. Subsequently, in 1997, the *Van der Peet* ruling (*Van der Peet v. The Queen* (1996) 137 DLR (4<sup>th</sup>) 289 (SCC)), and discussed below) emphasized that Aboriginal rights are justified within, not in conflict with, the Canadian Constitution. That further affirmed that Aboriginal rights are vulnerable to revision by Parliament.
- 8 As one legal scholar noted, "Many tribes were dormant as governments, under the yoke of federal suppression ... and prospective [reservation] residents saw them as not much more than miscellaneous bumps on the horizon" (Wilkinson 1987:23).
- 9 For example, the Navajo had taken notable symbolic steps in line with an increased emphasis on sovereignty and nationhood. In 1968 they celebrated the 100th Anniversary of their treaty with the U.S. (Iverson 2002:244). As reported by David E. Wilkins, "on April 15th, 1969 the advisory committee of the Navajo tribal Council enacted a resolution directing that 'all correspondence, stationery, and letterheads ... of the Navajo tribe, use the designation "Navajo Nation" to locate the tribe'" (Wilkins 1999:3). That same year the Quinault tribe on the Pacific Washington coast, led by new Tribal President Joe DeLaCruz, had closed Quinault beach to non-Indians as a way to re-assert tribal authority over the reservation land base.
- 10 Some nations, such as the Haudenosaunee (also known as the Six Nations or the Iroquois Confederacy), have long explicitly renounced this status, rejecting U.S. citizenship and declaring themselves international sovereigns.
- 11 Under the 1968 *Indian Civil Rights Act*, the U.S. bill of rights applies to tribal members, thus to some degree this concern was a non-issue for women in U.S. tribal communities.
- 12 The 2000 U.S. Census data contains a racial breakdown of populations on reservations and other types of Indian land (<http://www.census.gov/>, accessed 16 July 2004). Taking American Indian ethnicity as a proxy for tribal membership, it should be noted, does overestimate the actual percentage of tribal members on any given reservation.
- 13 C.E.S. Franks knowingly notes that slightly over half of status Indians in Canada live on a reservation land base occupied exclusively by members of the same band (Franks 2000:105).
- 14 *Congressional Record* 123:29777, and 124:20848-49.
- 15 A main mechanism through which tribal views were acknowledged was the American Indian Policy Review Commission, which conducted two years of research in and produced a subsequent policy report. (American Indian Policy Review Commission 1977).
- 16 See: <http://www.epa.gov/indian/resource/chap3.htm> (July 14, 2004).
- 17 The trust responsibility is derived from treaties, court rulings and executive statements, and conveys the federal government's obligation to act in the interests of Indians. In enjoying peace and land formerly possessed by tribes, this trust is the accompanying moral and actionable burden assumed by the U.S.
- 18 These include the Department of Defense, the Department of Energy, the Department of Agriculture, Department of Justice, and agencies such as the National Parks Service, the Forest Service, Natural Resources Conservation Service, and others. For an example, see the Department of Energy's employee guide for working with Indian tribal nations (U.S. Department of Energy 2000).
- 19 In terms of funding eligibility, tribes currently qualify for funding restricted to governments in areas such as transportation development, growth management planning, nuclear waste safety, job loss mitigation, welfare-to-work programs, homeland security disaster mitigation, and environmental regulation. For an example of tribal inclusion in federal programs, see their eligibility for growth management assistance in response to military job losses [http://12.46.245.173/pls/portal30/SYSTEM.PROGRAM\\_TEXT\\_RPT.SHOW?p\\_arg\\_names=prog\\_nbr&p\\_arg\\_values=12.613](http://12.46.245.173/pls/portal30/SYSTEM.PROGRAM_TEXT_RPT.SHOW?p_arg_names=prog_nbr&p_arg_values=12.613), accessed 16 February 2004).
- 20 See note 5.

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# Keynote Address:

## *American and Canadian Native American Repatriation: Differences of Approach*

James D. Nason

The repatriation of human remains and important cultural objects from government and private institutions to Native American communities has been a matter of considerable importance within Native American communities for some time. I have been asked to compare the approaches to this issue taken by both the United States government and the government of Canada, and I believe we will find that the contrasts in approach are illustrative of much broader contexts of relationships that exist between Native American groups and these respective governments.

The presence of tens of thousands of Native American human remains and millions of cultural objects in United States museums and government agencies led to a Native American movement to enact state and federal repatriation laws. These efforts were facilitated by the fact that in the United States most tribes have sovereignty, i.e. a tribal government status vis-à-vis. the federal government backed up by land and other resource ownership as well as by other treaty rights.

The Indian Burial Rights Movement in the early 1970s, the passage of the *American Indian Religious Freedom Act* in 1978 at the federal level, and the repatriation guidelines issued by the American Indian Museums Association in 1981 were all key parts to the large scale national effort by Native Americans to address repatriation and other

significant issues. They were also very successful. By 1988, about 30 states had enacted state level repatriation laws and more were being considered when the U.S. Congress began holding hearings on a national repatriation law, a law driven in part by the fact that so many states had already seen merit in this issue and had taken legal steps to address it on their own.

Intense lobbying against the passage of a national law by scholarly and museum organizations quickly followed and focused on several key arguments:

1. the desirability of case-by-case consultations and negotiations between individual museums and government agencies and individual tribes;
2. the importance of scientific freedom, the purity of scientific goals, and the inherent 'goodness' of the products of scientific investigation;
3. the value in having museums maintain cultural heritage collections on behalf of tribes, most of whom did not have museums; and,
4. the suggestion that museums and government agencies would in future develop means to have closer collaboration with tribes, allow tribes more access to collections, and perhaps even allow tribes to take part in how these collections were interpreted.

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DIFFERENCES OF APPROACH

It is worth noting that all of these suggested remedies to forestall a national law represent approaches essentially mirrored by current Canadian practice.

The U.S. Congress weighed these comments in light of testimony from tribal representatives and rejected all of these arguments and suggestions as ineffective, if not blatantly insincere; i.e., Congress did not believe that museums would, for example, actually engage in honest case-by-case negotiations in any meaningful way. As a result, the *Native American Graves Protection and Repatriation Act* (NAGPRA), Public Law 101-601, was passed unanimously by Congress in November 1990. It was immediately signed into law by the president, and thus became one of the most powerful cultural property laws ever enacted by any government. It combines important civil rights law and tribal sovereignty law with administrative and criminal law, because it also provides for criminal and civil punishments for violations of several of its provisions.

In brief, this complex law requires government agencies, museums, and educational institutions to repatriate Native American human remains, funerary objects, sacred objects and patrimonial objects to culturally affiliated tribes, i.e. to tribal governments which are federally recognized and who present claims with evidence for affiliation. NAGPRA also outlaws commercial trafficking in human remains and cultural objects, a fact organizations like eBay were close to recognize, mandates tribal notification for any new archaeological discoveries, and penalizes museums who do not comply. Special federal funds were provided, at a maximum of \$75,000 per request, to both tribes and museums as grants to facilitate all aspects of this process, including consultations, reporting, and repatriation costs. All together these funds have totaled about \$2.5 million per year in recent years. Museums and agencies were given until November 1993 to provide tribal governments with summaries of their holdings and until November 1995 to provide detailed inventories of human remains and funerary objects in their possession. Some extensions were allowed in producing inventories, but these were only temporary. Finally, the law has no time limit on the period during which tribal governments can make claims, and museums can and must allow complete access to all of their pertinent collections and collection records on tribal request.

By October 2002, more than 1,000 repatriations had been completed, involving thousands of human remains and cultural objects, and with many more in process. By 2000 alone, more than 19,000 human remains had been repatriated along with more than 363,000 funerary objects and about 1,700 sacred or patrimonial objects. There had

been 10 prosecutions for trafficking, and some 14 institutions were noted for their failure to comply. In other words, the United States had indeed taken what some Canadian observers have termed a very legislative approach to resolving this exceptionally important cultural policy issue; and this legislative approach appears to be working, with significant new repatriations taking place each year. Make no mistake, without NAGPRA's passage into law, many if not most U.S. museums and government agencies either would not or could not, by law, engage in repatriation. As a state agency, for example, my own museum could not repatriate materials otherwise in the public trust in the absence of legislation that required us to do so, no matter what we otherwise felt about this issue.

The contrasts with the Native American experience in Canada appear to be distinct. Most Canadian First Nations communities are not sovereign entities, nor do they have treaty rights. As a consequence of that, the issues involved in repatriation became part of a very different process. The 1989 Canadian Museums Association Task Force on Museums and First Nations resulted in a report that had several key recommendations:

1. the increased involvement of First Nations people in museum interpretations;
2. increased access for First Nations people to museum collections; and,
3. the repatriation of human remains and illegally obtained objects, as well as certain sacred objects and possibly patrimonial objects, provided there is evidence of cultural affiliation and ownership.

Overall, the recommendations stressed collaborative case-by-case consultations between First Nations groups and museums rather than the enactment of a law.

These recommendations were echoed by the 1991 Royal Commission on Aboriginal Peoples Report, while the 1996 ethical principles produced by the Canadian Archaeological Association and the 1999 principles issued by the Canadian Museums Association also called for consultations and exercising care in the exhibition of human remains. Overall, these statements essentially mirrored the late 1980s statements produced in the United States during the NAGPRA hearings by the American Anthropological Association, the Society for American Archaeology, and the American Association of Museums. In sharp contrast to the Canadian statements, many major American museums will not now exhibit Native American human remains at all and give considerable input up to and in-

cluding veto power on other Native American exhibits to community representatives.

The recommendations emerging from the Royal Commission in Canada were not funded and thus became a matter for resolution between individual bands and museums using their own resources. As a consequence, it appears that only a limited number of repatriations, involving a limited number of museums and communities, have taken place. Some cases of repatriation in Canada have been part of on-going treaty negotiations, e.g., the Nisga'a treaty negotiations. That process began first in 1887 and ultimately did provide, in the 1996 Agreement-in-Principle, for the repatriation of 125 cultural objects from the Canadian Museum of Civilization and the Royal British Columbia Museum to the community. Other communities have apparently also considered the issue of repatriations as one element of the new treaty negotiations process. But, if the "Powershifts" meeting held at the Sechelt community in 1996 was any indication, First Nations groups, at least in the lower mainland of British Columbia, did not see the treaty negotiation process as leading to any satisfactory conclusion in the near future and were frustrated with aspects of that process.

Individual Canadian museums have developed, in some cases, their own policies regarding repatriation. For example, a relatively new policy at the Museum of Anthropology at the University of British Columbia sets out a system where written requests will be considered with options for special access, loans, replication of objects, and different storage conditions for objects, but not necessarily for the repatriation of cultural objects. The Royal British Columbia Museum's policy emphasizes the possibility of museum legal ownership of human remains and cultural objects while also setting forth the possibility of increased Native American involvement in museum projects and access to museum collections. This same policy makes it clear that the museum will consider repatriating human remains and funerary objects to affiliated groups and may also consider the repatriation of some sacred objects on a case-by-case basis. Finally, there is also one piece of provincial legislation, the *First Nations Sacred Ceremonial Objects Repatriation Act* of 2000 in Alberta, with regulations in effect in May, 2004; but this legislation deals only with two museums, the Glenbow Institute and the provincial museum, and it concerns only sacred ceremonial objects needed for use primarily by the Blackfoot nations, a total of about 251 objects.

From my perspective there are significant differences in the approaches that have been taken to repatriation of Native American human remains and cultural objects

in Canada and the United States. In Canada, federal and provincial governments and museums are largely in the position of telling tribal communities what the government and museum might be willing to repatriate, with no time limit on their actions and without any compelling reasons to repatriate anything. In the United States, tribes tell government agencies and museums what they want to see repatriated, based on exact data mandatorily provided in full by each museum or agency to these tribes, and agencies and museums must respond promptly to these requests, most of which cannot be automatically denied, deferred, or otherwise transformed into requests for loans or something other than full legal transfer of ownership and control.

The sovereign status of Native American tribes in the United States facilitates this process and enables the transfer of title for cultural objects—no matter how those objects were acquired in most cases (i.e., although the technical possibility of a "right of possession" in U.S. law is there, it is rarely possible for a museum or agency to make such a claim). And finally, the United States government has provided funds to tribes and museums to facilitate research, repatriation processes and costs, consultations, and reburials or returns. Although there are always requests for more funding than is available, the fact that there is any funding at all is most welcome and has been truly effective in hastening the repatriation process. If we look at this issue from the point of view of a Native American person or community, it is hard to see why one would prefer an approach that places institutions in a position of control through on-going negotiations and in the absence of any compelling rationale to take action, as opposed to a legal requirement that gives one's community the initiative and the power to obtain through repatriation all of its ancestors and all of its most valued sacred and patrimonial objects. That would not appear to be simply a difference in approach; it seems rather to be a fundamental variation in a complex history of the legal standing of Native American communities and citizens.



# *Digital Storytelling: A Comparative Analysis of Cultural Policy Supporting Aboriginal Media in the U.S. and Canada*

Kristin Dowell

During the last thirty years global indigenous media production has emerged as a powerful arena for articulating indigenous identity, self-representation, and cultural practices. The emergence of indigenous media is connected with the growth of indigenous political activism advocating for recognition of indigenous sovereignty and self-determination. Canada has emerged at the forefront of this global indigenous media movement with its unprecedented support for Aboriginal media. From the National Film Board's program Challenge for Change in 1969 to the development of the Inuit Broadcasting Corporation and, more recently, the Aboriginal Peoples Television Network, Canadian cultural policy has created a space for Aboriginal media within national communications initiatives. Scholarship about the development of indigenous media has grown out of anthropological interests in indigenous rights and identity as well as from the subdiscipline of visual anthropology. Attention to indigenous media within visual anthropology has looked at the way media are used to recuperate indigenous cultural practices and historical narratives—"screen memories" (Ginsburg 2002)—as well as "talk back" to Western cinematic representations of their communities (Langton 1993; Singer 2001).

This paper will examine comparatively the emergence of indigenous media within the U.S. and Canada, with particular attention to the institutional structures and cultural policies in these two countries that have supported this

emerging "field of cultural production" (Bourdieu 1993). I will compare the different kinds of work that Aboriginal media makers in these two countries are producing as well as the various contexts in which these works circulate and the impact these media makers have had in shaping cultural policy. In particular, I will discuss the role of the Canadian state in film and media production highlighting the marginalization of Canadian media in relation to the overwhelming presence of Hollywood in Canada. Scholars of Canadian communications emphasize that Canadian cultural policy was developed in order to maintain Canadian content on Canadian screens in response to the onslaught of American media (Dorland 1996; Gasher 2002; Magder 1993; Pendakur 1990). Though these scholars address the marginalization of Canadian media in relation to the U.S. they often ignore the marginalization of Aboriginal media within the overall Canadian media industry. Likewise, scholars who have addressed the emergence of Aboriginal media production in Canada do not address the broader landscape of Canadian media in relation to American media dominance (Brisebois 1983; Buddle-Crowe 2002; Roth 1994; Valaskakis 1992). I will address this gap by discussing the "double marginalization" of Aboriginal media produced within a dominant Canadian media industry that itself is marginalized within the broader context of the domination of Hollywood.

### **In the Shadow of Hollywood: Canadian Film Policy in “Hollywood North”**

From the beginning Canadian film production was characterized by a strong involvement of the federal and provincial governments to promote projects of nation-building (Armatage 1999; Dorland 1996; Gasher 2002; Holmes 1992). Cinema was used to encourage immigration and tourism, particularly to the Canadian West. Canadian governmental agencies used cinema to construct a Canadian national identity and to identify cinematically who belonged to the nation and who did not. Early films, such as *Wonders of Canada* (1906), cinematically constructed the Canadian landscape as a resource over which white Canadians exert mastery, whereas First Nations people are visually represented as “entertaining spectacles, exotica, that must be traversed, denigrated and manipulated to further the ends of empire” (Gittings 2002:8). Early ethnographic film of Canada’s First Nations also worked to support the idea of Aboriginal people as “vanishing” that sustained the dominant narrative of Canadian expansion and colonization (Morris 1994). Throughout the early 1900s the Canadian state sporadically supported film production designed to meet specific political objectives—immigration, tourism, foreign investment, and the war effort—which attested to the view of film as an effective medium for the dissemination of education, propaganda, and information (Magder 1993).<sup>1</sup> The National Film Board of Canada was created under the leadership of John Grierson in 1939 with the mission to “produce and promote the distribution of films designed to interpret Canada to Canadians and other nations” (Evans 1991:4). The National Film Board (NFB) sought to unify the disparate provincial, cultural, and ethnic experiences of Canadians by providing a national cinema that would promote a national Canadian identity. The NFB worked to “reproduce the nation as subjects who form a community of belonging to a specific imagining of Canadian nation” (Gittings 2002:20).

The development of the National Film Board with John Grierson at the helm created and entrenched documentary cinema as the quintessential Canadian film genre. Grierson viewed feature films as a form of low popular culture and envisaged a more erudite, formally instructional Canadian national cinema. For Grierson “film was a medium suited to education and to the development of a more informed and democratic public opinion” (Magder 1993:53). Grierson’s dogmatic approach was a crucial factor in the delay of the development of a Canadian feature-film industry. By 1945 the NFB had 12 production units and close to 800 employees and had become a considerable

force in film production, garnering much national public support, particularly through its development of various film councils and societies the NFB set up around Canada. Another unique aspect of the NFB was its development of an alternative non-theatrical distribution system. By developing “rural traveling cinema circuits” the NFB brought films to small communities across the country. Ninety-two rural cinema circuits reached approximately a quarter of a million people a month by 1945 (Evans 1991). The NFB also made films available to the public by establishing twenty different regional film libraries. The development of alternative exhibition sites for NFB films helped to garner public support and create broader audiences for NFB productions by attempting to forge national identity through a shared spectatorship (Gittings 2002).

In the 1960s the NFB underwent a shift in ideological and production structure as the NFB decentralized and began a process of regionalization that sought to reconfigure “national identity” by focusing on the diversity of Canadian regional experiences (Evans 1991; Gittings 2002; Magder 1993). In the late 1960s the NFB established the Challenge for Change Program that sought to use media production for social activism among minority and disadvantaged groups around the country (Evans 1991).<sup>2</sup> This move away from the universalizing pan-Canadianism of earlier NFB works was extended to gender difference in 1974 when the NFB established Studio D, the world’s first publicly funded women’s production unit (Armatage, et al. 1999).<sup>3</sup> This ideological shift in the NFB’s structure moved towards supporting films that produced alternative narratives of Canadian history, experiences, and identity. The NFB was created as an institution to promote nationalist visions of Canadian identity, and yet by opening its structure to programs that provided access to filmmakers from marginalized communities the NFB supported films, such as Abenaki filmmaker Alanis Obomsawin’s *Kanehsatake: 270 Years of Resistance* (1993), that interrogated and challenged the dominant Canadian national narratives (Gittings 2002).<sup>4</sup>

A Canadian feature-film industry emerged in the last thirty-five years since the creation of the Canadian Film Development Corporation (CFDC) in 1967. A feature film industry did not develop in the early twentieth century largely as a result of the impact of the dominance of Hollywood and American film production and the lack of Canadian state support for feature films. The height of Canadian cooperation with American film interests came in 1948 when the Canadian government agreed to the Motion Picture Association of America’s “Canadian Cooperation Project” in which Canada agreed that it would do

nothing to interfere with the dominance of American features on Canadian screens, including a guarantee that it would provide no federal support for a feature film industry (Feldman 1996). The Canadian Cooperation Project lasted until 1958 and further entrenched the dominance of American film within Canada. The Canadian government did not implement legislation protecting the development of a Canadian feature film industry and, instead, chose to support film production for the purposes of education and promotion of trade and immigration (Morris 1978).<sup>5</sup> Whereas many theorists argue that American film dominance amounted to media imperialism by working to limit the development of a Canadian feature film industry (Dorland 1998; Pendakur 1990), other scholars have argued for acknowledging that the Canadian government was complicit in creating legislation that further encouraged American film domination in Canada as it served Canadian business interests (Magder 1993).

While the creation of the CFDC in 1967 allocated \$10 million from the Canadian government to invest in Canadian feature films, a major obstacle to the development of Canadian feature films remained in the arena of distribution. Although Canadian features were being produced under CFDC money, these films were not being seen by the Canadian public because of the U.S. monopoly on theatrical distribution in Canada. Canada implemented tax-shelters and Canadian content requirements to help create distribution venues for Canadian features that in the 1970s and 1980s came increasingly in the form of television production. In response to the emergence of television production as a central venue for Canadian media production, the CFDC was renamed Telefilm Canada in 1984. Telefilm also created a Feature Film Fund in 1986 with \$65 million to support the work of Canadian filmmakers, although poor distribution has continued to limit the number of Canadian screens showing Canadian films (Feldman 1996). Although Canadian feature films have won critical acclaim and success internationally, it remains that approximately only two percent of Canadian cinema screens reflect Canadian images to their audiences (Gittings 2002), whereas Canada has become the number one market for American films (Pendakur 1990), and American distributors continue to include Canada as part of their “domestic market” (Magder 1993). Canadian cinema is marginalized within the shadow of Hollywood’s dominance on Canadian screens. Within this climate Canadian producers are concerned to ensure that Canadian content, experiences, and narratives are cinematically represented and are not elided by the overwhelming presence of American media.

### **First Peoples<sup>6</sup> Cinema: Canadian State Support for Aboriginal Media**

Aboriginal media makers have asserted that access to and control over the production of images of their lives, communities, and experiences are central to Aboriginal self-determination. In response to the misrepresentation of Native life within mainstream media productions, Aboriginal “cultural producers” (Mahon 2000) have taken up media as a powerful form of storytelling and self-representation (Ginsburg 1991, 1996; Johnson 1993; Langton 1993; Masayeva 1995; Meadows 1992; Minore 1990; Morris 1994; Pick 1999; Turner 1992). Tlingit filmmaker Carol Geddes asserts that “as First Nations people move into an era of greater self-determination, one of the important aspects of that self-determination is to interpret our own realities in media ... and we must take the means of production of our images into our own hands as a way of taking our place as distinct cultures in Canada” (Geddes in de Rosa 2002). Aboriginal media production is intimately connected to political activism, as much as cultural practices of storytelling,<sup>7</sup> as Aboriginal media makers strive to give voice to and represent the experiences of their communities (Chaat Smith 1994; Kalafatic 1999; Silverman 2002; Singer 2001). To examine the emergence of Aboriginal media production as a vibrant “field of cultural production” (Bourdieu 1993), it is important to look at the ways in which the Canadian state, responding to pressure from Aboriginal media makers and activists, has supported the development of Aboriginal media in terms of funding, production venues, broadcasting, and distribution. It is crucial to emphasize that any gains for Aboriginal media, whether in the form of changes in broadcast policy or the allocation of funding programs, were the direct result of many decades of hard work, dedication, lobbying, and activism on the part of Aboriginal media producers.

One of the first venues of Canadian state support for Aboriginal media production began in 1969 with the development of the National Film Board’s Challenge for Change Program. This program was designed to use filmmaking for social activism and to provide the tools of media production to disadvantaged communities to document their experiences (Evans 1991). When George Stoney became the head of this program in 1969, he sought to use the Challenge for Change Program to help Indian<sup>8</sup> political activists document their struggles and community experiences. Working with the Department of Northern and Indian Affairs, the NFB established an Indian film crew with seven Indians being chosen from various communities to live in Montréal and learn the

technical aspects of film and video production.<sup>9</sup> One of the most powerful films produced under this program was *You Are on Indian Land* (Stoney 1969) which was made at the request of Mike Mitchell, a Mohawk activist who was part of the Indian film crew. This film documented Mohawk activists blocking an international bridge in protest of the Canadian government's charging duties on goods brought in from the U.S.; however, Native people were guaranteed free passage across the U.S.-Canadian border under the *Jay Treaty* of 1794. This film was screened in many different reserve communities and helped to support other Native activists and encouraged them to use film to document their activism. This film also traveled across the border to the U.S. and was screened at the A.I.M. (American Indian Movement) occupation of Alcatraz. This film built bridges of solidarity between Native political activism across the U.S.-Canadian border. Another film, *The Ballad of Crowfoot* (1971) produced by Willie Dunn (Mi'kmaq) used archival photographs and an original score to create a powerful critique of Canadian national historical narratives and a scathing indictment of Canada's historical and contemporary treatment of Aboriginal peoples. The Challenge for Change Program was instrumental in providing a forum for Indian activists to learn the technical skills for film and video production and for opening up a space within the NFB for Indian produced work from Indian perspectives (Ginsburg 1999).

Although the Indian film crew and another Indian Film Training Program in the early 1970s were early NFB initiatives designed to provide basic training in media production, these programs were short term projects lasting only a year or two at a time and did not establish longer term Native employment or production at the NFB. There were suggestions made to the NFB by the participants in these programs to establish an "Indian studio" within the National Film Board similar to the structure of English and French Programs. Asserting sovereignty and the special place of Aboriginal peoples within Canada, these participants argued that there should be such a separate "Indian studio" within the NFB instead of Aboriginal filmmakers having to work through either the English or French Programs. Although these suggestions were made in the mid 1970s the NFB did not establish an Aboriginal studio until 1990 when Studio One became the first all Aboriginal production unit based in Edmonton, Alberta (de Rosa 2002; Gittings 2002; Lewis 2003).<sup>10</sup>

After pressure from Aboriginal filmmakers and cultural activists the NFB responded by establishing Studio One. Studio One created an NFB facility devoted exclusively to the training, experience, and technical support of

Aboriginal filmmakers. Tlingit filmmaker Carol Geddes was appointed Studio One's first producer, and she helped to initiate workshops for Aboriginal filmmakers as well as the creation of the Aboriginal Film and Video Alliance, an Aboriginal film and video collective that supported Aboriginal producers (Ginsburg 2000). Under Studio One a range of work was produced and many Aboriginal producers, including Loretta Todd (Métis-Cree), Gregory Coyes (Métis), Barb Cranmer ('Namgis), and Annie Frazier-Henry (Lakota-Blackfoot-French), gained experience working within this production studio. Documentary films such as Barb Cranmer's ('Namgis) *Laxwesa Wa: The Strength of the River* (1995), Loretta Todd's (Métis-Cree) *Forgotten Warriors* (1996), Carol Geddes' (Tlingit) *Picturing a People: George Johnston, Tlingit Photographer* (1997) and Gregory Coyes' (Métis) *No Turning Back* (1996) were all produced in the first years of Studio One.

In 1996 Studio One underwent a transition at the recommendation of Aboriginal producers and was transformed into a virtual studio under the framework of the NFB's Aboriginal Filmmaking Program (AFP). This transformation decentralized the Aboriginal studio and enabled Aboriginal filmmakers to gain access to equipment, training, and resources at any of the NFB's regional offices (de Rosa 2002; Gittings 2002). This shift was made in response to Aboriginal filmmakers who wanted opportunities to make films in their respective regions. The development of the AFP also earmarked more funds from the NFB allotting \$1 million a year to be used exclusively for productions and co-productions with Aboriginal filmmakers across the country. Under the AFP, Aboriginal directors began to produce work in other genres, including animation, narrative, experimental shorts, as well as documentaries. Films produced under AFP have explored the revitalization of cultural practices *Qatuwas: Gathering Together* (Cranmer 1997), the importance of hunting to Native bush life *Okimah* (Rickard 1998), the stories of First Nations veterans *Forgotten Warriors* (Todd 1996), a Mi'kmaq woman's exploration of her heritage *Migmaeoi Otjiosog/Mi'kmaq Family* (Martin 1994), First Nations women's singing traditions *Singing Our Stories* (Frazier-Henry 1998), Native sexuality *Deep Inside Clint Star* (Alberta 2000), the distinctive Métis fiddling practice *How the Fiddle Flows* (Coyes 2002), and the role of First Nations women activists *Keepers of the Fire* (Welsh 1995). In 1997 the AFP produced its first drama, *Silent Tears* by Cree filmmaker and playwright Shirley Cheechoo; Annie Frazier-Henry's narrative short *Legends Sxwexwxiy'am: The Story of Siwash Rock* was produced in 1999; and, most recently the AFP supported the critically acclaimed Inuit

feature film *Atanarjuat (The Fast Runner)* directed by Inuit filmmaker Zacharias Kunuk in 2001.

During the early 1970s Canada's Northern First Peoples began participating in television production in response to the launch of the Anik satellite in 1973. Northern First Peoples sought to create their own television programming to protect their languages and cultural content from the onslaught of Southern media coming into their communities via satellite (Alia 1999; Roth 1996; Valaskakis 1992). The suddenness of the intrusion of southern media into Inuit communities encouraged Inuit activists and political groups to lobby the federal government to create a system where Inuit producers could create and distribute their own media (Bredin 1993; Fleming 1991; Madden 1992; Marks 1994). As scholar Laura Marks notes, "When Inuit communities and Federal policymakers finally came together to develop early Inuit media projects, it was Inuit groups that were responsible for the speed with which these experiments translated to permanent, community-based broadcasting" (Marks 1994:5). In response to pressure from Northern Native media activists the Canadian government created regional Native Communications societies and in 1980 initiated the Northern Native Broadcasting Access Program (NNBAP).<sup>11</sup> Another governmental initiative for Northern First Peoples media came in 1981 as the Inuit Broadcasting Corporation (IBC) became the first native-language television network in North America when it was incorporated and licensed by the Canadian Radio-Television and Telecommunications Commission (CRTC).<sup>12</sup> The IBC became a site for the production of Inuit media designed to preserve Inuit language, cultural practices, and community values. Inuit producers saw the IBC as a crucial way to assert self-determination and to appropriate, in culturally specific ways, the new technologies and images entering their communities (Brisebois 1983; Rupert 1983).<sup>13</sup> The development of northern communications societies and the IBC also helped to redefine the position of Aboriginal peoples within relationships to the Canadian federal government, as well as internationally, for media production became a way to connect with indigenous communities globally (Marks 1994; Meadows 1996; Molnar 2001).

Broadcasting legislation in Canada prior to 1991 specified that "all Canadians are entitled to broadcasting service in English and French as public funds become available" recognizing the "two founding nations" of Canada (Raboy 1996:154). Aboriginal languages and cultural programming were not addressed or protected on a national level in this early legislation. That changed in 1991 when the new *Broadcasting Act* enshrined Aboriginal language and

communication rights on a national level (Roth 1998). This legislation helped to expand state support for Aboriginal media to southern Aboriginal communities, and Aboriginal media producers continued to push for a national Aboriginal television channel that would recognize the *national* rather than *cultural* status of First Peoples. That was achieved in 1999 when the Aboriginal Peoples Television Network (APTN) received a license to broadcast, becoming the world's first national Aboriginal television network serving all First Nations communities in Canada and available on all basic cable service (Buddle-Crowe 2002). APTN provides some funding for Aboriginal media production and has emerged as an important venue for Aboriginal media to be screened and gain visibility.<sup>14</sup>

At the same time as the NFB established the Aboriginal Filmmaking Program, Telefilm Canada initiated an Aboriginal Production Fund designed to support Aboriginal cultural programming and languages within television production. Although cultural institutions such as Telefilm, the National Film Board, and the Canada Council have pockets of funding available for Aboriginal media production, the amount of money that these funds are allotted compared to the overall budgets of these organizations is relatively low. For example the National Film Board's average annual budget is approximately \$65 million and the Aboriginal Filmmaking Program receives \$1 million annually, which is a much lower percentage of the budget than French language productions receive, for instance. Between these various organizations depending on how the figures are added up, there is approximately \$10-12 million available for Aboriginal media production in Canada, but compared to the overall budgets of Telefilm at approximately \$270 million or the CBC at \$600 million that is a relatively low amount of money.<sup>15</sup> Many Aboriginal filmmakers and media producers are pushing for a larger percentage of the overall budget of these organizations and for the funds to be consolidated into one fund so that the process of accessing these resources is easier. Activists would also like to see more Aboriginal involvement on juries and on the board of these organizations that make the decisions regarding the management of the cultural resources for Aboriginal media. It is also important to point out that Aboriginal filmmakers are not limited to applying only through the Aboriginal programs at these funding organizations and can apply in the general categories as well, although the difficulties faced by Zacharias Kunuk in funding the critically acclaimed *Atanarjuat* as he faced resistance from Telefilm in considering it within the general category in order to be eligible for greater funds is just one example of how difficult it can sometimes be

for Aboriginal projects to receive the same consideration within these mainstream institutions<sup>16</sup>. The issue of funding and monetary resources for Aboriginal media is a crucial one and deserves more in-depth analysis, and I raise this point to highlight that, although Canadian cultural institutions such as the NFB, Telefilm, and the Canada Council have been instrumental in helping to support and fund Aboriginal media production, Aboriginal media and cultural activists are pushing for increased access to funds and resources in order to build capacity and develop the emerging field of Aboriginal media into a fully self-sufficient Aboriginal media industry.

Among the NFB's Studio One/AFP, Telefilm Canada's Aboriginal Production Fund, and APTN, the Canadian government has created an infrastructure for the training, funding, production and distribution of Aboriginal media and helped to support and sustain a vibrant Aboriginal media world that is producing work ranging from feature films to television productions, to experimental video, to documentaries that are garnering critical acclaim and visibility within Canada and internationally. That Zacharias Kunuk's *Atanarjuat* became the most financially and critically successful Canadian feature in 2002 and that the Telefilm's Aboriginal Production Fund has been oversubscribed are just two indications that Aboriginal media production in Canada is flourishing (de Rosa 2002).

### **Countering the Legacy of the Hollywood Indian: Native American Cinema in the U.S.**

The development of Native American media production and cinematic practice emerged out of a response to the misrepresentation of Native Americans within mainstream media. The "Noble Savage-Savage" stereotype within Hollywood movies left a profound impact on the imaging of American Indians within the popular imaginary (Berkhofer 1978; Friar and Friar 1972; Rollins 1998). This legacy has left the contemporary mediascape littered with stereotypical images of "the Indian" and iconography of "Indianness" that Native filmmakers are directly addressing, responding to, and challenging through their own work (Kilpatrick 1999; Singer 2001; Vail 1997). As Stuart Hall points out, it is not merely about replacing negative images with positive images, but about controlling the resources of production of these images that is crucial for the contesting the politics of representation that has historically enabled Western filmmakers to create cinematic representation of non-Western peoples (Hall 1996). Native scholars have critiqued Hollywood's "celluloid Indians" (Kilpatrick 1999) as one-dimensional, often

derogatory misrepresentations of their lives and experiences, and have shifted focus to highlight the field of Native American media production as a new arena of Native self-determination and a form of visual sovereignty (Chaot Smith 1994; Churchill 1998; Rickard 1995; Singer 2001).

Native American media production began to emerge as a distinct field of cultural production in the 1960s and 1970s as Native producers began to gain access to resources within the public television production sector (Abbott 1998).<sup>17</sup> In comparison to Canada, the U.S. has not implemented state sponsorship and funds for Native media production. That is largely due to the different ideological stance towards state-supported communications policy. Whereas Canada views public broadcasting as a form of nation-building and cultural citizenship and of providing equal access to participation in this system to minority communities within Canada as a central aspect of its multiculturalism policy, the U.S. has a privatized communications sphere with relatively little state funding of public broadcasting and the arts (Dorland 1996; Raboy 1990). In the U.S. there is not much organized infrastructure of training or funding for Native filmmakers.<sup>18</sup> Despite a general lack of sustained and consistent governmental or private funds<sup>19</sup> for training, funding, and distribution of Native produced media, there is a vibrant and active Native media world with producers working in a range of genres, including experimental video and feature films, although the majority of the work produced is in the documentary genre. Prominent Native producers within this emerging cinema include Sherman Alexie (Coeur d'Alene-Spokane), Victor Masayesva Jr. (Hopi), George Burdeau (Blackfoot), Arlene Bowman (Diné), Chris Eyre (Cheyenne-Arapaho), Sandra Sunrising Osawa (Makah), Randy Redroad (Cherokee), Beverly Singer (Tewa-Diné) and Malinda Maynor (Lumbee). The diverse work of these filmmakers has explored such subjects as experimental video that seeks to evoke a Hopi sensibility (*Itam Hakim Hopiit* 1980 and *Ritual Clowns* 1988), documentary portraits of Native elders and communities (*Backbone of the World* 1997 and *A Season of Grandmothers* 1976), the Navajo young woman's rite of passage ceremony (*Kinaalda: Navajo Rite of Passage* 2000), political activism surrounding Native fishing rights (*Lighting the Seventh Fire* 1994 and *Usual and Accustomed Places* 2000), the integral role of women in Native communities (*Hozhó of Native Women* 1997 and *Song Journey* 1994), gay and lesbian Native life (*Honored by the Moon* 1990), the impact of stereotypes on Indian identity (*Real Indian* 1996), and the commodification of "Indianness" for tourism (*What was Taken... What Remains* 1994). There has been an increasing number of Native narratives and

feature films including *Smoke Signals* (1998), *Skins* (2000), *The Business of Fancydancing* (2002), *The Doe-Boy* (2002), *High Horse* (1994), and *Naturally Native* (1998).

Native organizations, such as the Native American Producers Alliance (NAPA) are working towards increasing funding and resources for independent Native filmmakers in the U.S. NAPA was developed in 1990 by fifteen Native filmmakers who felt that the funding through NAPT (then called the Native American Public Broadcasting Corporation (NAPBC)) was in some instances being allocated to non-Native filmmakers. NAPA was created as an organization independent of federal funding as a response to minimal funding, distribution, and employment opportunities for Native filmmakers (Vail 1997). Whereas there is no single distribution venue in the U.S., such as Canada's APTN, for Native produced media, many Native filmmakers in the U.S. circulate their work through Native film festivals, such as the American Indian Film Festival in San Francisco and the Smithsonian's Native American Film and Video Festival in New York City, independent film festivals, such as the Sundance Film Festival, and independent media organizations (Leuthold 1998; Prins 1989; Singer 2001). The Native film festival circuit is a vibrant alternative to mainstream distribution venues, such as theater and cinema distribution, which are venues that have historically been reluctant to become accessible for Native media. Through Native film festivals, Native media gain a venue for visibility and enable Native audiences a chance to see their own experiences and voices on screen.

### Conclusion

The emergence of Aboriginal media within the U.S. and Canada has reshaped the politics of representation and created a new "counter-public" sphere (Fraser 1993) in which Native experiences, histories, and narratives are cinematically represented to counter dominant misrepresentations of Native life. In Canada, Aboriginal producers have played a strong role in negotiating with the federal government to create cultural policies that have made funds, resources, broadcasting, and institutions available for Aboriginal media production. Access to media production as an expression of self-representation and self-determination has become a powerful arena of Native political activism (Weatherford 1996). Although the U.S. has not developed cultural policies that provide systematic state support for Native media production, Native media makers continue to lobby for increased access to funds, training, production, and distribution resources. A vibrant independent Native film community has emerged

and draws on the support of private organizations such as the Sundance Institute's Native Program, the American Indian Film Institute in San Francisco, Third World Newsreel, and Native American Public Telecommunications (NAPT).

In Canada, the sustained government support for Aboriginal media throughout the last thirty years has enabled a multi-generational and diverse Aboriginal media world to emerge, producing works in a variety of genres including experimental video, installation and performance art, documentary, television, and feature film. The diversity of this work is illustrated from Mohawk artist Shelley Niro's innovative narrative shorts (*Honey Moccasin* 1998 and *It Starts with a Whisper* 1993) to Lakota artist/media maker Dana Claxton's powerful experimental videos (*Buffalo Bone China* 1997 and *I Want to Know Why* 1994) to the numerous films of renowned Abenaki filmmaker Alanis Obomsawin documenting generations of Aboriginal political activism (*Is the Crown at War with Us?* 2002, *Rocks at Whiskey Trench* 2000, *Kanehsatake: 270 Years of Resistance* 1993, and *Incident at Restigouche* 1984) to Métis filmmaker Gregory Coyes unique animations for Native children's television (*Stories from the Seventh Fire* 2002) to 'Namgis filmmaker Barb Cranmer's documentary portraits of West Coast Aboriginal cultures (*Gwishalaayat (The Spirit Wraps Around You)* 2002, and *T'Lina: The Rendering of Wealth* 1999) to Métis-Cree filmmaker Loretta Todd's powerful explorations of Native historical experiences erased in Canadian national narratives (*Forgotten Warriors* 1996 and *The Learning Path* 1991) to the emerging Aboriginal feature films of Cree filmmaker Shirley Cheechoo (*Bearwalker* 2000) and Zacharias Kunuk (*Atanarjuat* 2002) and programming produced for APTN (*Buffalo Tracks*, *Contact*, *Ravens and Eagles*, and *The Seventh Generation*). It is clear that Canadian cultural policy and support for Aboriginal media combined with the activism of Aboriginal media producers has enabled an Aboriginal media world to emerge with work being produced in a variety of genres for diverse Native audiences and by a range of individuals with different backgrounds and experiences with art and media production.

In looking at the tremendous impact that Canadian state support has had on Aboriginal media, it is evident that government cultural policy can have a powerful affect on the ability for Aboriginal media makers to produce their work. From the founding of the National Film Board of Canada—a central institution to Canadian filmmaking that views media as a social and educational tool and access to media production as integral to expressing a shared cultural and national citizenship—Canada's cultural pol-

icy has worked to extend access to participation in media production to Aboriginal and culturally diverse communities. Perhaps Canada has been receptive to Aboriginal concerns about self-representation and providing venues for Aboriginal content and perspective on the screen because Canada itself is concerned to maintain Canadian content on Canadian screens in response to the onslaught of American media.<sup>20</sup> The success of Aboriginal media in Canada stands as an example of what can be accomplished in supporting Aboriginal self-representation when given institutional frameworks, structures, and state support for Aboriginal media production.

## Notes

- 1 In 1918 Canada became the first federal government in the world to create a state-sponsored film production unit with the creation of the Canadian Government Motion Picture Bureau (CGMPB). The CGMPB was not in the feature film entertainment industry but primarily produced short films to promote Canadian trade (Gittings 2002).
- 2 The NFB's in-house laboratory was at the forefront of developing lightweight, portable filmmaking equipment which made it possible to develop community-based filmmaking and low-budget feature film (Feldman 1996).
- 3 Studio D was critiqued for creating essentialist constructions of gender that subsumed diversity of sexuality, race, ethnicity, and class under monolithic representations of gender. In response to critiques of women of color the NFB created the New Initiatives in Film Programme that restructured Studio D by making representations of the ethnic and racial diversity of women's culture in Canada a major component of the studio's production. Unfortunately the NFB suffered budget cuts in 1996 that contributed to the closing of Studio D in 1996 (Gittings 2002).
- 4 When asked about her relationship with the NFB in an interview for a Brooklyn newspaper, Alanis Obomsawin asserted, "Even in the NFB, which is also a government institution, the politicians cannot dictate what films are being made here, which is very beautiful" (Lewis 2003:44).
- 5 Scholars also point out that the creation of protective legislation for Canadian feature film production during the 1930s and 1940s would have complicated arrangements of Canadians working within the Hollywood system, particularly those Canadians in the exhibition industry where American films became a lucrative business for Canadian movie theater owners (Madger 1993).
- 6 First Peoples is a term used to encompass all indigenous individuals and groups in Canada, including Aboriginal, First Nations, Inuit and Métis communities. Some scholars (Roth 1994) prefer this term because it is more inclusive than First Nations or Aboriginal. As this section is discussing Inuit and Northern Aboriginal production as well as Southern First Nations, Métis, and Aboriginal production, I will use the inclusive term "First Peoples" throughout this section.
- 7 As Métis-Cree filmmaker Loretta Todd asserts, "I see myself in the same way as the storyteller, except my way of telling the story is different.... The storyteller, the artist, has a role to play in the health of the community" (Silverman 2002: 389). For more references on Aboriginal filmmaking as storytelling see (Chaat Smith 1994: Kalafatic 1999; Masayeva 1995; Singer 2001).
- 8 I am using the term "Indian" throughout this section as this was the term that was used by the National Film Board during the late 1960s and early 1970s to name the programs they developed for Aboriginal media during that time.
- 9 The choice of individuals to participate in the Indian film crew was made by the Department of Northern and Indian Affairs. The individuals came from different regions, band affiliations, and community experiences as well as historical tribal rivalries that often caused tension among the group (Evans 1991).
- 10 Graydon McCrea, the executive producer for documentary productions at NFB, was approached in 1990 by Native filmmakers who wanted to increase Aboriginal participation in the Canadian film and television industry. McCrea supported the creation of an Aboriginal production unit, declaring that, "Aboriginal peoples must have the resources to reach the screens of their communities and of this country with their perspectives and values woven implicitly into the fabric of the cinematic stories they themselves choose to tell" (McCrea in de Rosa 2002:331).
- 11 This program was administered by the Department of State and distributed \$40.3 million over a four-year period to thirteen regionally based Native Communications Societies so that they could produce twenty hours of radio and five hours of television programming per week. The aim of this program was to produce and distribute "programming that enhanced native culture and the use of native languages" (Roth 1994:124).
- 12 Inuit producers began receiving initial training in broadcasting, film, and video production from National Film

- Board initiates that conducted programs for Northern Inuit in the early 1970s, including workshops conducted from 1972–1974 in Cape Dorset and in Iqaluit in 1974–1975 (Evans 1991). Although these workshops provided crucial training for Inuit producers, the only shortfall was that these programs were not designed to institute long-term Aboriginal communications centres (Marks 1994).
- 13 The IBC was important for providing production experience and technical training for independent Inuit producers such as Inuit filmmaker Zacharias Kunuk who started working in the Igloodik station in 1983 and who went on to form his own production company Igloodik Isuma Productions that has produced a series of short docu-dramas about Inuit life and became the internationally celebrated director of *Atanarjuat (The Fast Runner)* in 2001 (Fleming 1991).
  - 14 Some scholars and Aboriginal media activists have advocated that Aboriginal media be given equal visibility in mainstream television broadcasting in addition to APTN in order to avoid creating a “media reservation” in which Aboriginal media are shown only on the Aboriginal television station (Roth 2001).
  - 15 My understanding regarding funding and budgets as it relates to Canadian cultural policy and the role of Canadian cultural institutions in funding Aboriginal media is indebted to conversations with Loretta Todd and Jeff Bear who have been instrumental in pushing for greater access to funds and resources, as well as helping to change cultural policy to support Aboriginal media. I am very grateful for the time that they shared in talking with me about this topic and helping to put the funding of Aboriginal media in Canada in a broader perspective.
  - 16 For more information on the details of this example see Ginsburg, Faye. 2003. “*Atanarjuat* Off-Screen: From ‘Media Reservations’ to the World Stage.” *American Anthropologist* 105(04): 827–831.
  - 17 One of the earliest indigenous media projects in the U.S. was the “Navajo Film Themselves” project initiated in the late 1960s by anthropologists Sol Worth and John Adair who set out to see if film would communicate different cultural cognitive patterns by introducing filmmaking to a Navajo community. Worth and Adair were interested in what Navajo filmmaking would reveal about aspects of the Navajo worldview (Chalfen 1992; Dubin 1998; Ginsburg 1994; Worth and Adair 1997). While the “Navajo Film Themselves” project was problematic in its focus on the cognitive aspects, the filmmaking process would illustrate that aesthetic principles revealed through film production may be consistent with Native cultural concerns, rather than show the social effects of filmmaking within the community.
  - 18 There are a few private organizations, such as the American Indian Film Institute and the Sundance Institute, that offer both training workshops and funding for Native filmmakers. The Native American Public Telecommunications (NAPT) organization receives some government funding and offers employment opportunities, limited production funds, and distribution for Native filmmakers producing works for public television.
  - 19 Several recent Native produced feature length fictional films have received funding from tribes, including *Naturally Native* (1998) funded entirely by the Mashantucket Pequot tribe and *Christmas in the Clouds* (2001) which was executive produced by the Stockbridge-Munsee Band of Mohican Indians. Many Native directors have asserted that it is crucial for the further development of feature-length Native films for Native people to be involved at the highest levels of production.
  - 20 As communications scholar Marc Raboy states, “From the origins of public broadcasting in the 1930s through the free trade talks of 1988, communication policy has been seen as a central bulwark of Canadian cultural and even political sovereignty vis-à-vis the United States” (Raboy 1996:154).

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# Negotiating the Apparatus for Indigenous Sovereignty and Storytelling

Kalli Paakspuu

Like any cultural artifact, photography has a utilitarian function which alters in meaning through subsequent uses. Much of the earliest Western photography in North America was used to document the land visually by surveyors and explorers. Photographers like American E. S. Curtis and Canadian Harry Pollard practiced on the western frontiers in a time when federal governments used treaties to extinguish Indian land rights. Generations of descendents, scholars and curators are discovering alternate and multiple readings to these cultural artifacts of memory. Despite originating in a European Fine Art movement, Curtis's and Pollard's pictorial photography with Natives is evocative of Homi Bhabha's Third Space<sup>1</sup>—an alteric space outside the dialogue of existing relationships where new possibilities can be articulated. Like totem poles and other ceremonial objects removed from their communities, the archives are part of a larger process of indigenous peoples' dispossession of land and cultural signification. As objects of the colonial gaze, colonial photographs are part of a repatriation process which involves the repatriation of narrative and ways of seeing. This essay will offer a lense and a historical perspective on indigenous sovereignty and storytelling in early photography and in recent films like Zacharias Kunuk's "Atanarjuat" (2001), an Isuma Igloodik/NFB co-production and Loretta Todd's "Kainayssini Imanistaisiwa: The People Go On" (2003).

Occupying a location wherein relations of power, knowledge and pleasure are embedded in transparent ideologies of nationalism and imperialism, photography historic-

ally utilized the techniques of scientific investigation to maintain specific categories of Same and Other in a hybrid novelty for the public. Victorian anthropologist E.B. Tylor in his book *Primitive Culture* (1871) introduced a notion of how societies came to construct artificial, non-natural and hence cultural ways of life: "Culture or Civilization, taken in its widest ethnographic sense, is that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society."<sup>2</sup> Anthropology's definition of culture thus embraced all human activity with visual arts and crafts and differed from English scholar Matthew Arnold's "the best that has been thought and known," a perspective disseminated by American art critic Clement Greenberg in his essay "Avant-garde and Kitsch" (1961). Tyler, a firm believer in race science, believed that different human societies manifested stages of human evolution. The anthropologist thus could rely on a contrast between the modern present time of the white European anthropologist and the pre-modern present time of his or her (non-white, non-Western) subject. A linear model of evolution was made intelligible by "visualism," which was defined by anthropologist Johannes Fabian: "The ability to visualize a culture or society almost becomes synonymous with understanding it."<sup>3</sup>

In colonial expansion master narratives Natives are produced as subaltern and relegated into a popular imaginary as a disappearing race. Introducing a contrapuntal reading to photography, however, reveals various sites of alternative readings wherein multiple realities are in conflict with

each other both in the present and in the past. Native subjectivity enters into negotiations with non-native photographers in several stages of the production and exhibition. One such location of reception is defined by postcolonialist theorist Gayatri Spivak as “strategic essentialism,” where a reinscription of meaning creates an alternative and positive subject position for the Native.<sup>4</sup> Years after the photograph’s production, its meaning alters again as reception moves from naturalisation of Native as “other” into skepticism of technological mediation. Contemporary Native curators use a positivist essentialism strategically to deconstruct various truths and expose their construction. Reinscription makes the photograph a site where a politics around race, class, gender, and place are contested.

The anthropological view, dependent on a binary difference between non-Western and Western culture, located its task of describing cultural organization within a spatial and temporal distinction: over there is equivalent to going back in time. This “art-culture system” as James Clifford has named it, is an interpretive structure in which Western art is dependent on being distinguished from non-Western culture. “From present-day perspectives, the monuments of elite culture and anthropological data alike both point in a different direction, towards a modern visual culture that is always cross-cultural, and always hybrid—in short transcultural.”<sup>5</sup> While Modernism may have cast the intersections of race, class and gender into a disciplinary grid, it is presently recognized that visual culture remains a discourse of the West about the West, i.e. Europe about Europe and that Western culture is a construction of naturalized histories of Western power.

As late as 1820, indigenous peoples controlled half the globe. The Indian wars popularized by Hollywood westerns that mis-recognized them as “manifest destiny” were “ethnocidal” and were formulated by Social Darwinist terms of “survival of the fittest” and inevitable modern “development.” However, in the partitioning of the world in the cultural map, the “Third World” has elided a “Fourth World” which exists in all of the other worlds. This world consists of the Indigenous, tribal, or First Nations and the descendents of inhabitants of territories taken over by conquest or settlement. According to some estimates this represents 250 million people. Fourth World people practice communal and custodial ownership of land, community-based childcare, cooperative production and are geared to subsistence needs that disperse wealth and limit material acquisitiveness.

Within this context let us examine early twentieth century photographers Canadian Harry Pollard and American E.S. Curtis and their work with the Blackfoot people.

Despite the fact that they may have photographed some of the same individuals and similar activities, their projects had significant differences over time as they participated in relations of economic exchange. Pollard’s work with the Blackfoot was produced over a period from 1904 to 1916 when Pollard himself became an honorary chief of the Blackfoot. Most of Curtis’s work with the Blackfoot dates much later in 1926. Pollard’s granddaughter wrote that he modeled himself after a Father Lacombe who distributed tea, sugar, flour and tobacco to the natives: “With his wagon filled to the brim he traveled to the various Indian reserves at Gleichen, Cluny, Morley and Sarcee, where he hoped he would be granted the right to photograph individual chiefs and braves. On a good day the chief of the tribe would have a teepee set up next to the chieftain’s and then order his minor chiefs and braves to pose.”<sup>6</sup>

For both the Natives and Pollard it is evident that participation in the photographic spectacle is an honourable and prestige undertaking, possibly even entertaining. Pollard’s granddaughter’s description explicitly reveals that Pollard shared responsibilities with the chief of the tribe who also directs aspects of the photography. Thus two separate referential worlds are mediated and Barthe’s four image-repertoires are opened up by a doubling of the cultural referents into a transcultural photographic form.<sup>7</sup> Pollard’s photography, as well, because it was produced over many years would involve a return to the same locations, persons and subjects, and would thus make reference to earlier photographs and events shared in collective memories. It became self-referential as it surveyed time passing, children growing, people ageing and an assimilation and resistance politics that comprised a photojournalistic form.

Curtis’s work with Native subject began after the Harriman Alaska Expedition where he worked as official photographer with anthropologist George Bird Grinnell and scientist C. Hart Merriam. His immersion into scientific practices enabled him to envision a project to document “the old time Indian, his dress, his ceremonies, his life and manners.” At the Sun Dance gathering of Blackfoot, Algonquin, and Bloods in 1900 at the Piegan Reservation in Montana, Grinnell said to Curtis, “Take a good look. We’re not going to see this kind of thing much longer. It already belongs to the past.” The Sun Dance became the inspiration for Curtis to produce “The North American Indian,” the most ambitious and controversial representations of traditional American Indian culture ever produced in a limited edition from 1907-1930. “The North American Indian” included over 2000 photogravure plates and described the traditional customs of eighty Indian tribes in twenty volumes, each with an accompanying portfolio, or-

ganized by tribes and areas encompassing the Great Plains, Great Basin, Plateau Region, Southwest, California, Pacific Northwest, and Alaska. The published photogravure images included over 1500 illustrations bound in the text volumes, along with over 700 portfolio plates.

On 16 December 1905 President Roosevelt wrote to Curtis, "I regard the work you do as one of the most valuable works which any American could now do." In 1906 railroad magnate J.P. Morgan lent him \$15,000 per year interest free for five years so that he could produce the twenty volume set which sold for \$3,000 a set. The economic relations of producing these volumes were political relations that placed the Natives in a spatial and temporal distinction, an "over there" which was "back in time," which enabled industrialists like Morgan to succeed in expansionist projects with public approval and aggressive force. Curtis's project, however, stretched over thirty years and aspired to an objectivity conceived as perfectly detached and neutral with the positivist-empiricist principles of a scientific enterprise. Conceivably J.P. Morgan's considerable investment facilitated what feminist theoretician Donna Haraway describes as "the god-trick," a "view from nowhere," where representations of tribes escape the constraints of location within specific bodies and historical circumstances. In consideration of the political context of the work, Curtis's enterprise deserves comparison with the anthropological studies of Rev. Henri-Alexandre Junod in Africa:

One of the major reasons for undertaking extensive anthropological studies in Africa, according to Junod (Rev. Henri-Alexandre Junod was Swiss missionary and ethnographer) was to provide Europeans with a picture of their own prehistoric, primitive past. The view that Europe's past could be found in Africa's present drove Junod to produce a form of salvage anthropology that uncoupled "traditional" society from any form of change. This image was reinforced as he strove to present Europeans, experiencing the trauma of industrialisation, with a picture of a primitive, uncomplicated society living close to nature. Junod's vision of what he wanted to find in Africa had an immediate impact on the choice and organization of his illustrative photographs. So, although almost 100,000 workers drawn from southern Mozambique were employed in the mines, farms, plantations and ports of South Africa by the turn of the century, not one photograph of a migrant worker appeared in his anthropological monographs.<sup>8</sup>

A genre is a standard style in which presentation aesthetics are more important than the actual content within the image. Over Curtis's life long production he established a genre of photography that was exclusive to "The North American Indian." The later work adheres to stylistic and formal qualities of early picturesque work. As the style is reproducible with countless variations an illusion of political neutrality is naturalised and reinforced. As the art director of his life work, Curtis compares the similarities and differences of the eighty tribes in an artistic construction of the "old time Indian." He erases modern lifestyle from his representations and uses the techniques acquired in a photo studio practice for an artistic effect that is consistent in all twenty volumes. The time frame of "old time Indian" and "glory days" literally exists in an artistic imaginary dislocated from actual time and frequently place. Curtis's views of reservation life thus do not reveal the harsh realities that the inhabitants actually faced. Despite the mixed reception of Curtis's work and its contradictory claims to scientific principles, Native people do value Curtis's legacy of photography and meticulous recording of songs and customs as an inheritance. Curtis's photographed characters are someone's real family members beautifully presented in fine quality photography.

"Portrait of Geronimo" (1905) was taken when Geronimo was on a government enforced tour with President Roosevelt after officially being a prisoner at Fort Sill, Oklahoma for more than 20 years. Curtis renders Geronimo in a blanket and ceremonial headdress which disguises Geronimo's contemporary clothing and obliterates the political situation by which the photograph was constructed. As one of his most political representations, the photograph is a prime example of how a non European subject is represented in ways that are appropriate to the colonizer. Geronimo's portrait denies the political complexity of the Native experience and completely ignores the struggle that is really lived by his subject in the moment of picture making. Geronimo, the Apache leader of the last American Indian fighting force formally to capitulate to the United States's surrender in 1886, died a prisoner of war, unable to return to his homeland and only four years after riding in Roosevelt's inaugural parade. To this day, "Portrait of Geronimo" and its "glory day" erase the real conflict and replace it with a safe alternative which reduces the historical actuality into a non-event. In this paradoxical moment of photography Geronimo, himself, graciously performs "glory days." But why would this legendary living figure want to be remembered otherwise? The pain of being a prisoner of war is anesthetized by a ceremonial

headdress that reinforces Geronimo's authority as a fearless guerilla.

Curtis's aesthetics in ethnological documentation would often result in ambiguous images. In "Hopi Girls Grinding Peke Bread Meal" four unmarried women (recognized by their distinctive hairstyle) are grinding corn, an everyday household activity, while wearing ceremonial clothing. The image presents valuable information on food preparation through the tools and method displayed, but by making his subjects wear ceremonial clothing Curtis creates an anomalous situation. A metonymic reading of the image would place an incongruent ceremonial value on the food preparation. This interpretation of the ethnographic moment compares to contemporary advertisement practices where an image uses two conflicting or contradictory events to attract the public's attention. This image, as well, conforms to the "glory days."

Over the years Canadian Harry Pollard photographed different views of the Blackfoot Camp. Inside the medicine lodge (52 Inside Medicine Lodge 1910) we see a man and wife in European cotton fashions lying on their sides in a comfortable domicile, resplendent with fine handmade, highly portable personal furnishings. Different views from different years of the Sundance Lodge (87 Sundance Lodge, 111 Medicine Men Sundance Lodge, Crazy Dog Society, and P119 Inside Sundance Lodge 1913) are evidence of Pollard's commitment to a serious documentary effort produced in collaboration with his subjects.

Pollard's documentary approach to the Sundance does not anticipate a unified position of the viewing subject. Produced over more than a decade in a relationship of collaboration with his subjects, his subjects may well have anticipated their own uses of the imagery. Unlike many of his contemporaries, Pollard's work aspires to a historical consciousness in that it often adheres to a local and specific moment in opposition to Haraway's "view from nowhere." He was conscientious about maintaining a record of each photograph which could include a number, the subject's name, location and date. His contemporaries were often negligent about native names and would use generic terms like Indian, which Pollard never once used.

Like his predecessor Canadian artist William J. Hind, Pollard chronicled assimilation and resistance in the contradictory moment of colonial expansion. He documented the reserve, a place which Gerald McMaster has described as "a negotiated space set aside for Indian people by oppressive colonial governments to isolate them, to extricate them from their cultural habits, and to save them from the vices of the outside world. Paradoxically, isolation helped maintain Aboriginal languages and many other traditional

practices. Although it may be difficult to view these places as prisons now, at one time Indian people needed special passes to leave the reserve boundaries."<sup>9</sup>

Documenting the Blackfoot Sundance Ritual in the "Making of a Brave," from 1904 to 1916 (a ceremony banned by American and Canadian governments) Pollard's is possibly the most complete record of this native spiritual and resistance movement to exist. Pollard's attention to the local, specific and embodied can be compared to what Alanis Obomsawin has used in her performative documentaries—"the sense of the local, specific, and embodied as a vital locus of social subjectivity," which "gives figuration to and evokes a dimension of the political unconscious that remain suspended between an immediate here and now and a utopian alternative."<sup>10</sup>

Curtis's photography with Natives through its ambiguous and anomalous readings does enable a strategic essentialism to emerge. "Portrait of Geronimo" and "Hopi Girls Grinding Peke Bread Meal" are evocative of ceremonial ritual and their alteric reality undoes Curtis's own gaze as it challenges the public's gaze with the something unseen. Pollard's work with a prohibited ceremony dismantles our preconceptions about what we think we are seeing and opens a portal to an alterity that is itself a site of reinscription: alternate and positive to any false genre whatsoever.

Despite a ubiquitous Eurocentricity in colonial texts, the photography of Pollard and Curtis evidence unique characteristics of a First Nations' sovereignty that enable Native subjects to participate actively in the constructions of their locales within a continuum that serves their purposes. As photography escapes many of the hierarchies of binaries found in spoken and written languages it permits an exchange between two socially interactive performances on opposing sides of the camera in a construction of a fourth wall: between the photographer and the subjects. These men with their bulky cameras and tripods could not simply pin a human being into a corner like a dead butterfly and take a photograph. The photographic production needed to address a physical dialogue between a man with the camera and a living subject in a social interaction: an agonism in a choreography between the body motions of a man and his equipment and a subject's active body positioning. The very holding of a position for several seconds for the camera was a consent to the production because at any point in the production the subject could renege by moving out of the frame. As Curtis and Pollard were working with subjects at sites that were reserves or traditional and ceremonial grounds, their subjects' participation existed within a First Nations' social, religious and

political organization. In these circumstances, presentations of self and social constructions followed cultural rules that were an expression of the subject's status and competence in their community and, in this circumstance, would signify, as well, a one-of-a-kind relationship negotiated between a photographer and his subject.

On both sides of the camera individuals have been engaged in a dialogue about understanding the Other and living and acting in ensemble in the co-creation of the photograph. These early co-creators construct a Third Space through body idioms and a disidentification: the subject neither assimilates nor opposes the ascribed roles of genre from the photographer's production script. Photography for indigenous peoples is a living storytelling that documents disidentification with assimilation, as it paradoxically also embraces new cultural hybridities. Defined by Jose Esteban Munoz, disidentification "works on and against dominant ideology ... this 'working on and against' is a strategy that tries to transform a cultural logic from within, always laboring to enact permanent structural change while at the same time valuing the importance of local or everyday struggles of resistance."<sup>11</sup> The Native subject's participation in the Pollard or Curtis photographs was thus not an active partnering into a High Photography project which was the photographers' goal. It was an affirmation of a living culture and the subject's status and competence in the community.

The primacy of cultural continuity with land, memory and knowledge were reasons for indigenous peoples to return to traditional grounds for sacred observances where temporary domiciles were set up by established rules. The process of returning to a traditional campsite, however, developed a new meaning in the period where indigenous peoples were losing their land and property rights, which coincidentally was also the early period of the camera. Providing a profoundly visible representation of the subject, the camera as apparatus recorded aspects of subject formation and the interpellation with real and imagined conditions of survival.

A critical variable in a photographic narrative is the construction of culturally significant categories like individual and society and the social organization and maintenance of various boundaries. Oral and written texts and photographs are windows on constructions of the past from the perspective of participants enmeshed in and negotiating various power relations in complex social networks. All societies use narrative structures to enable members to construct and maintain cultural boundaries and reproduce knowledge which either becomes official history or collective memory. Roger Wilkins described in

his essay "White Out" how at first segregation was seen as the greatest power wielded against blacks in the United States. However, Wilkins states, "The greatest power turned out to be what it had always been: the power to define reality where blacks are concerned and to manage perceptions and therefore arrange politics and culture to reinforce those definitions."<sup>12</sup> What he describes here is an active negotiation of cultural narrative from a position of resistance. Some cultural centres do this by disallowing any access to outsiders to their photographic collections. In this way the home community defines the narrative which is withheld from outside competing interpretations.

Collecting ethnographic artifacts from colonial lands was preceded by ways of seeing that subjected the material culture of indigenous peoples to a controlling "gaze." James Clifford has stated that collecting in the West "has long been a strategy for the deployment of a possessive self, culture and authenticity. Even today these collected 'cultures' are often in the 'ethnographic present,' i.e. explained in the present but conceived as remnants of the human past and thus as timeless and without history. Authenticity is produced by removing objects from their historical situation."<sup>13</sup> The collection and preservation of any domain of identity is intermeshed with national politics, restrictive law and contested encodings of past and future.

Like Foucault's story of a white psychologist visiting Africa different narratives situate a viewer in a cultural text. Foucault's psychologist followed character and plot while the indigenous viewer attended to the passage of light and shadows through the trees.<sup>14</sup> Their different perspectives have specific purposes of cultural knowledge production. Haraway argues that vision is always a question of the power to see and that violence is implicit in our visualizing practices. Like the African or psychologist's response to film, vision is culturally constructed and different aesthetics and political perspectives lay bare the ground of power struggle.

Repatriation therefore involves questioning and re-situating the gaze. In modern museums a politics of display embeds ethnographic representation into a discourse of colonialism. A poetics of display uses a semiotic approach to investigate how language constructs the representation of the ethnographic Other.<sup>15</sup> Since all representational practices emerge from the economic relations that govern the production and reception of material objects, a postcolonial re-interpretation involves a deliberate re-appropriation of the signification of indigenous forms and motifs. What people have seen or understood when they have looked at artifacts in the past is inseparable from

contemporary forms of colonialism and postcolonialism which also address the tourist's gaze.

Thus reappropriating the cultural signs is an important part of postcolonial revival. The U'mista Cultural Centre of Alert Bay on its website describes its origins: "In earlier days, people were sometimes taken by raiding parties. When they returned to their homes, either through payment of ransom or by retaliatory raid, they were said to have "u'mista." The return of our treasures from distant museums is a form of u'mista."<sup>16</sup>

The extreme example of this "raid" was the outcome of a revised law which very specifically criminalized the potlatch, a practice of wealth re-distribution central to the Kwakwaka'wakw culture. In 1921, a big potlatch held by Dan Cranmer at Village Island ('Mimkwamlis) resulted in twenty men and women being sent to Oakalla Prison near Vancouver, B.C. for giving speeches, dancing, carrying and receiving gifts at the potlatch. Indian Agent Halliday arranged to store the confiscated goods in the Anglican Church at Alert Bay where the goods were put on display and an admission was charged. Halliday then sold 33 pieces to a collector, Mr. George Heye of New York, which earned him a government reprimand for "unwarranted action." However, the greater part of the collection was crated and shipped east and divided between the Victoria Memorial Museum (later to become the Canadian Museum of Civilization in Ottawa), the Royal Ontario Museum in Toronto and private collections.

The potlatch went "underground" until the *Indian Act* was revised in 1951 and Section 149 was simply deleted. Those who had lost their treasures in 1921 had not forgotten and a repatriation of these objects led to the incorporation in 1974 of the U'mista Cultural Society. The oldest living descendants of the original owners of the artifacts were then to decide where their possessions were to be held.

Despite the early ban that disallowed potlatches and totem poles, photographer Edward Curtis commissioned ten new totem poles for his film, "In the Land of the Headhunters" (1914) in which he showed the life of the Kwakiutl tribe. He believed that "of all the coast dwellers, the Kwakiutl tribes were one of the most important groups, and, at the present time, theirs are the only villages where primitive life can still be observed."<sup>17</sup> Aligned to the early continental globalization forces through subsidies by railroad magnate J. P. Morgan and distribution networks that aspired to High Art, Curtis's public was establishment America which included Rockefeller and the industrialists.

In Alert Bay's U'mista Cultural Centre a display of Curtis's photographs repatriates family members.<sup>18</sup> This new framework of embodied objectivity accommodates

these photographs into Kwakwaka'wakw community and history through a strategic essentialism.

Roland Barthes' argument in his essay, "The Death of the Author" demonstrated that an author is a socially and historically constructed subject that does not exist prior to or outside of language.<sup>19</sup> The "death of the author" concept also applies to photographic production which uses a language of body idioms that exists prior to the photographic act and is a negotiation between subject and photographer. Photography conveys what Fabian describes as "a personally situated process of knowing" within a constructed dialogue between photographer and subject. In Canadian copyright law the person photographed and the photographer must both give their permissions for the photograph to be used beyond a personal use. Thus the negotiation and written agreement between the photographer and the subject is recognized as a legal contract with any limitations agreed upon by either side and is, in effect, a partnership.

A rapid post Civil War migration in the States threatened indigenous cultures and in 1884 made E. B. Tylor, call for the British Association for the Advancement of Science to initiate an intensive effort to record what was disappearing. Tyler's classical technical and anthropological definition of culture dominated anthropology for thirty years and produced a need for salvage which according to anthropologist Jacob Gruber produced "a kind of myopia whose distortion accelerated the process of an empirically based observational, item oriented, theory-safe anthropology."<sup>20</sup> Salvage anthropology investigated socio-cultural systems in advanced stages of destruction, and like modern medicine, focused on the abnormal which set the standards of investigation. From its origins as an entertaining novelty, colonial photography soon rooted in Western frames of reference and masculine subjectivity, but it also retained the other partner's references to home, community and living culture.<sup>21</sup>

In early films about American indigenous cultures, such as E.S. Curtis's "In the Land of the Head Hunters" (1914) and Robert Flaherty's "Nanook of the North" (1922), an effort to recreate an earlier "pre-contact" period was characteristic and, in the case of Curtis, included the reconstruction of costumes and settings for the film.<sup>22</sup> Discourse analysis has made us sensitive to "issues of power and perspective, questions of how authoritative knowledge is legitimated, of self-awareness and authenticity of voice in the presentation of data, and of the constraints of the historical and cultural contexts within which knowledge develops."<sup>23</sup>

Alice Beck Kehoe describes a Third Space in the early transformations of culture: “From a First Nations’ perspective, the Blackfoot adopted substitutes for their principal economic resource, the bison, and accepted opportunities to learn English reading, and other means of dealing with the conquerors. To call these strategies ‘acculturation’—that is moving *toward* Western culture—misses the essential point that indigenous people were struggling to retain as much of their heritage as possible under the much altered circumstances of the reservation.”<sup>24</sup>

If we examine some of the portraits we will have a better understanding of the performance dialogue between photographer and subject. In this relationship the photograph is a mutual negotiation between the subject and the photographer. As Pollard was directed by the chief to set up in a tipi next to his, the photographer’s tipi position also signifies a formal and hierarchical relation in the community, if not an integration as Pollard uses their tipi and not a military tent. Revered as an honorary chief of the Blackfoot, Pollard had unparalleled access to document ubiquitous and ceremonial events and domestic spaces from this tipi. Though Pollard’s and Curtis’s Native subjects may not have understood the photographers’ artistic purposes, they actively interpellated the original photographic forms with traditional knowledge and values that address their own people. Photographs thus hold traditional storytelling practices and knowledges in suspension for future generations to assimilate through observation. The picture construction therefore is not only a dialogue between the photographer and subject in anticipation of a fourth wall for a public. The purposes of the picture production are organized differently in the consciousnesses of the photographer and the subject and mutually through their collaborative act. The pictorialist emphasizes emotion, composition and artistic effects whereas the subject uses the social occasion as an expression of individuality, competence in the community, and performance of culture.

If we were to apply the dramaturgical model of Erving Goffman, a symbolic interactionist, and do a qualitative analysis we would discover a performance relationship between the photographer and the subject, in which interaction is shaped by body movements and such physical aspects constituted by the subject and the photographer with camera, tripod and tipi. The portrait sitter must match the competence of the photographer’s performance in order to achieve a positive result. The sitter’s expression even reflects the competent performance of this collaboration.

Pollard’s portrait of Big Belly (*Big Belly Sarci Chief*: 58) in front of a tipi is one of many photographs taken during one of Pollard’s photographic studies with his Bosche and

Lombart lens. Documenting life at traditional ceremonial camps from 1904 to 1916, Pollard’s work is possibly the most complete record of a native spiritual and resistance movement to exist. (He also collected photography on ceremonial camps from his predecessors.)

Big Belly proudly displays the treaty medals and the clothing from Article 6, Treaty Number 7. The clothing was a negotiated treaty benefit that provided every chief one set of European style (or white man) clothes. The full outfit was a brass buttoned coat, side-striped trousers and plug-hat. A portrait of a chief wearing the Queen’s Medal is a display of strong faith in the great “White Mother.” The wearing of the full outfit at a ceremonial camp, however, is a contradiction of assimilation, if not more clearly a disidentification with the colonizer’s apparel. As an item that the Sarci listed in a treaty negotiation with the Queen, the clothing also represents an assimilationist policy which was a desirable outcome for the Canadian government. The act of wearing it at a Sundance ceremonial camp, however, will not make Big Belly with his waist long braids pass for a white man. In fact, the complete presentation of the self is not only for Pollard, the photographer, but also for the little girl at the left side of the frame for whom this enactment is a performance of disidentification. Not only are the clothes and medals a symbol of assimilation, in the context of this historical camp, they are an appropriation from the colonizer and as a mimicry and theatrical dress up take on a new political meaning. They are not simply the Queen’s clothes.

With his profile clearly presented to the camera, Big Belly’s gaze to the side places him in a spatial relationship to the land as one who surveys and commands the space. It is a symbolic and alteric representation. The relaxed facial expression and body position show comfort and active participation in the portrait making process. Pollard’s gaze follows ordinary details from everyday life and the First Peoples resolve to make their culture survive—a defining difference from other contemporary photographers.

Old narratives recirculate a hundred years later and Pollard’s Big Belly portrait resonates again in Loretta Todd’s poster for “Kainayssini Imanistaisiwa.” It presents a man with waist length braids wearing an outfit similar to the clothing from Article 6, Treaty Number 7. The man is in profile and wearing a European hat with a smaller brim. He also surveys the land, possibly even the site of a ceremonial camp where much of Todd’s film was shot. He wears fashionable sunglasses and holds a black and white sun umbrella, more portable than the tipi: both items are products of industrialism and signifiers of leisure and recreational pursuits. The poster presents digitized clouds

and a paint box yellow fabricated sun. Like in Big Belly's portrait the Queen's white man clothes in this poster are not simply retro fashion. Nostalgia and disidentification coexist in precarious balance. The viewer of the poster looks up at our idol like the girl in the Big Belly portrait. These works are pierced by the traditional storytelling forms of their Native subjects in a referentiality to a Native continuum of history by location, place and positionality. The message is clear that "the people go on" which is the second part of Todd's film's title.

In the recent film "Atanajuarat" striking differences mark a disidentification with earlier salvage photography efforts. First, the company's narratives are directed at telling historical stories rich with traditional knowledge to the Igloodik community of Inuktitut speakers using physical action and traditional storytelling forms like songs, games and improvisation. The rest of the world is reached as a secondary audience through sub-titles and music. These productions have enabled an older generation to pass on life skills like building an igloo, food preparation or traditional courtship practices and only came to life after Kunuk sold a carving and returned home with a video camera some years ago.

In an earlier Kunuk film, "Qaggiq" (1989) a marriage is informally arranged between the families of an ageing bachelor and a child bride. Though this practice seems antiquated, audiences are entertained by age old customs that frame a romantic comedy. Cultural retrieval work enacts a pre-contact virtual world as a spectacle for contemporary audiences and the production crew faces new challenges and must acquire skills like running a dog team. Actors either develop a taste or learn to fake pleasure in eating raw animal flesh. Similarly to the earlier films where ethnographic authority and the power to designate authenticity rested with the filmmaker, the camera is an invisible observer in an understated role as participant in the cinematic spectacle. The indigenous community, however, still gets represented as essentialized, universalized, "traditional" and, possibly even, "rapidly vanishing"—but not under the colonizing influence of empire builders.

Within a process of addressing a racist discourse which they seek to subvert, the filmmakers paradoxically use a very similar race discourse to their predecessors. However, a form of "artificial respiration" which breathes new life into old situations is an aesthetic strategy at work in "Atanajuarat." This term, used by cultural theorist Munoz in reference to gay parody, has an entirely different inter-sectional value when applied to indigenous communities' own recovery work. When a subject is marked as a racialized minority, they must develop a strategic response to

their misrepresentation within dominant culture. "Disidentification is meant to be descriptive of the survival strategies the minority subject practices in order to negotiate a phobic majoritarian public sphere that continuously elides or punishes the existence of subjects who do not conform to the phantasm of normative citizenship."<sup>25</sup> A postcolonial work articulates "a practice of suturing different lives, of reanimating, through repetition with a difference, a lost country or moment that is relished and loved."<sup>26</sup>

Earlier ethnographic authenticity was located in an imagined pre-modern society that existed in contrast to the felt inauthenticity of contemporary indigenous culture within which the filmmaker was working.<sup>27</sup> Marius Barbeau (an ethnologist at the National Museum of Canada in Ottawa) and Ernest MacMillan (principal of the Toronto Conservatory of Music) recorded with camera and phonograph "the vanishing culture, rites and songs and dances of the Indians along the Canadian Pacific Coast" among the Nisga'a of the Nass River in the 1928 film "Saving the Sagas." Their recordings anticipated and naturalized the loss of traditional knowledges while paradoxically recording what existed and there was little evidence that their documents involved retrieval methodologies of any magnitude.

Blackfoot and Blood peoples, like other Native peoples, appropriated the moment of photographic collaboration with Curtis and Pollard into a continuum of their own historical narrative, particularly on ceremonial and reserve land. Loretta Todd's film, "Kainayssini Imanistaisiwa" shifts the terms of memorialization of these photographs and reconfigures them into a competing interpretive framework. Todd's early experiences infiltrated her films with a Native consciousness: "You have to remember that when you grow up Native, you grow up with constant inspection- checking your hair for lice, welfare workers looking in on you, the dentist yanking your teeth out. It feels like you are constantly peered at, interrogated, under surveillance. I was conscious of wanting to deconstruct that, and camera movements were a way to do that. For some reason, the moving camera allowed me to have a stronger sense of my own point of view."<sup>28</sup>

The notion of vanishing culture may still be evident. Provocatively, however, the interviewees in "Kainayssini Imanistaisiwa" consider an immortality of life: that their present life is the very same life lived two hundred years ago. Land, memory and knowledge through a re-use of the colonial photographs are breathed new life. Pollard's photographs in the Todd film, are a re-appropriation and

recontextualize, refract and re-presence an architecture of national identity.<sup>29</sup>

Todd's documentary revisits the Sundance location of Harry Pollard's early documentary photography at the traditional camp of sloping coulees and open sky: the home of the Kainai Blood Indians. Todd's disidentification, however, begins inside the dominant culture, as in the infrastructure of the National Film Board of Canada, using established documentary techniques, while at the same time critiquing these forms she addresses at each new reading. Guided by a strong sense of duty to community she draws on her own experiences: "I thought of myself as being a means to give voice to the Native community. Because I was from somewhere else, was Cree and Métis from Alberta, and now living on the West Coast, I was conscious of being in someone else's territory, and in someone else's culture. I think my filmmaking allowed me to really respect that—the camera helped me negotiate the relationship between myself, this other territory, and these other Native cultures.... I began to recognize my internal voice, my intimate voice, my personal voice.... By speaking for myself, I'm engaging in an act of transformation and liberation."<sup>30</sup> It is a strategy for intervening in the public sphere that resists both assimilation with the status quo and an imagined counter-identification.

The Native belief in cultural renewal is the reason for the return of artifacts from distant museums. Collected by colonial travelers sometimes entrusted because of expectations that white society would be part of First Nations' cultures, these sacred objects occupy a Third Space in the historical narrative and exist in a disidentification with the teleological museum project. Todd's lyrical projection of the First Nations ancestor portraits on white flags that wave and ripple over the lush prairie grass are also a disidentification: though powerfully evocative of peace, memory and cultural renewal.

Though the photographs conform to European aesthetics, Todd places them in recognizable Blackfoot land to tell a story differently and to de-colonize a modernist framework of galleries, museums or institutions of higher learning. Early treaties are known for their inadequacies in British Parliament procedure and Canadian courts have not been effective in recognizing their status.<sup>31</sup> Where "Indian title" in many cases was in the past admitted, often no actual historical agreement exists as to what it actually entailed. As cross-cultural collaborations these photographs and cinematic stories thus offer a new resource and perspective to Third Space negotiations.

## Notes

- 1 Bhabha, Homi. 1994. *The Location of Culture*. New York: Routledge.
- 2 Tylor, E. B. 1881. *Anthropolgy*. Edward Burnett Tylor authored *Researches into the Early History of Mankind* (1865) and *Primitive Culture* (1871) in roughly the interval between Darwin's *Origin of Species* (1859) and *Descent of Man*.
- 3 Fabian, Johannes. 1983. *Time and the Other: How Anthropology makes its object*. New York: Columbia University Press. P. 106.
- 4 Spivak, Gayatri. 1988. "Can the Subaltern Speak?" In *Marxism and the interpretation of Culture*. Edited by Cary Nelson and Larry Grossberg. Chicago: University of Illinois Press. P. 271-313. "Strategic essentialism" is like role-playing: briefly inhabiting the criminal mind in order to understand what makes it tick. The Subaltern Studies group, for example, succeeds in unraveling official Indian history by particularizing its narrative: "a strategic use of positivist essentialism in a scrupulously visible political interest." See also Landry, Donna and Gerald MacLean, eds. 1996. *The Spivak Reader*. New York and London: Routledge. P. 214.
- 5 Mirzoeff, Nicholas. 1991. *An Introduction to Visual Culture*. New York: Routledge. P. 131.
- 6 Firmstone, Joy. 1975. *Harry Pollard: Chief Little Picture Man*. Unpublished paper: Provincial Archives of Alberta, 14 April.
- 7 Barthes, Roland. 1981. *Camera Lucida: Reflections on Photography*. New York: Hill and Wang.
- 8 Harries, Patrick. n.d. *Photography and the rise of anthropology Henri-Alexandre Junod and the Thonga of Mozambique and South Africa*. University of Cape Town: Iziko Museums of Capetown, South African Museum, <http://www.museums.org.za/sam/conf/enc/harries.htm>.
- 9 McMaster, Gerald. 1998. *Reservation X: The Power of Place in Aboriginal Contemporary Art*. Hull: Goose Lane Editions/Canadian Museum of Civilization. P. 19.
- 10 Waugh, Thomas. 1990-1. "Words of Command: Notes on Cultural and Political Inflections of Direct Cinema in Indian Independent Documentary." *Cineaction* 23(winter):36.
- 11 Munoz, Jose Esteban. 1999. *Disidentifications: Queers of Color and the Performance of Politics*. Cultural Studies of the Americas, vol. 2. Minneapolis: University of Minnesota Press. P. 11-12.
- 12 Wilkins, Roger. 1993. "White Out." *Mother Jones: Back-talk* Nov./Dec.

- 13 Clifford, James. 1988. *On Collecting Art and Culture. The Predicament of Culture*. Cambridge, MA: Harvard University Press. P. 222-225.
- 14 Foucault, Michel. 1989. *Foucault live (interviews, 1966-84)*. New York: Semiotext(e). P. 193.
- 15 Lidchi, Henrietta. 1997. "The Poetry and Politics of Museum Display." In *Representation*. Edited by Stuart Hall. London: Sage.
- 16 "U'mista." <http://www.umista.org/umista/umista.asp>.
- 17 Clifford, James. 1991. "Four Northwest Coast Museums." In *Exhibiting Cultures*. Edited by Ivan Karp. Washington D.C.: Smithsonian Institution Press.
- 18 Ibid.
- 19 Barthes, Roland. 1977. "The Death of the Author." *Image, Music, Text*. Translated by Stephen Heath. New York, NY: Hill & Wang.
- 20 Gruber, Jacob W. 1959. "Ethnographic salvage and the shaping of anthropology." <http://www.aaanet.org/gad/history/033gruber.pdf>. P. 7. (Originally published in *American Anthropologist* 61(1959):379-389.
- 21 Gordon, Deborah. 1988. "Writing Culture, Writing Feminism: The Poetics and Politics of Experimental Ethnography." *Inscriptions* 3: 7 -24.
- 22 "Frontier Photographer: Edward S. Curtis." Smithsonian Institution Libraries, <http://www.sil.si.edu/Exhibitions/Curtis/curtis-play-3.htm>. Curtis wrote and directed the film "In the Land of the Headhunters" to raise money for his North American Indian Project. Primarily an ethnographic work about Kwakiutl Indians, the film was similar to Nanook of the North (1922) in its use of a plot. The film was only shown once and Curtis never recovered money for the distributors.
- 23 Rubinstein, Robert A. 1991. "Introduction." *Fieldwork: The Correspondence of Robert Redfield & Sol Tax*. Boulder, CO: Westview Press.
- 24 Kehoe, Alice Beck. 1996. "Transcribing Insima, a Blackfoot 'Old Lady'." In *Reading Beyond Words: Contexts for Native History*. Edited by Jennifer S.H. Brown and Vibert, Elizabeth. Peterborough: Broadview Press Ltd. P. 386—37.
- 25 Munoz 1999:4.
- 26 Ibid. 128.
- 27 Jessup, Lynda. 1999. "Tin Cans and Machinery: Saving the Sagas and Other Stuff." *Visual Anthropology* 12:49—86.
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PART VI

SOCIETAL DEVELOPMENTS

Immigrant Settlement, Social Policy, Health Care, Abortion, Child Care,  
Youth Participation, Union Membership, and Urban Re-Development



# *Transnational Refugee and Immigrant Networks at the Canadian–U.S. Borderland\**

Susan W. Hardwick

## Introduction

Perhaps no moment in history has been this critical for research on refugee issues. With more than 25 million displaced people in the world in 2004, studies on the migration pathways, re-settlement patterns, adaptation and transnational relationships of refugees flows have become ever more salient topics for scholars in a variety of disciplines in recent years.

The idea for this paper first took shape in the mid 1990s during an interview in Sacramento, California with a post-Soviet-era Ukrainian refugee from Vernon, British Columbia. He was visiting the local Russian Baptist church, he told me during this interview, because his new émigré community in Canada was still too small to have its own place of worship. More than a decade later in early September 2004, I was surprised to discover (while doing fieldwork for this paper), a rural elementary school in a tiny hamlet in northwest Washington state with between 60-70 cars with British Columbia license plates parked outside on a Sunday morning. On-site interviews revealed that the school, located on a country road east of Bellingham at the edge of the remote Cascade Ranges just a few miles south of the Canadian border, is currently being used as a church by the more than 800 Russian and Ukrainians who now reside on both sides of the Canadian-U.S. border in towns like Abbotsford, B.C. and Kendall, WA.

In this paper, I focus on a small part of a much larger long-term multi-method project on refugee settlement, survival, and social networks in the Pacific Northwest.

According to the 2000 census, Washington and Oregon now rank as the top two states in the U.S. for post-Soviet Russian and Ukrainian migrants. Unlike earlier migration flows into western North America from Russia and the Soviet Union that were dominated by Jewish, Orthodox, Old Believer, and Doukhorbor groups, the majority of today's recent refugees are primarily Baptist, Pentecostal and Seventh Day Adventist. These ethno-religious newcomers to the region are defined as much by their religious belief systems as by their place of origin. All are classified as 'refugees' by the U.S. and Canadian government according to Geneva Convention definitions as someone who is persecuted in his or her homeland because of their race, religion, nationality or membership in a particular social group.

Other 'non refugee status' migrants from the Russian Federation and Ukraine have also relocated to the Pacific Northwest in smaller numbers in the post cold war years. These more urban, and often more educated, professional class arrivals have been admitted into the U.S. and Canada under each nation's similar family reunification policies or, in Canada, as 'business class migrants' either as 'entrepreneurial class' or 'investor class' immigrants (Dimitrov 1995:2; CIC 2002).<sup>1</sup> Because the latter two groups have settled in the study area this paper focuses on much smaller numbers than the religious refugee groups, and because their migration and settlement stories are usually quite different from the experiences of other Russians and

Ukrainian refugees, I am focusing only on the migration, settlement and adjustment experiences of this much larger fundamentalist group. Temporally, I focus exclusively on post-Soviet arrivals. Thus, this paper also does not include an analysis of any of the earlier groups of Russians and Ukrainians in the region such as the Doukhobors who settled in the Fraser Valley and Vancouver Island in the early decades of the twentieth century, Russian Orthodox and Jewish groups who settled primarily in Vancouver, Seattle, and Portland between the 1880s and the 1920s and after World War II, and rural Russian and Ukrainian settlers in places like the Palouse and the Okanagan Valley because their migration and settlement have been adequately documented and analyzed elsewhere (see, for example, Rak 2004; Hardwick 1993; Bondaref 1975; Holt 1964). My decision to constrain this analysis to this more narrow spatial and temporal story also grows out of Sherrell and Hyndman's recent cogent reminder that the transnational experience is dramatically different for refugees than it is for immigrants since "the uncertain status of the ... region of origin ... shapes transnational relations as well as [their] settlement and integration" (Sherrell and Hyndman 2004:2). To provide additional support for the decision to limit this study only to Russian and Ukrainian refugees in the Pacific Northwest, these geographers further argue that "in employing the term 'refugee transnationalism,' we recognize that competing discourses are embedded within the concept. 'Refugee' is a political and legal category framed by 'international' discourse focused on the relation of nation-states to one another.... The idea of 'refugee transnationalism,' however, reframes the category 'refugee' as simultaneously embedded within both the country of origin and the host society to consider ways in which refugees develop identities and form ongoing relationships" (Sherrell and Hyndman 2004:5).

### Research Questions

The overarching theoretical aim in this paper is to build on prior work on migration, transnationalism, and on social network theory to help unravel some of the culturally specific practices unique to particular groups of migrants resettling in different locales. The importance of place, space, and time play especially visible roles in my argument. In addition, because the decisions, identities, and relationships of Russian and Ukrainian refugees in the Pacific Northwest may not be bounded by the constraints of a single nation-state, transnational theory also plays a critical role in my analysis. This triad of migration, social networks, and transnationalism are related and import-

ant dimensions in making sense out of the long list of metaphors used to describe transnational connections by other scholars.

This analysis of the socio-spatial experiences and patterns of two related groups of refugees in the Canadian and American northwest is guided by three overarching questions:

1. How do social and religious networks at a variety of scales (ranging from local to transnational) shape and reshape the migration decisions and settlement patterns of Russian and Ukrainian refugees in western British Columbia, Washington, and Oregon?
2. Do transnational networks play a role in migrants' pre-departure decision-making? If so, how do they function and what processes encourage their maintenance after re-settlement in North America?
3. What social processes contribute to the formation and ongoing evolution of deterritorialized refugee identities across political borders?

A set of overlapping answers to each of these inter-related questions is presented here, with an emphasis on the impact of local-to-transnational religious networks on the spatial patterns and related social processes of refugees living in a linear region located on the western edge of the Pacific Northwest in towns and cities located along or near the I-5 corridor.

### Situating Post-Soviet Russians and Ukrainians: The Temporal and Spatial Context

The Canadian and American Northwest has a long history of Russian and Ukrainian settlement. In British Columbia, in particular, large groups of other religious sects from Russia, such as the Doukhobors mentioned above, made their homes in remote parts of the province beginning in the early years of the twentieth century. Known more by the general public in Canada by sensationalist media images that marked them as religious fanatics, nude protestors, and anarchists, these earlier arrivals from Russia first came to Western Canada with plans for peaceful communal living and the desire to pass on their traditional beliefs to their children in the rural farmlands of eastern British Columbia. A map of 'Russian ethnicity' created from data contained in the 2001 *Census of Canada* documents the persistence of the Russian identity of this group more than a century after their first settlement in the area.

This map also provides evidence of the lingering presence of Ukrainians in other parts of British Columbia, such as the fertile Okanagan Valley where their ancestors established farms and homesteads in the late nineteenth and early twentieth centuries. Historic Ukrainian churches in Vernon and other settlements in that part of British Columbia provide additional reminders of the early presence of diverse groups of pre-Soviet era Slavic migrants in western Canada.

Likewise, but in much smaller numbers, other groups of Russian and Ukrainian immigrants made their homes in Washington and Oregon beginning in the late 1880s. Most of these early arrivals were Russian Orthodox or Jewish migrants who favored more urban places such as Seattle and Portland. Like the Ukrainian church in Vernon, BC, the beautiful domes of St. Spiridon's Russian Orthodox Church in downtown Seattle stands today as a reminder of the long and enduring history of migration and settlement of these earlier immigrants in the region.

As this paper illustrates, the post-Soviet era has seen a dramatic resurgence of migration flows of Russians and Ukrainians into the region. Most of these approximately 60,000 new residents of the Portland metropolitan area and the more than 100,000 new foreign-born Ukrainians and Russians reside in cities and towns located along Washington's I-5 corridor from small cities south of Seattle, such as Kent, north to Bellingham. These recent arrivals are one part of a much larger flow into other parts of these two states in the U.S. that includes cities and towns like Spokane, Colville, and Pasko in Washington, and Salem, Woodburn, and Eugene in the Willamette Valley, in Oregon. Unlike British Columbia, the dramatic increase of newcomers born in the former USSR now outnumbers increases in Vietnamese, Chinese, Asian Indians and all other Asian groups (*U.S. Census of Population* 1990, 2000) in these two states. The reasons for this unexpected migration stream are found primarily in the host of religious and social networks linking migrants still residing in their Slavic homeland with sponsors and church congregations in host communities in the Pacific Northwest.

### ***Post-Soviet Migration Patterns and Processes***

The majority of immigrants from the former USSR who relocated to the Pacific Northwest during the past decade and a half came for political and religious reasons. The earliest arrivals came in the late 1980s because of Soviet President Mikhail Gorbachev's decision in 1988 to permit certain religious minorities in the USSR to leave their homeland for the first time since the end of the Russian

Revolution (See Hardwick 2003, 2002, 1993). Chief among these groups were Jews and evangelical Christians. During the final years of the Soviet Union in the late 1980s and immediately following the break up of the USSR in the early 1990s, emigration began in earnest. Jewish refugees from the former Soviet Union most often relocated to Israel, Germany, and France or to Toronto, New York, Chicago, the San Francisco Bay Area, and Los Angeles.

Comparatively, the majority of Protestant fundamentalist refugees relocated, first to Sacramento and other small cities in California's Central Valley and, by the mid 1990s, in large numbers to Oregon and Washington and in smaller numbers to British Columbia (see Hardwick 2002, 1993). Most made the decision to settle on the West Coast of the U.S. because of the active involvement of sponsors from church congregations in the region. Ultimately, the majority were encouraged to seek sponsors and emigrate to North America by their exposure to Russian-language radio broadcasts and church newsletters sent to Ukraine and the Russian Federation by West Coast evangelical groups such as Sacramento's *Word to Russia*.

From evidence gathered through structured and unstructured interviews, focus groups, participant observation and responses from Russian language survey questionnaires, I established that these refugees chose to relocate in Washington, Oregon, and British Columbia because of their ongoing participation in evangelical religious networks. Religious ties and the social structures they encourage lead many to settle in the same neighborhoods as co-religionists from home (Libov interview 2002; Holmes interview 2004)

In support of the critical role of these religious networks in refugee resettlement decision-making and adjustment are a host of other political, educational, and social networks operating on both sides of the Canadian-U.S. border. These include political networks such as the Mosaic immigrant and refugee support center in Vancouver (Holmes interview 2004) and the Immigrant and Refugee Community Organization in Portland (Libov interviews 2002-2004), as well as social, educational, and economic connections discussed in the following section of the paper.

### ***Local-to-Global Transnational Networks at the Borderlands***

*Transnationalism* ... is not simply a theoretical perspective, but a nexus of social and material relationships which blur the centrality of borders. (Hyndman and Walton-Roberts 2000:24).

Since the earliest years of Russian and Ukrainian settlement in the Pacific Northwest, U.S.-Canadian cross-border networks and interconnections have persevered. In the past, as today, people, goods, capital, and ideas regularly flow back and forth across the border. This international border, then, like so many other borders in the world, is thus a fluid and increasingly stateless zone of contact and connectedness as a Cascadia *translocal* for refugees and their belief systems.<sup>2</sup> But how can these ongoing transnational connections and relationships be theorized to help place them in a larger context and answer larger questions? This overarching question forms the gist and goal of this section of my paper.

During the past decade and a half, in a variety of disciplines and contexts, migration theorists have been engaged in an ongoing debate about ways best to understand and analyze a world in motion brought on by the drama of migration. Some say that political borders are now permeable sites of flexible and hybrid migrant identities (see, for example Bailey, et al. 2002). Others suggest that, to accommodate and make sense out of this ongoing and often dramatic globalizing process, it is necessary for scholars to come up with a whole new way of conceptualizing and writing about the migration experience. Whether discussing transnationalism and the changing role and relevance of the state (Wright 1997), transnational social fields (Glick Schiller, et al. 1999, 1995), transnational communities (Kearney and Nagenhast 1989); transmigrants (Glick Schiller, et al. 1999, 1995), transnational global ethnoscaples (Appadurai 1991); transnational sojourning and settlement (Scott 2003), methods for studying transnationalism (Hyndman and Walton-Roberts 2000, Goldin 1999, Vertovec 1999), finding new ways to theorize transnational studies (Kivisto 2001), or economic, social, cultural, and symbolic ties, or all of them, between places of origin and new sites of residence (Faist 2000a, 2000b; Hardwick 2003), transnationalism has clearly emerged as the buzzword in migration research in the new millennium.

Because refugee flows today are at the convergence of a series of global processes, transnational relationships and linkages hold particular fascination for students of the refugee experience. For most of the past century, refugees were viewed as unwilling victims who were pushed out of their homeland by circumstances out of their control. In contrast, they are more often viewed today as migrants in search of better political, economic, social, and environmental circumstances, or all of them, ranging from political to economic. According to Sassen: “Policies and conventions among states recognized refugee flows as an

outcome of the actions of other actors—particularly the actions of states. This understanding is increasingly under scrutiny if not attack. Slowly the same imagery prevalent regarding inter-national migration is gaining ascendance: refugees are now often seen as individuals in search of better opportunities in a rich country” (Sassen 1999:1).

Building on the ideas of scholars such as Sassen (1999) and Hyndman and Walton-Roberts (2000), then, it is essential to note that transnational processes happen in distinctive places and at distinctive moments. Like national political borders, space and time still exist. Therefore, the impacts of space, place, and time on migrants must be documented and analyzed to understand how migration processes shape various locales and the refugees and immigrants who live there.

First and foremost, place matters. Migration processes are shaped by the larger context of conditions in the sending country, the characteristics and events that happen during the journey in between, and the economic, political, and cultural context of the receiving society. Of particular note are ways in which the political and other features of distinctive places shape individual and group migration decision-making about destination locales. Although transmigrants are often described in spatially interwoven terms as migrants who live in two worlds at the same time, in order to find ways to survive or even thrive in their new lives, most must make decisions and produce actions at particular times in particular places. Therefore, whereas their past lives may haunt migrants at times (e.g., during periods of civil and military unrest or economic duress at home), most must focus their energies on finding ways to survive and adjust to their new place of residence, especially in the early years. As new arrivals face ongoing decisions and choices each day, it is essential for individuals to search for ways to exist ‘in situ’ in particular places and at particular moments in time.

Of critical importance to the Russian and Ukrainian case study is noting the role that religion plays as a particularly important linking role for some groups of migrants. As established by the Slavic fundamentalist example, ethno-religious connections are maintained and enhanced by collective behavior patterns and a shared identity. Numerous studies have established the powerful ties of the immigrant church on new arrivals and subsequent generations (see, for example Park 1989; Ralston 1992; Hardwick 1991; Tweed 1997). McAlister’s (1998) analysis of the participation of many of New York’s recent Haitian immigrants in a feast day first celebrated by New York City Italians provides a particularly illuminating case

study illustrating the importance of transnational religious ties on immigrant identities.

Prior work connecting the role of religion to the social network and social capital literature also has become increasingly common in recent years (see, for example Cao 1998). Research on religious expressions as a part of ethnic festivals (Hoelscher 1998) and ethnic heritage sites (Graham, Ashworth, and Turnbridge 1999) provide further evidence of the important role of symbolic ethnicity and identity for both recent migrants and those who came to the U.S. in the more distant past.

Scholars also have written extensively about other solidarity-building, intra-community support systems of immigrant groups in North America. Because education and skills from the home country often are devalued in the host society's labor market, and persecution of the 'otherness' of new arrivals is often lingering and pervasive, a solidarity born of adversity arises and may intensify over the years. According to Portes, migrant solidarity possesses two analytically distinguishable elements (1996:256). These are: 1. a common cultural memory brought from the home country and which comprises the customs, mores, and language through which immigrants define themselves, and by what they communicate with others; and 2) an emergent sentiment of 'we-ness' prompted by the experience of being lumped together, defined in derogatory terms and subjected to the same discrimination by the host society. These elements working in combination may transform different groups into cohesive ethnic enclaves in a relatively short period of time. Participation in ethnic organizations, religious rituals, ethnic festivals, and visits to co-ethnic shops and restaurants help consolidate attachments to migrant identity and community. In sum, "the more immigrants' solidarity is grounded in a common cultural memory and the replication of home country institutions ... the greater the density of social networks within these communities" (Portes 1993:258). For that reason, other social scientists have paid more attention to analyzing the processes involved in shaping and reshaping ethnic enclave formation (see, for example Kaplan 1997; Zhou and Logan 1989; Portes and Jensen 1987).

To date, however, most researchers have overlooked the all-important role of networks of ethnicity in maintaining social cohesion in a foreign environment. A notable exception to this omission in the literature is the work of Li (1998) who uses the term 'ethnoburb' to describe and analyze the web of economic and social ethnic connections now common in many suburban neighborhoods dominated by one or more large ethnic groups. These social and economic connections are particularly help-

ful and may even be essential in resource-poor groups who must rely heavily on others from their homeland for support. As groups seek each other out and congregate in a new place they then either remain there or move on depending on the role of social connections in their lives and on boundaries imposed by their race, language skills, and lack of social networks, or all the foregoing, outside the ethnic community.

As an example of the power of social and spiritual bonds, research conducted during this study establishes that the majority of Russian and Ukrainian refugees in the Pacific Northwest are closely connected to others who share their belief systems on both sides of the Canadian-U.S. border and in their homeland. These transnational networks are maintained through close contact between church congregations operating throughout the migration process and all along the migration circuit. For example, Pentecostal, Baptist, and Seventh Day Adventist believers in the Vancouver, Seattle, and Portland metropolitan areas sponsor families who belong to their same faith in Russia and Ukraine. It has become common in the past few years, in fact, for churches in North America to sponsor whole congregations in Russia and Ukraine. Thus, religious ties all along the migration journey connect migrants to their new place of residence and to each other.

In the Russian and Ukrainian case study, then, migration streams and the settlement decisions of migrants are shaped by these shared *networks of ethnicity* (see Mitchell 2000). This type of network is held together by the cohesive influence of religious beliefs and membership in church congregations in pre-departure towns and cities. Well-defined transnational networks are maintained by participants in the system especially by the leaders of local, regional, and international church congregations and missionary organizations. These linkages have resulted in the arrival of large numbers of newcomers who participated either in a primary migration stream directly from Russia and Ukraine or arrived as secondary migrants after living briefly in other states (primarily California) or provinces (primarily Ontario). Sponsors help new arrivals locate and pay for housing near others from their homeland. As a result, residents in the study area of this project often find themselves living in the same apartment building or next door to friends from their hometown (Golovan interview 2004).

Working in tandem with these religious networks are private, non-profit voluntary resettlement agencies. Groups such as the Church World Services, Lutheran Family and Social Services, and United Catholic Conference also help sponsor and resettle migrants. These

agencies may place refugees with sponsoring families or individuals or may sponsor them directly. They also work closely with regional resettlement agencies who help new arrivals master language and employment skills needed to find work in their new place of residence.

Economic Russian and Ukrainian *networks of ethnicity* are also now well established in the Pacific Northwest. For example, there were more than 400 businesses in the Portland area owned by Russian-speaking immigrants. Many are in the construction industry and trades. Recent migrants from the former USSR now own and operate plumbing and electrical businesses and real estate firms and work in social service agencies, school classrooms and medical establishments that serve their compatriots. These economic networks help newcomers accrue social capital and ground their permanency and identity in the region. Services or support are often exchanged from one business owner to another as needs arise. These economic networks, along with the religious and political networks discussed above, work together to maintain ethnic solidarity, identity, and social and religious cohesion in the immigrants' new places of residence.

Regular contact via cell phones, letters, e-mails, and news sent through church newsletters and missionaries also continue to be maintained with family and other co-religionists in Russia, Ukraine, and western North America after resettlement in the Pacific Northwest. Very few of the post-Soviet era migrants who participated in this study have any interest in returning home except as temporary visiting missionaries. Furthermore, no one expressed any desire to remain politically connected to his or her homeland in any way. Interestingly, in a reverse transnational model, because the Baptists, Pentecostal, or Seventh Day Adventist churches with which they are associated were originally American institutions, the transnational circuit operates in reverse for these groups. They made their first connection with the U.S. through spiritual and symbolic bonds as believers in American faiths in their homelands.

For some of the older migrants, these connections were in place for decades prior to departure for the U.S. Therefore, upon arrival in Vancouver and elsewhere in the U.S. and Canada, most of these fundamentalist refugee groups already feel connected to their new place of residence because of these intense and ongoing religious ties to place, to space, and to each other.

My work on transnational networks at the Canadian-U.S. borderlands has established that there are actually two sets of essential networks framing the refugee migration experience. They work in tandem to help perpetuate

migration flows and ease the adjustment experience. First, a set of endogenous ethnic networks operate inside the community. These networks are defined by membership in ethnic, social, political, and economic groups and are particularly important to new arrivals in their first months of settlement in the U.S. and Canada. Second, exogenous networks provide links to outsiders—first through personal contact with personnel working at social service organizations and government resettlement agencies and, later, through connections with students and teachers at educational institutions, support staff at medical facilities, and potential friends among non-ethnic neighbors and others. These overlapping religious, political, and social networks play a critical role in defining the spatial patterns and the adjustment experiences of these new migrants to their new place of residence. Examples of this nodal pattern of settlement are visible on maps of Portland, Oregon; the Puget Sound region of Washington; and Vancouver, British Columbia based on census tract data recorded in the *U.S. Census of Population* (2000) and the 2001 Canadian census.

In sum, a set of interrelated social, cultural, and economic networks, guided and girded by common religious beliefs and common places of origin help ground new Russian and Ukrainian refugees in place and to each other as they adapt to life in the U.S. and Canada. Shared religious beliefs, moral values, and regular participation in church services and religious activities in particular help new Russian and Ukrainian migrants gain opportunities to penetrate the norms of a confusing culture and mediate the challenges of language barriers, employment challenges, and the shock of adjusting to a new cultural system. However, with time, based on the experiences of other groups of new migrants, attachments to religious networks and to each other may not hold firm in the fast-paced multicultural environment of a new place of residence. Like other groups in other places, attachment to ethnic identity and the values and customs brought from home may lessen through time as participation in non-Slavic social networks intensifies over the years.

## Conclusions

Ongoing research on the transnational connections of Russian and Ukrainian refugee groups residing on both sides of the Canadian and U.S. border in other parts of North America is needed to expand upon work completed for this study. Do similar binding religious networks link cities like Vernon with Spokane? Do the regular visits of refugees who now live in Abbotsford with small towns

in rural northwest Washington—and Vancouver Russian and Ukrainian refugees with church activities in places like Bellingham, Seattle, and Bellevue—offer predictions for other Slavic translocalities in places located along the border?

Answers to these and other related questions must be framed within a concern for differences in place, space, and scale. At the local level, neighborhoods located in the inner suburbs of northeast Portland, Seattle suburbs like Bellevue and Kent, and the cluster of new Russians and Ukrainians in places like Burnaby, B.C. are now home to large numbers of foreign-born residents who cluster in apartments and small homes in these outer parts of these metropolitan areas where the cost of living downtown is prohibitive. Many relocate to the outer suburban edge of the city (or move to smaller towns located in close proximity to them) if and when it is economically possible to do so. Based on my longterm prior work with Russian refugees in other parts of the U.S., this process should, in time, disperse refugees to ever more heterolocal residential locations.

But even in these first years of settlement in the U.S., a set of *regional linkages* helps hold Russian-speaking newcomers in Oregon together no matter where they may live. On this larger scale of analysis, migrants united by cohesive religious networks travel from one community to another on interstate highways to shop at ethnic groceries; eat in ethnic restaurants, and attend regional church conferences and retreats, social events, and family gatherings.

At the transnational scale, ethnic networks organized and maintained by religious leaders, newsletters, e-mail lists, radio and television broadcasts, missionaries, and friends and family members play powerful, pivotal roles in migration and settlement decision-making. The vast majority of refugees from the former USSR initially make the decision to emigrate from their homeland because of contact with these religiously defined networks of ethnicity. Likewise, almost all choose to relocate to the suburbs and small towns that surround them because they heard news about these places on radio broadcasts in their homeland or from reading church newsletters or hearing from other prior migrants.

Indeed, in scales ranging from the neighborhood to the community to transnational scales of analysis, participation in various types of networks appear to be integral to maintaining the ongoing flow of migrants from the former USSR into the Canadian and American Northwest. As families and friends who belonged to the same congregation in Russia or Ukraine renew ethnic and cultural ties at social events and religious gatherings held in various com-

munities in the region, a renewed sense of ethnic identity and the freedom to express their Slavic heritage openly is resulting in a set of nested ethno-religious *regional networks* bonded and bounded by common beliefs and places of origin, ongoing relationships with family and friends, and shared memories.

## Notes

- \* A different version of this paper appeared as “The Ties that Bind: Transnational Migrant Networks at the Canadian-U.S. Borderland” in *American Review of Canadian Studies* Volume 35, Number 4, Winter 2005 (<http://www.acsus.org/display.cfm?id=276&Sub=297>).
- 1 For a fascinating analysis of the impact of business class migrants on the Canadian economy and society, see Ley, David. 2003. “Seeking Homo Economicus: The Canadian State and the Strange Story of the Business Immigration Program.” *Annals of the Association of American Geographers* 93(2):426-441.
- 2 These transnational spaces for evolving identities of motion are often located at border zones or within major urban centers that are home to large numbers of new refugees and immigrants. Thus, my focus on linkages between refugees in a linear corridor connecting places from Portland, Oregon to Vancouver, B.C. provides an appropriate point of analysis for transnational linkages. See Hyndman and Walton-Roberts (2000), Sassen (1996), and Appadurai (1996) for further comments on the importance of other *translocalities*.

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# *The Danes in North America: Histories, Identities, and the Meanings of Success*

Rebecca Mancuso

This study examines communities of people of Danish descent in Montréal, Québec, and Solvang, California, and how they have used history in attempts to recreate their Danish identity. I compare and contrast these two communities' struggles with ethnic identity and show how efforts to create history have contributed to a sense of crisis within each.<sup>1</sup> Danes in Montréal and Solvang used the term "identity crisis" to describe what their community was currently experiencing: in Montréal, historical research heightened fears that the community has lost its Danish identity, and in Solvang, a city that was rebuilt as a Danish theme park, there is concern that Danishness is associated with things contrived and gimmicky.

For Danes in North America, ethnic identity has in large part revolved around making choices. Danes benefited from a positive ethnic stereotype that allowed for rapid upward mobility whether they chose to assimilate into their host society or to preserve Danish traditions as they saw them. Nevertheless, the choices these communities have made in the past about how to express ethnicity are now looked upon by some with doubt and concern.

My research has provided opportunities to explore the pluralistic ethnic mosaic and assimilative melting pot ideals of nation-building that are present in both Canada and the United States and how they have played out in the lives of Danish North Americans. As Tamara Palmer Seiler argues, the promotion of mosaic and melting pot concepts may perpetuate tensions in unexpected ways.<sup>2</sup> In

the Danes' case, tension has arisen within communities as they examine their experiences in light of these ideals.

## **The Danish Community of Montréal, Québec**

In 1993, the Danish Canadian Society of Montréal (DCS) decided to lend its financial support to the research and writing of a history of the city's Danish community. Of great concern was that the memories of nonagenarians who had immigrated in the 1920s would be lost with their passing. The DCS also worried that the second and third generations of Danish-Canadians, who tend not to speak Danish or attend community events, might not otherwise learn about the contributions their relatives had made to the city's history. I was hired as project historian and began research in the summer of 1993.

The Danish History Project in Montréal was undertaken in the context of a larger awareness of and appreciation for Canada's cultural diversity. The last twenty-five years have seen a plethora of scholarly monographs, public history projects and popular media explorations of Canada's multicultural heritage. In the 1980s, McClelland and Stewart released its *Generations: A History of Canada's Peoples* series on ethnic groups with support from the Government of Canada's Multiculturalism program and the Canadian Historical Society, also with federal support, commissioned a series of booklets on Canada's ethnic groups that were released over a fifteen-year period. In the 1990s movie-goers and school children were exposed to the Heritage Minutes, video vignettes that included

depictions of the brutally hard work of immigrant railroad builders and farmers. The documentary film series, *A Scattering of Seeds: The Creation of Canada* explores the lives of “unsung immigrants” who “contributed to the building of a nation.”<sup>3</sup> The more recent CBC production *Canada: A People’s History* provides moving accounts of French settlers’ struggles, Irish immigrants perishing on Grosse Ile, and travels of escaped slaves on the Underground Railroad. The message of the “new immigration history” is that the motives, strategies, and daily lives of immigrants are worthy subjects of inquiry and that every study of a group or community adds to an understanding of the totality of Canada.<sup>4</sup>

While these products point out that historical experiences of immigrants have varied considerably according to race, region, and timing of migration, in addition to other factors, a dominant narrative has emerged. Typically, immigrant groups experienced economic hardship and overt discrimination, themes that are heavily underscored in the historiography and videography. These stories often, however, do end on a triumphal note; ethnic groups are presented as nation-builders who have adopted Canadian values while cherishing their ethnic heritage in the face of hardship. Ottawa’s Multiculturalism Program, which has lent financial support to many of these products, describes its purpose as “ensur[ing] that all citizens can keep their identities, can take pride in their ancestry and have a sense of belonging.”<sup>5</sup>

While research for the Danish history project was challenging, most documents from the Danish church, mutual aid organizations and social clubs are in English; therefore, it was possible for an historian with no Danish language skills to undertake it. Research methods consisted of reviewing records from these organizations, examining Montréal’s English language newspapers and Scandinavian community newspapers and ephemera, as well as conducting sixty-nine interviews.

The first sizable influx of Danes to Montréal took place in the 1920s, in part because the flow of immigration was directed away from the United States because of restrictive laws passed in that country in 1921 and 1924. At the same time, Canada’s Department of Immigration and Colonization made an effort to attract Scandinavians, a “desirable” group of migrants, with pamphlets, posters, and newspaper advertisements.<sup>6</sup> Danes were considered “readily assimilable” and, thus, fit the image of the ideal immigrant.<sup>7</sup> Many newcomers were highly skilled men and women, products of Denmark’s superior public education system, who wished to leave behind their country’s high rates of unemployment and inflation.<sup>8</sup> While adjust-

ment difficulties were normally faced by these immigrants in their first years in Montréal, they experienced rapid economic and social mobility. Unlike other immigrant groups such as the Chinese or Italians, Danes did not establish an ethnic enclave with businesses catering to their countrymen; instead, they opened flower shops, a silver smith, bakeries, and restaurants on some of Montréal’s busiest downtown streets. An appreciation for Danish design and craftsmanship ensured a steady middle and upper class English Canadian clientele.

The community, which reached 1,700 Danes by 1929, created several institutions with Danish cultural components. *Den Danske Klub* was a businessman’s club established in 1922 with membership on an invitation only basis. Two popular groups were the Lutheran Danish Ladies Aid and a Danish young people’s club, the *Dansk Luthersk Sammenslutning*, both associated with St. Ansgar’s Danish Lutheran Church. While the Danish church was a focal point of the community, it is notable that it was not established on the initiative of Montréal’s Danes but by a Danish-American synod which appointed a pastor to Montréal in 1926. The church and affiliated groups provided religious and social outlets to locals, as well as services to new immigrants who disembarked in Montréal but planned to continue west. For the most part, newcomers had little need for assistance from the community after their first few weeks in Canada. Originally a mutual aid organization, The Danish Canadian Society of Montréal, *Dansk Canadisk Samfund*, was incorporated in 1935 to help needy families, but since the end of the Great Depression it has primarily served a social function.

The second wave of Danes arrived in the 1950s and early 1960s. This new influx, which reached its peak in 1957 when 7,790 Danes landed in Canada, revived Danish language use and customs in the Montréal community for a time, but as in the 1920s many new immigrants moved on to settle in other provinces.<sup>9</sup> These newcomers were primarily professionals with excellent language and occupational skills who, although proud to be of Danish heritage, integrated with ease into anglophone society.

A Montréal Council of Social Agencies survey of 1968 found 1,271 people in Montréal claiming Danish as their mother tongue.<sup>10</sup> Immigrants to Québec in this period, Danish or otherwise, overwhelmingly adopted the English language. In interviews, Danish immigrants stressed that they were not averse to learning French, but it was evident that acquiring French was not particularly necessary for economic success unless one served a francophone clientele. At a time when religious affiliation was as much a divisive factor as language, the Danes, who were nearly all

Lutheran, placed their children in the English and Protestant school system. One family that attempted to enroll children in a Catholic francophone school near their home was unsuccessful.<sup>11</sup>

The near cessation of Danish immigration to Canada in recent decades has had profound effects on Montréal's Danish community, requiring a change of focus to the needs of the elderly and interests of second and third generation Danish Canadians. As post-industrial Denmark no longer has a surplus population, those few Danes who left their homeland after 1970 did so for personal reasons such as marriage, a desire for travel, or for study. Most recent immigrants reported that their contacts with Danish organizations in Montréal have been positive, but that they did not seek out the Danish Canadian Society upon their arrival in Montréal because they had no need for assistance, and because activities are geared toward the older generation. For the second and third generations, participation in Danish organizations is not high, and any ethnic expression is purely voluntary. They tend to be indistinguishable in Montréal's anglophone society.

What characterized Danish immigrants generally was their inclination to adopt the English language and assimilate quickly into anglophone Montréal.<sup>12</sup> My research showed that Danish-Canadians, especially the immigrant generations, tend to possess a strong sense of community as evidenced by their mutual aid society, their Lutheran church, and by the fact that they commissioned their history. Nevertheless, it was also clear that few Danish cultural practices—folk dances, church services or club meetings in the Danish language—have survived. Of the sixty-nine Danes interviewed for the project, a majority knew some English upon arrival, and many explained that using English was not only necessary for work but was considered appropriate at their time of immigration when one's ethnicity was not emphasized. Indeed, it was fairly typical for Danes to begin speaking English in their homes soon after arrival in Canada, even in cases where the couple had been married in Denmark and had spoken Danish together previously. Furthermore, it was common for them to marry outside their ethnic group; thus, families had (and continue to have) blended household traditions regarding cuisines and holiday celebrations. It was not common for children to grow up speaking Danish.

In 1995 I submitted a significant portion of a written manuscript to the Danish Canadian Society executive board for feedback. The reaction was mixed. Much appreciated were detailed treatments of the lives of several prominent Danes such as Carl Poul Petersen, a silversmith who pursued a successful career in Montréal and worked

on a design of the Stanley Cup. Clearly, Petersen was a star of the community whose lifework confirmed a Danish contribution to Canada's culture and economy. However, the board was concerned that the story of the community as a whole was "not very Danish." There was, the board felt, little in the history to distinguish Danes from the larger anglophone society. Something was missing.

My first concern was that I, as a non-Dane, had not been sensitive to the subtleties of Danish culture in the course of my research. However, additional discussions with board members revealed that there was no missing thread in the story of the community; instead the nub of the issue was their expectation of what an immigrant community's history should be. The DCS was expecting the book to highlight the community's distinctiveness by describing more colorful outward expressions of Danishness. Furthermore, they were disappointed that earlier generations did not have the foresight to preserve the Danish language and traditions. For the first generations of Danes in Canada, in the twenties and post World War II period, success had meant integration, if not assimilation, with the maintenance of some sense of Danish identity. This was unsettling to the Danish-Canadian community of the 1990s, at a time when multiculturalism had become a national value and when preserving cultural difference, not integration, was the mark of success.

As I completed additional chapters of the history, the Montréal community continued to struggle with historical evidence showing that Danes were a welcomed group of immigrants who had faced comparatively little hardship or discrimination. Although few newcomers had money, they did possess social capital: they were white, Protestant, often skilled workers considered to be of superior intelligence with a strong work ethic and solid moral fiber. These attributes, real or imagined, placed them in the category of preferred migrants and opened doors of opportunity for them. As one member of the DCS board put it, she came to realize that no one minds if a Dane moves in next door.

My task then, in addition to writing the book, was to impress upon DCS board members that we were making an important contribution to the historiography, even though the Danes' experience did not conform to the dominant immigration narrative. Together, we worked out a modified approach to presenting the material. As a piece of public history, the book highlights the lives of many individuals facing challenges and adapting to Canadian life while maintaining their strong sense of Danish identity. These personal histories portray Danish immigrants as the nation builders that they were, which satisfied the DCS board and made for interesting reading; however, passages

that discuss trends within the larger community do not invent a “Danishness” according to present conceptions and impose it on the past. Immigrants’ tendencies to use English and open businesses in English neighborhoods are not cast in a negative light in the monograph but are presented in historical context as success strategies.<sup>13</sup>

The concept of multiculturalism and the metaphor of the ethnic mosaic have entered Canada’s national mythology. My discussion here should not be read as a critique of cultural pluralism as a national value in Canada. Multiculturalism, with its assertion that equality is not sameness, will continue to bring immigrant and ethnic groups, especially visible minorities and non-Christian groups, greater social acceptance. Expansive and appealing, multiculturalism provides the sense of having contributed while remaining culturally unique, a fact which resonates with Canadians. Danish Canadians of Montréal wanted to be a shining piece of the mosaic, and although their local history did not turn out as expected, their “piece” is no less valuable or unique. An endeavor initially seen as a somewhat disappointing, the book plays a role in persuading North Americans to acknowledge a comprehensive picture of immigration. For many immigrants the desire for anglo-conformity has been strong, and for those who were permitted to conform, like the Danish immigrants of the 1920s and 1950s, it was a logical choice. The Danes’ story is an important contribution for yielding insight into the kind of society English Canada wished to build in the past, and what it values at present.

If Canada’s current multicultural ideal is one that regards “assimilation or acculturation as a violation of the integrity or dignity of the individual,”<sup>14</sup> then assimilated individuals or communities may experience a lack of self esteem as they embark on the popular activity of searching for their ethnic roots. As a concept of belonging, multiculturalism should not exclude any person or group, but acknowledge the whole variety of experiences.<sup>15</sup> The pressure to reinvent ethnic traditions and practices that a group chose to abandon or were forced to abandon might bring about a new type of conformity to a certain idea of what it means to be ethnic.<sup>16</sup>

### The Community of Solvang, California

A Danish settlement most striking in comparison to the Montréal community is Solvang, California, which has adopted the title “Danish Capital of the USA.” Located approximately 150 miles north of Los Angeles in the Santa Ynez Valley, Solvang, meaning “sunny field,” was settled in 1911 by Danes and Danish Americans, most of whom had

previously lived in the American Midwest. The town has grown to include approximately 5400 inhabitants.

What I present here are some preliminary findings on the dimensions of Danish ethnicity in Solvang and the community’s attitudes, very generally, about the evolution of ethnic expression in the town. My research draws from pieces of local history, newspapers and tourist brochures, and unpublished dissertations. I have also begun collecting oral history interview material from multiple generations of Danish Americans in Solvang. Unlike the Montréal project, I have not sought funding from government sources or Danish organizations for my work on Solvang.

The first 74 adult inhabitants of Solvang established the Atterdag College folk school on the model popularized by N.F.S. Gruntvig, a nineteenth century Danish educator and Lutheran minister. As the term suggests, the folk school or “school for life” for young adults stressed Danish culture and tradition rather than academic subjects and did not offer degrees.<sup>17</sup> The creation of such a school was a major goal of the early settlers who wished to nurture their traditions and draw other people of Danish heritage to their settlement. Townspeople also established Bethania Lutheran Church and Danish-American fraternal organizations. With its distinctly Danish character, Solvang met with no discernable disapproval from a host society that has advanced the assimilationist model of the melting pot.

As in Canada, Danish immigrants to the United States were rarely subjected to social or economic discrimination; instead, with their reputation as stalwart farmers they were encouraged to settle throughout the country. There were almost no barriers to their assimilation into the American mainstream or their economic mobility. According to researcher Paul Harris Pedersen, Solvang’s institutions had their roots in Danish culture, but by the 1920s the town was already becoming Americanized. Danish was spoken at church services and by many settlers, but the benefits of using English were increasingly clear, especially as greater numbers of non-Danes swelled the population of the town. By the late 1930s, the Danish folk school was closed except for a short summer session, and the church had begun offering English services.<sup>18</sup> However, rather than allowing the entire town to continue down this path unchecked, inhabitants made several choices about the uses of ethnicity.

For the Solvang community, the catalyst for the decision to emphasize its Danish heritage was the publication of a 1947 *Saturday Evening Post* article featuring the town. The romanticized piece described Solvang as a “picturesque,” “trim,” and “spotless Danish village” where “old country charm and customs have been successfully fused

with the American way of life.<sup>19</sup> California was the fertile ground for Danish piety and industry to take root. Both mosaic and melting pot concepts were in evidence in the article, as the author presented American and Danish customs and values as perfectly compatible in this town that contained the best of both worlds. The village children, who possessed “unusual” artistic and intellectual ability, learned both English and Danish. The town was praised for its efforts during World War II when its young men fought in American regiments while the townspeople supported occupied Denmark’s resistance to the Nazis.<sup>20</sup>

The national attention Solvang received as a result of the article encouraged community boosters to make the most of their Danishness. A number of citizens, mainly businessmen who recognized a good opportunity, set about reconstructing the town in an identifiably traditional Danish style with windmills, wooden storefronts and thatched roofs, fountains, and “sidewalks [that] are like cobblestones, adding to old world charm.”<sup>21</sup> Ironically, the purpose of the town’s modernization drive was to recreate an old-fashioned atmosphere, and to do this the town needed significant changes in lighting, streets and sanitation, and other public services.<sup>22</sup> Over the next several decades, the trend continued as Danish styling was bestowed upon items from phone booths to trash dumpsters,<sup>23</sup> and streets were given new names such as Copenhagen Drive and Tivoli Square. Other attractions included a Danish heritage museum and Hans Christian Andersen museum. Thus, tourism became the major industry in Solvang, and continues to be in the present day.

In 1970, the original Atterdag College building, closed and in disrepair since the 1950s, was demolished to make room for an old age home. Some townspeople reasoned that the 1914 landmark had been thoughtlessly destroyed to accommodate modern needs, and was just one more casualty in the town’s transition from an “authentic” Danish-American place to one of contrived Danishness. Five years earlier, a journalist visiting Solvang from Denmark had dealt a blow to the community’s pride when he stated that the town had perhaps gone so far as to become “too Danish” with its Hollywood-style Danish culture, on display mainly for the benefit of tourists.<sup>24</sup> Like the Danes in Montréal, Solvang sought to create an imagined history in some respects. Solvang is certainly a unique and colorful tourist destination that values its history and identity, but the current community still wrestles with whether the town’s Danish identity is one of substance or only a façade. Current inhabitants express concern that the town has lost its soul to glitz and a desire for tourist revenues.<sup>25</sup> We are now in an era when expressions of ethnicity

have commercial value; the money to be gained through federal grants or tourism is a new measure of success.

## Conclusions

The experiences of the two communities described here run counter to immigration myths in their respective nations in many ways, and each has expressed unease with success strategies adopted by its forebears. This study speaks to the powerful hold these myths maintain over ethnic communities, especially in the Montréal case. “Melting pot” and “mosaic” are rarely useful generalizations for contrasting real immigrant experiences in the United States and Canada. Instead, these terms should be viewed as ideals present in both nations that help or hinder certain ethnic groups at various times. Danish communities over time have gravitated between mosaic and melting pot ideologies precisely because they could do so, using one or the other to fit changing needs and identities. Danes were never regarded as a threat to their host societies in North America. That has given them an atavistic ethnicity that other immigrant groups, especially those of color, have lacked. In Canada Danes had the choice to assimilate when being ethnic was not desirable and at other times have emphasized their Danishness when multiculturalism gained approval. In the U.S., despite the popular notion of a melting pot to describe the immigrant experience, Danish-Americans were permitted to preserve their cultural traditions and later generations to accentuate them. Nevertheless, Danes have at times felt pressure to conform as values of the host society have changed, and each community has internalized the message that there is an “authentic” way to be ethnic.

In both cases, the communities have retained a strong sense of Danish identity, but feel they have made less than optimal choices to protect “authentic” Danish customs, leading to a sense of crisis. Both communities grasp for a purer, unambiguous past, and historians appear to have added to the identity crises of these subject communities, which have adopted depreciatory images of themselves as “not Danish enough” or “too Danish.”<sup>26</sup> Unfortunately, in North America, we have not moved beyond the concept of ethnicity as problem; I have shown that as a label, ethnicity can still diminish self-esteem in unanticipated ways. My aim is to represent accurately change and continuity in these communities and express the view to community members that I do not judge current expressions of Danishness in Montréal or Solvang to be any less authentic than practices of the past. Through my work I hope to empower generations of what we call ethnic peoples to

decide what it means to be ethnic, or whether to be so at all, and to value their decision.

## Notes

- 1 Joanna Anneke Rummens defines identity as “the distinctive character belonging to any given individual, or shared by all members of a particular social category or group.” An ethnic groups looks for the extent of “sameness or oneness with others [in the group] with respect to ... particular characteristic[s]” Rummens. 2004. “Overlapping and Intersecting Identities.” *Canadian Diversity* 3 (1, winter):6. It is helpful to view identity, as I do in this paper, as not only relational in nature, but contextual (in the home, at work, in a community) and processual (developing and changing over time).
- 2 Palmer Seiler, Tamara. 2002. “Melting Pot and Mosaic: Images and Realities.” In *Canada and the United States: Differences that Count*, 2nd ed. Edited by David M. Thomas. Peterborough: Broadview Press. p. 98.
- 3 *A Scattering of Seeds: The Creation of Canada*. 1998. Video series, videotape package label. Toronto: White Pine Pictures.
- 4 Iacovetta, Franca. 1997. *The Writing of English-Canadian Immigrant History*. Ottawa: The Canadian Historical Association, Canada’s Ethnic Group Series, no. 22. p. 5.
- 5 Canadian Heritage. n.d. “Canadian Multiculturalism: An Inclusive Citizenship.” [http://www.pch.gc.ca/progs/multi/inclusive\\_e.cfm](http://www.pch.gc.ca/progs/multi/inclusive_e.cfm).
- 6 Canada, Department of Immigration and Colonization. n.d. *Annual Report for 1927*. Ottawa: Sessional Papers vol. 2. p. 6.
- 7 Kelley, Ninette, and Michael Trebilcock. 1998. *The Making of the Mosaic: A History of Canadian Immigration Policy*. Toronto: University of Toronto Press. p. 209-210.
- 8 Jones, W. Glyn. 1986. *Denmark: A Modern History*. London: Croom Helm. p. 130. Denmark’s unemployment rate peaked at 30 percent in 1926. Denmark’s *New Education Act* of 1903 granted free primary education to boys and girls as well as technical training through apprenticeships; therefore, the post World War I period saw a marked surplus of trained labor as Denmark’s economy readjusted and a large cohort of educated citizens entered the labor market.
- 9 Canada, Department of Citizenship and Immigration. n.d. *Reports, Statistics Section Pamphlets, 1956-1965*; Department of Manpower and Immigration. n.d. *Statistics, 1966-1976*.
- 10 Montréal Council of Social Agencies. 1968. *Sixty Major Study Areas and Their Comparative Socio-economic Profiles in Metropolitan Montréal*. Montréal: Montréal Council of Social Agencies.
- 11 Gerlach, Karen. 1995. Interviewed by author. 25 June.
- 12 Very few Danish immigrants integrated into the franco-phone community, although many who have remained in Montréal since the late 1970s understand the necessity of learning French in contemporary Québec. When discussing language issues, members of the Danish community point out that the Danish language is important but not central to their identity, as French might be for a Québécois. As a possible explanation for this, Mr. Svend Berg related that Danes tend to be highly adaptable polyglots because Denmark is located at a “crossroads” of Europe, resulting in contact with many languages and cultures. Berg, Svend. 1993. Interview with author. 8 June.
- 13 Mancuso, Rebecca. 1997. *Faces of Change: The Danish Community of Montréal*. Montréal: Danish Canadian Society.
- 14 Gagnon, Alain-G, and Raffaele Iacovino. 2001. “Framing Citizenship Status in an Age of Polyethnicity.” In *Canada: The State of the Federation 2001, Canadian Political Cultures in Transition*. Edited by Hamish Telford and Harvey Lazar. Kingston: Queen’s University Institute of Intergovernmental Relations, McGill-Queen’s University Press. p. 317.
- 15 Donaldson, Ian. 2004. “Identity, Intersections of Diversity and the Multiculturalism Program.” *Canadian Diversity* 3(1, winter). p. 15.
- 16 A paper discussing the Multiculturalism Directorate’s current focus on rediscovering ethnic folk dance was given by Lisa Doolittle, University of Lethbridge, and Anne Flynn, University of Calgary, at the Association for Canadian Studies in the United States (ACSUS) Conference in Portland, Oregon, November 21, 2003.
- 17 Buschardt Christensen, Rolf. 1991. “Danish Folk Schools in Canada.” In *Danish Emigration to Canada*. Edited by Henning Bender and Birgit Flemming Larsen. Aalborg, Denmark: Danes Worldwide Archives. p. 108.
- 18 Pedersen, Paul Harris. 1995. “A History and Analysis of Solvang, California.” PhD. diss., California State University, Fullerton. p. 44-47.
- 19 Jennings, Dean. 1947. “Little Denmark.” *Saturday Evening Post*, 18 January. p. 29.
- 20 Ibid. 65.
- 21 <http://www.solvangca.com/1/photo/index.html>.
- 22 Pedersen 1995:53.

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- 23 Ibid., 147.
- 24 *Santa Barbara News Press*, 18 August 1965, in Pedersen 1995:55.
- 25 Boggess, A. 2004. Interview with author. 28 July.
- 26 Taylor, Charles. 1994. *Multiculturalism: Examining the Politics of Recognition*. Edited by Amy Gutmann. New Jersey: Princeton University Press. p. 25.



# *Mitigating but Not Rethinking: George W. Norris, Tommy Douglas, and the Great Plains\**

Frances W. Kaye

To compare and contrast is not just an exercise used by teachers of rhetoric to annoy and bewilder students. Rather, to compare and contrast has the potential to identify patterns that are invisible to even the most accomplished scholar focussing only on one phenomenon. As Norman Krivosha, former chief justice of the Nebraska Supreme Court was fond of saying, if civil rights leaders had looked only at the back of the bus, they would not have perceived any discrimination. My aim in this paper is to compare and contrast the ideas and accomplishments of two extraordinary Prairie progressives, George W. Norris of Nebraska and Tommy Douglas of Saskatchewan. Between them, they cover nearly a century of political activism, and their careers tell us something about the possible and the unthought-of in prairie life.

Richard Lowitt, Norris's biographer, describes him as a nineteenth-century Liberal, but one who became a Progressive and then a New Dealer, who developed his ideas to fit the exigencies of the twentieth century but maintained his basic beliefs in the fundamental goodness of human beings, in the value of honesty and hard work, and in the role of government in helping people who were in trouble through no fault of their own. Although he carefully researched all the legislation he proposed and supported during his long career in the United States House (1902-1912) and Senate (1912-1942), he charted his economic and political course on experience rather than on readings in history or theory. Like many highly successful individuals, he had a few big ideas and he stuck to them, winning most of his greatest battles. He believed that gov-

ernment should be efficient, economical, and accountable to the voters. His institutional reforms included curbing the power of the Speaker and the caucus in the U.S. House, as well as instituting a unicameral legislature in Nebraska. He himself started his career as a Republican but eventually became an Independent and one of the most intelligent backers of Franklin Delano Roosevelt's New Deal. Deeply moved by an international peace conference he attended in Belgium in 1905, he consistently supported a world body for arbitrating disputes, the disarmament of aggressor nations, and the restriction of munitions and armaments on the part of democratic nations. Norris, though originally not sympathetic to organized labour, came to see farmers and labourers as a necessary coalition. He believed that "big business" tended to exploit them both and that the role of government was to protect the people from monopolies by ensuring fair competition, bargaining right for workers, and mortgage relief for farmers beset by bad weather or poor markets. He also believed that electric power was a basic but transformative necessity that could serve people best if it were generated and distributed publicly; he supported both municipal and federal power.

Tommy Douglas has so far attracted more adulation, more vituperation, but less painstaking scholarly analysis than Norris. There is no work that compares to Lowitt's magisterial three-volume study of Norris. Nonetheless, the outlines of Douglas's career and beliefs are have been examined. His intellectual tradition was that of British Labour of the Scots variety, deeply affected by the twenti-

eth century Social Gospel of J.S. Woodsworth. Like Norris, his program was based on experience rather than theory—he quickly dropped the repugnant eugenics theory that had formed his master’s thesis, and it never formed any part of his public policy (Stewart 2003:80-81). While Norris had had his pragmatic training as a lawyer and judge in southwestern Nebraska during the 1890s, Douglas’s lessons in the world came from his own recurring bouts of osteomyelitis, his witnessing of the police riots against strikers in Winnipeg in 1919 and in Estevan in 1931, and his experience as a pastor and graduate student among the unemployed and desperate in the early 1930s. Unlike Norris, Douglas was satisfied with the parliamentary systems he worked in as both a Member of Parliament (1935-44, 1962-1979) and as premier of Saskatchewan (1944-1962). He could make either opposition or majority work for advancing his ideas and beliefs. Like Norris, Douglas favoured arbitration as a settlement of international disputes, though he was more willing to use force if he thought it necessary. During the 1930s he was strongly opposed to Canada’s selling any materials that might be used as munitions against Canadians or their allies. The Cooperative Commonwealth Federation (CCF), the party that in its different guises would be Douglas’s throughout his career, was founded as a farm and labour party, and Douglas always saw farmers and urban workers as a natural alliance against what the Regina Manifesto, the founding document of the party, had denounced as “capitalism.” Both Norris and Douglas came to see an alliance between farmers and urban workers as necessary if farmers were to overcome their increasing minority status as the farm population moved to the cities. Like Norris, however, and unlike some of his more purely socialist colleagues, Douglas believed in private business and entrepreneurialism and regarded only large, faceless, monopolistic businesses as the enemy. Norris saw the role of government in ensuring that there was adequate competition to protect the people from big business and the trusts, leaving public ownership as a last resort, while Douglas favoured public ownership or at least public control and government planning for development, with competition playing only an auxiliary role. Norris backed public power above all and, in times of war or crisis, other public ownership as seemed necessary for society to function. Douglas consistently advocated a mixed ownership structure, including crown corporations, cooperatives and private enterprises and saw planning as government’s most crucial economic function. Both Norris and Douglas were successful in bringing rural power to their politics, but Norris’s sustained campaign for public ownership of electric power really had no ana-

logue in Saskatchewan, as public power had been a norm in Canada since the 1910s. Douglas’s most personal and deeply felt cause was universal hospital and medical insurance, which took twenty years to secure in Saskatchewan, and helped bring about Douglas’s 1962 defeat in Regina in the federal election and the 1964 defeat of the CCF-NDP government in Saskatchewan, but Medicare has become Tommy Douglas’s most enduring legacy and one of the enduring—though enduringly embattled—touchstones of Canadian society. Unfortunately, there is not any analogue for Norris or for the United States.

While Norris moved directly from local to federal office, Douglas began and ended his elected career as an MP but spent the most productive part of his political life as Premier of Saskatchewan. Norris served only as a Nebraskan, while Douglas was elected MP from British Columbia after his federal defeat in 1962. The actual overlap in the careers of the two men is relatively short, from Douglas’s election to Parliament in 1935 to Norris’s defeat in the Senatorial election in 1942—or at most from Douglas’s first campaign in 1933 to Norris’s death in 1944. Year by year comparisons, then, are not always relevant. Both Norris and Douglas worked in the context of political movements, Norris with the Progressives and the New Dealers, as well as his own circle of friends and supporters in Nebraska, and Douglas with the CCF and later the New Democratic Party (NDP). They are not isolated prophets howling in the wilderness, but they were such significant leaders and shapers that one can attribute ideas to them without being misleading. In the literature, each has usually been discussed in the context other politicians and parties. For instance, Douglas is often compared to William Aberhart and the Saskatchewan CCF to the Alberta Social Credit. Norris is most often discussed as a Progressive and compared to Robert LaFollette or as a New Dealer who was not a Democrat. Comparing Norris to Douglas, however, allows us to compare and contrast the ways in which the particular environmental and historical conditions of the Great Plains (in the US and Canada) enabled the rise to power, the long and influential careers, and the distinctive arguments and successes (as well as those things misconceived or overlooked) of these two remarkable men.

In order to compare these men against a regional background, it is necessary to have a sense of what that region is. The Great Plains often gets short shrift in the history books. It is stereotypically a region that is deficient in both practical things like rainfall and aesthetic things like purple mountains’ majesty while being full of prairie schooners and Red River carts, Indians, and miles and miles of mon-

otonous mono-crop. These stereotypes are not particularly fair or useful. For the first 10,000 or more years of human habitation, the Great Plains was utilized for purposeful cycles of hunting and gathering along the verges, relatively near wood and water, and as a transit area. Over the three centuries between the reintroduction of the horse in 1541 and the completion of the first transcontinental railway in 1869, the region developed a polyglot culture that focussed on the horse and the buffalo—and hence on the grass—and was informed by a ceremonial year that usually focussed on the Sundance. The earlier purposeful migration cycles came to include more of the High Plains and to place less reliance on horticulture. With the horse, the people could use the whole area, not just the verges and river valleys. Pandemics of European-originated diseases caused great grief and destruction, but generally the survivors were able to re-gather their strength and keep their sense of self intact. Except for disease, European fur and hide trade utilization meshed reasonably smoothly with indigenous life patterns, especially in the pemmican trade of the Canadian Plains. The U.S. *Homestead Act*, the sale of Rupert's Land to the new Dominion of Canada, the completion of the Union Pacific (1869) and the Canadian Pacific (1885), and unprecedented immigration from eastern North America, Europe, and, to a smaller extent, Asia brought about the rapid disappearance of the buffalo and a fairly rapid “ethnic cleansing” of the Indigenous people through treaties, warfare, and pandemics without population rebounds. What had been an economic and social homeland based on purposeful migration to utilize the full resources of land and sky became “free land,” open for homesteaders or purchasers to turn from a “desert” (at least in the sense of being “deserted”—though it was not) into a “garden.”

Both Canada and the U.S. adopted the square survey and divided up the Great Plains into 160-acre packages without regard to topography, soil, or the complex microclimates of heat and frost and precipitation that determine both the succession of native grasslands and the success or failure of various transplanted and specifically bred tame grasses such as maize, wheat, and milo, or forbs such as canola, soy beans, and sunflowers. No ecosystem is either deficient or excessive in terms of the flora and fauna that have co-evolved with it, but the Great Plains is deficient in both the general amount of precipitation and the consistency of precipitation for annual production agriculture of most of the crops Amer-European settlers brought to it. While the first 10,000 years of occupation of the Plains had taught people to adapt to the sporadic nature of precipitation through migration over both short and long

distances and by riverine horticulture, the combination of the square survey and an inflexible commitment to private ownership of plots of land sufficient to support a family in a humid environment without power technology (or even much horse-drawn technology) represented an unprecedented shift in land use and economy. As it turned out, this shift was not wholly workable, and the people of the Great Plains are still trying to figure out how to manipulate the system to adapt it to this region. One of the greatest tragedies for both land and people (Natives or Newcomers) was the blinding aspect of free market ideology to even the recognition, let alone the study, of any other way of utilizing the mid-continent semi-arid grasslands as anything but ploughed fields and pastures held in fee-simple ownership. Looking at the experiences of the Dakotas in Manitoba and Saskatchewan, the Five Tribes and the Osages in Oklahoma, and in tiny brief glimpses, the Crees, Blackfoot, Lakotas, and many other Indigenous Plains peoples, it seems as if a perfectly workable market economy could have existed on the Great Plains without requiring it to be a sparsely populated staples producing (semi-processed resource producing, e.g., wheat) hinterland. A hybrid system did not evolve, and when there was an economic downturn, the Plains were most affected.

One of the problems with theories of economics and economic development is that they deal with undifferentiated *space* rather than with specific *place*. In pure Adam Smith terms, farm failure and mortgage foreclosure was actually the invisible hand of the market performing exactly as it should, whereas Norris and Douglas saw these events as the human tragedy. Theoretically, as a sparsely populated staples exporting hinterland, the Plains should export its agriculture, its minerals, and the best and brightest of its children. In times of economic contraction it should shed capital quickly and labour just a little more slowly. People desperately trying to keep the family farm are an anomaly, a sentimental blip, not an indication that something is wrong. As Paul Gates (1936) pointed out some seventy years ago, the *Homestead Act* itself is an anomaly in the public land systems of both Canada and the United States. In many ways it was most effective for those people who did not take it too literally and either sold the land extra-legally as a relinquishment without actually proving up, sold immediately on proving up, or proved up, mortgaged the claim to the hilt, and decamped, leaving creditors with unimproved land not worth the value of the mortgage. For such innovative entrepreneurs, the *Homestead Act* was an excellent source of capital, and the *Homestead Act's* greatest economic service may indeed

have been in converting “free land” not to family farms but to liquid capital.

The people whose anguish Norris shared in the 1890s and who commanded compassion from him and Douglas in the 1930s, however, were the ones who had taken the promise of the *Homestead Act* seriously, whether they had homesteaded their land or purchased it. For them out-migration was neither emotionally sane nor economically sensible. They had followed all the rules to turn “free land” into farm homes, and they had failed because of forces they could not control—the climate, the international economic downturn, the pressure of outside financial, manufacturing, and transportation corporations, the workings of grain marketing boards, and the tax, tariff, and relief structures of municipal, provincial, state, and federal governments. Norris and Douglas would do their best to change the conditions under which their constituents laboured, from government policies to regional economics, to the very relationship of sky, land, and water. Although both men and their allies would be attacked as socialists and enemies to the market system, they, like the farmers whom they wanted so deeply to help, were concerned with making a conventional humid-culture market system work on the Great Plains. As the CCF and NDP would discover, public ownership was not nearly as much of a departure from market economics as theory would have it, and planning did not change the parameters of a sparsely populated hinterland. Neither Norris nor Douglas undertook reforms that looked to previous means and ideologies of using the land, that related directly to the particular ecosystem of the Plains, or that moved outside the basic patterns of the market. Socialism is not an entirely radical alternative to capitalism, it seems. The patterns of what Norris and Douglas fixed, what they tried to fix, and what they could not fix, however, are useful for understanding what their particular relationship with the Great Plains was and how economic development might have happened and still might happen.

As a district judge in Nebraska from 1896 to 1902, Norris was frequently called upon to foreclose farm mortgages and to order sheriff’s sales of the properties. If the dead mule is the leitmotif of Southern literature, losing the farm is the central trope of Plains literature, and Norris was in the thick of it. The southwestern corner of Nebraska (like south central Saskatchewan, where Tommy Douglas would find himself in the 1930s) is a semi-arid region that receives an average of less than twenty inches of precipitation in a year, coming in alternating cycles of wet years and dry years, as it does on most of the Great Plains. It is mostly cropped land rather than pastures and cattle

country. Farmers who had come to Red Willow and the surrounding counties in the 1880s had arrived during a period of good rains and good crop prices. The decade of the 1890s was drier and featured the spectacular 1893 economic crash following the overbuilding of the railroads. Southwestern Nebraska, like south central Saskatchewan and most of the territory in between, was over-settled—people moved in as if the land were suitable for humid culture agriculture. The standard 160-acre homestead could not support a family, even when it was eked out with pre-emption claims, timber culture claims, and other ways of adding land. The area was also over-capitalized. The rich soils coming under production were an irresistible magnet for eastern and European investors. Money, in the good times, fairly chased farmers. However, it was not the sale of wheat that produced the prairie booms but the lending of money on the expectation of the production of even more wheat (Felberg and Elofson 1998). And farmers during the 1880s (and later in the 1900s, and particularly during the great boom of WWI), were more than willing to borrow money to buy more land, to buy the machinery such as reapers and threshers that were necessary for increasingly large-scale agriculture, and to build improvements such as fences, drains, and irrigation works. The drought and economic contraction of the 1890s meant that farmers in Norris’s district were producing less wheat per acre and receiving less money per bushel of wheat than they had a few years before. Making things worse was an agricultural economy that had been basically deflationary since the Civil War, meaning that each year the farmer needed more bushels of wheat to pay off the same amount of debt. No wonder the Populist Party rose out of this mess and called for railroad and elevator regulation and the free coinage of silver to inflate the dollars of the debtor farmers.

Judge Norris was an ardent Republican, not a Populist, but he was as concerned about foreclosure as anyone. Because his background as a lawyer was in working for lenders, he could see better than most people that selling out a hardworking farmer was a lose-lose proposition. The farmer and his family lost their home, and all the lender gained was a hardscrabble ruined farm that no one wanted to buy and that had no one to work it, unless the former owner were willing to stay on as a disillusioned and angry tenant. Nebraska had no mortgage foreclosure moratorium law; so Norris simply stayed foreclosure and sale if he thought a farmer would be able to make a profit when the good times returned (Lowitt 1963:49). Only when he thought an individual were too shiftless or too heavily in debt to work his way out did Norris allow a sheriff’s sale. At first, creditors were furious, but they soon came to see

that Norris's solution was the most likely to repay their investments. For Norris, this was a pragmatic and humane solution to "the agony of these cycles of crop failure, heavy indebtedness upon the land, and ruinous farm commodity prices" (Norris 1945:71), and perhaps more important in the long run, it preserved both capital and democracy. For Norris, "national welfare and progress are stimulated by any system of capitalism which provides for the widest distribution of the natural resources of soil and its use by the largest number of legal owners" (Norris 1945:72).

Tommy Douglas would not be in a position to deal with farm mortgages for nearly half a century, but his response was essentially the same. Like Norris, Douglas deeply believed that one of the most essential roles of government, especially, in a Christian society (Lovick 1979:106), was to protect those who could not help themselves. The CCF fought the election of 1944 on the promise of farm security, and one of the first measures that the CCF government introduced was the *Farm Security Act*, designed to provide absolute protection to the farmer's home quarter section and to prevent foreclosure in years of poor yields. Although the war had brought a large measure of prosperity back to Saskatchewan, many farmers were still in debt from the Depression. The *Farm Security Act*, like similar measures passed in Alberta, was eventually declared *ultra vires*, but the period during which the issue was tied up in court gave at least some farmers the breathing room that they needed (Stewart 2003:164; Thomas 1982:225). Neither Norris nor Douglas intended to interfere with capital's right to a return on its investment, though the *Farm Security Act* did propose that investors be required to forego interest in years that a farmer could not make enough crops to repay the loan. Sharing the risk is part of the investment process, however, and the higher the rate of return, the higher the shared risk is assumed to be. The object in both Nebraska and Saskatchewan—as well as the other polities that introduced or considered foreclosure moratoriums—was to make capital more flexible and capable of creating both a healthy rural economy and a satisfactory rate of return in the long run. Farmers forced to repay debts to distant eastern investors before buying local goods and services depressed the local economy and were less likely to succeed in the long run. Creditors who waited would get their investment back over the length of the climatic and economic cycles, if not in the annual cycle.

Mortgage moratoriums, whether ad hoc or statutory, and the relief programs of the New Deal were not, however, sufficient for healthy rural economies, and both Norris and Douglas continued to fight for changes to the way capitalism worked in the farm economy. Douglas was par-

ticularly interested in economic diversification. Another piece of CCF legislation that was eventually declared *ultra vires* taxed mineral properties that were not developed (Stewart 2003:165-66). Not part of orthodox socialism, this legislation was intellectually akin to Henry George's ideas in *Progress and Poverty*. Since economic value was created by society as a whole, landlords who held valuable properties out of production so that they could later reap speculative gains for themselves prospered at the expense of the rest of the society. Since the Dominion government had granted land and mineral rights to the western provinces in 1930, the Saskatchewan CCF tried to spur development by taxing undeveloped mineral rights. Since much Prairie economic development has been premature in the sense that markets were not ready to support it—railroad building is the prime example—taxing undeveloped minerals was an ingenious attempt by the government, and hence the taxpayers of the province, to get the economic benefit of premature development, even as owners waited for more economically viable production opportunities. Again, the courts overruled this option, but it would have been an innovative way of frontloading the revenues that would eventually come to the province by way of royalties, backins, and other measures Saskatchewan employed to share the revenue stream.

Norris's measures to mitigate the difficulties of raising humid crops in a dry environment were less innovative but were actually enacted. He was a great champion of dry farming, especially of the "Campbell method," and he pushed for federal support for agricultural experimentation with crops capable of withstanding High Plains meteorological conditions (Lowitt 1963:97). Both plant breeding and innovations in tillage succeeded in mitigating crop loss. Norris's greatest legacy to mitigation, however, was in the multi-purpose watershed projects that he championed throughout his federal career. Nebraska farmers were hindered by spring floods that inundated newly planted fields, swept away farm animals, damaged buildings, and sometimes, as in the Republican River floods of 1935, resulted in the loss more than one hundred human lives (Lowitt 1978:95). Later in the summer, the lack of rain resulted in parched crops and diminished yields or even no harvest at all. Life on the farm in all seasons was lonely and labour-intensive. Dams could solve all of that, providing flood control in the spring, irrigation in the summer, and electric power and recreation all year long.

Although Norris's response to the *Newlands Reclamation Act* of 1902 was to propose a reservoir along the border between Red Willow and Hitchcock counties in the middle of his congressional district (Lowitt 1963:72), his

real introduction to dam building and public power came with the Hetch Hetchy project in California. As Norris saw it, the major purpose of that project was to create hydro power on public land and to make it available to the city of San Francisco, assuring cheap power for consumers and for the street railway. The dam would also provide flood prevention downstream and provide irrigation water for the farmers who were already using the stream. Although the dam would flood a wild and beautiful valley in Yosemite National Park, Norris thought a lake would improve the view and the roads necessary for the project would make the area more accessible to tourists (Lowitt 1971:23-24). Not surprisingly, private power companies as well as conservationists opposed the project, and while conservationists had to see the valley flooded, the private power companies eventually took over the distribution and sale of the hydro power (Lowitt 1971:25). Although central California was far away from the Great Plains and the main purpose of the dam was electrical generation for a city rather than irrigation, it was Hetch Hetchy that introduced Norris to the “miracle” (Norris 1945:172) of dams and lakes.

Norris’s most famous multi-purpose river system development is also far away from the Great Plains. The Tennessee Valley Authority, as Walter Stewart has pointed out in both his 1987 study of crown corporations (Stewart 1987:62) and his 2003 biography of Tommy Douglas (Stewart 2003:191) is bigger than any of Canada’s crown corporations—thus somewhat complicating the assumption that publicly owned corporations are Canadian rather than American. After World War I, Norris saw an opportunity for the federal government to use the federally owned fertilizer plant at Muscle Shoals as the nucleus of a project to develop the entire Tennessee River watershed for flood control, navigation, irrigation, and hydro electric generation. This time supported by conservationists (but not, in the beginning, by the Nebraska legislature) Norris deflected a private offer from Henry Ford, hung on through vetoes of public power by Herbert Hoover, and fought off the private power interests of the southeast. When the New Deal finally favoured public projects, Norris still had to hold on through Supreme Court challenges to the constitutionality of TVA before he saw its building and success (Lowitt 1978:passim). What marked TVA, the Rural Electrification Administration that Norris also sponsored, and the collection of dams and lakes, crowned by Kingsley Dam and Lake Maconaghy, known as the “Little TVA,” in Nebraska, was their comprehensiveness. Norris made sure that each project even had a subsidiary that assisted farmers to purchase electric appliances so that

demand would be ready when supply came on line and power would never go unused (Lowitt 1978:129).

If Norris’s expertise in guiding dam building, irrigation, and power generation schemes did not begin with the Great Plains, it certainly lent itself to conditions on the Great Plains in the 1930s. John Wesley Powell had warned Americans since 1878 that water would control the economic development of the West and that federal development of dams and cooperative irrigation districts was the most intelligent means to that development (White 1991:153). Although Powell’s ideas were unpopular with western boomers, they were in many ways accurate harbingers of Norris’s plans. The biggest problem with federally developed irrigation projects had always been that in most cases irrigators alone could not pay for the cost of development. Hydro power could help subsidize construction, but not if private companies were able, as they were at Hetch Hetchy, to monopolize the sale and distribution of power. Navigation (not relevant to Nebraska, except on the Missouri) and flood control were federal concerns and could therefore command federal dollars that did not have to be paid back by the users of the water or electricity.

In putting together Nebraska’s “Little TVA,” Norris had to fight New Deal administrators to make sure the state was awarded Public Works Administration funding in accordance with the disproportionate economic losses suffered by the Great Plains states during the Dirty Thirties rather than with average per capita U.S. payments, and that farmers who had managed to avoid the dole were eligible to work on the projects (Lowitt 1978:92-93). He had to cajole local backers of individual projects to work together instead of fighting among themselves for the primacy of their own local construction (Lowitt 1978:102). And he particularly had to overcome the influence of his old adversaries, the “Power Trust,” particularly the Nebraska Power Company, headquartered in Omaha. Their vituperation against anyone associated with Roosevelt or the National Recovery Act of the New Deal was just as scathing as, and more lethal than, any of the opposition to the Socialism of the CCF. Because the president of the Power Company was also the president of the University of Omaha board of regents, he was able to censure a professor for praising the TVA and to fire university president W.E. Sealock, a Norris and Roosevelt supporter. Three days later Sealock committed suicide (Lowitt 1978:97). Norris persevered, however, and when World War II began to restore prosperity to Nebraska, farmers had the water and energy to increase production, while Nebraska’s central location and plentiful, cheap electricity allowed it to obtain wartime production industries, though not as many as Norris

desired (Lowitt 1978:414-15). Once public power was harnessed to war production it became patriotic rather than sinister and socialist (Lowitt 1978:366). Ironically, though, Norris's scrupulous concern for public welfare may have cost both Nebraska and the TVA region postwar economic development. Both the TVA and the Nebraska projects directly hired local workers to construct dams, transmission lines, and other parts of the projects. In the Far West, however, the Bureau of Reclamation hired private contractors from San Francisco, Salt Lake City, and Portland who were able to develop the corporate strength to grow even larger government industries during the war and to demand for both themselves and the region sustainable manufacturing and prosperity, unlike Omaha's, after the war (White 1991:488-89). One of them was Bechtel.

Saskatchewan's dams and hydro power lagged considerably behind Nebraska's. A Liberal government introduced public power to Saskatchewan in 1929, and the Conservative/Progressive government elected the following year endorsed it, but it was not until 1945 that the new CCF government began buying up all the private power companies in the province to gain economies of scale and to get rid of duplication (Richards and Pratt 1979:113-14; Thomas 1982:202). After that was completed, the CCF could move toward generation. Neither Nebraska nor Saskatchewan had to expropriate private utilities. They simply ceased to be economical after public power came in (Lowitt 1978:312; Thomas 1982:202). In 1949, Saskatchewan Power became a crown corporation and began a rural electrification program for the southern part of the province, paid for by the farmers and the SPC ([www.saskpower.com](http://www.saskpower.com)). Although the 1930s had moved Saskatchewan, like Nebraska, to look at damming major streams, particularly the South Saskatchewan River and its tributaries, the federal government dragged its feet on funding and authorizing such dam building projects until 1958, when Prime Minister John Diefenbaker agreed to what would become the Gardiner Dam on the South Saskatchewan River, holding back the waters of Lake Diefenbaker which lapped against the shores of Douglas Park (Outlook School Division 2002). Not until the late 1960s did the South Saskatchewan plants begin generating power, and, as the case in Nebraska, coal fired plants still provide much of Saskatchewan's power today. In both Nebraska and Saskatchewan, rural electrification was popular and non-controversial. Isolated farm houses were not an attractive target for private power companies. The big difference was in the move to consolidate private power companies into a state- or province-wide public grid. In Nebraska it was a hard fought battle. In Saskatchewan it was simply

the model that other provinces already followed, and the only surprise was that the CCF was able to hang on and get the job done in the vast and sparsely populated rural parts of the province. TVA and Nebraska Public Power are anomalies in the U.S. Saskpower was formed by the CCF, but its public status was the norm—even highly market-driven Calgary hung onto its city power system, though not without controversy, during the recent rage for utility deregulation.

Neither Norris nor Douglas saw any problems with building dams. Norris, as we have seen, thought even very picturesque parks were better with lakes and access roads. Rivers that simply ran were, he believed, a waste of water (Lowitt 1978:408). Yet dams on prairie rivers silt in rapidly and require dredging to retain their capacity to prevent floods and store water for irrigation and generation. The lack of flooding on the post-dam Platte means that the sandy islands characteristic of a braided prairie river are not scoured out, damaging the roosting habitat of sandhill and whooping cranes and the nesting and spawning habitats of various other species, some, like the whoopers, threatened or endangered. Just as the dams on the Columbia destroyed the native Pacific coast salmon, dams on prairie rivers have caused unforeseen ecological damage. Although Douglas opposed some provisions of the treaty governing Columbia River development, it was U.S. control of the water, not habitat loss that bothered him (Lovick 1979:173-81). Yet renewable resources, such as water, may not be entirely renewable after all.

Dams and lakes have an adverse environmental effect that was not foreseen by their builders. Many of the dams on the Great Plains have had an adverse effect on Indigenous people, who despite their articulate protests have in many cases received shorter shrift than the whooping cranes and snail darters. As F. Laurie Barron has pointed out in his study of Tommy Douglas and the Native peoples of Saskatchewan, governments, particularly governments that explicitly set out to help the underdog, must be judged at least partly by their ability to perceive and to respond meaningfully to the most disadvantaged members of society, and on the Great Plains, that primarily means Indigenous people. In Saskatchewan the relationship between Native peoples and hydroelectric projects is not as severe as it was in the case of the Great Whale projects in Québec or on the Old Man River in Alberta. Power generation is mostly absent from the northern parts of the province with the highest proportion of Native and Métis people, although power generation and transmission was one part of the general disruption of Aboriginal societies in the vicinity of uranium-producing and pulpwood sites in the

north. In Nebraska dam building would mean substantial losses to Native people. While the Platte, Loup, and Republican River valleys had for the most part been “cleansed” of Native people long before the 1930s, Republican River dams did cause the flooding of one highly important Pawnee holy spring that was venerated by most peoples of the region (Parks and Wedel 1985). TVA dams also flooded Cherokee graves and other holy sites, long after the majority of the people had been removed from the area. The controversy over the snail darter and the Tombigbee River, long after Norris’s time, obscured the Cherokee objections to the flooding of their ancient capitol of Echota and other historical sites (Tager 2004). The developments that caused the most damage both to living American Indian communities and to graves and holy sites, however, were those on the mainstem of the Missouri River. Although constructed long after the death of Senator Norris, these dams, like the project that flooded Echota, had been among his most cherished future projects (Lowitt 1978:454, 462). As Michael Lawton has pointed out, Missouri mainstem dams were consistently sited where they would not inconvenience many Amer-European settlers, but where they would inundate large percentages of the homes of Lakota and Dakota people settled on Missouri River reservations and in several cases, including the Santee in Nebraska, would flood whole communities. Although tribal leaders consistently testified that the dams would do considerable economic and social damage, their legitimate concerns were systematically denied at every level. While Douglas was uncomfortably, if incompletely, aware of the failure of CCF policies to render substantial aid to Aboriginal communities, Norris, for all his tolerance and disgust at racial hatreds, simply did not consider Indian people. In the uplifting farewell chapter with which Norris ended his memoirs, thoughtfully suggesting his best hopes for a peace that would endure at the end of World War II, he wrote, “Never in its entire history has America coveted the lands and the wealth of other peoples” (Norris 1945:407), quite oblivious to all of America’s *being* the land and wealth of other peoples. Building dams for irrigation and hydro power was a logical, even courageous, response to the conditions of drought and poverty, one especially relevant to the Great Plains. At the same time, it was a statement that both the land itself and the societies that had evolved there were deficient for proper human uses—so deficient as to be invisible and it is hard to think of looking for guidance to something that does not register on ones consciousness.

Dam building and the flood control, irrigation, and hydro generation that went with them were the main means

of mitigating the climate that Norris and to a lesser extent Douglas followed. Both, however, saw ways to change the structure of government itself so that it would better serve the particular needs of the Great Plains. Norris’s lifelong goal of providing efficient and transparent government led to the formation of the only one-house legislature in the United States, Nebraska’s non-partisan Unicameral. As was the case with public power, Norris expended a great deal of time and energy securing what Saskatchewan and most provinces already had, a one-house legislature, though of course Saskatchewan’s is not non-partisan. The Unicameral was Norris’s idea. Although state governance was no part of his duties as a United States senator, he organized the coalition that brought it into effect. While there was considerable public support for the idea, it would never have been raised except for Norris (Lowitt 1978:58-68; Norris 1945:344-56). A sparsely populated, relatively poor polity benefits even more than a large and diverse one from a small, simple legislature. Fewer senators cost less. Non-partisanship allows for fluid alliances that change from issue to issue. While both Saskatchewan and Nebraska have more diverse economies than they had in the 1930s, and both have developed urban centres with their own particular demands and concerns, neither has the diversity and polarity that might require two houses to protect. The major benefit of a unicameral legislation, to Norris, was the relative transparency that results when bills do not disappear into the mangle of conference committees and emerge with transformations for which no one is clearly responsible, something that could benefit any deliberative body. Norris brought the one-house idea to Nebraska because it was his home state, but voters may have been ready to accept it because it made particular sense for Nebraska and the Great Plains.

It is tempting, but not actually useful, to say that Norris’s institutional innovations made government smaller whereas Douglas’s made it bigger. Certainly Norris’s support for the various New Deal agencies in Nebraska increased the presence of the federal government more than ever happened in Saskatchewan. The CCF government in Saskatchewan from 1944-64 provincialized services that neither the federal government nor the private sector could provide. Cooperative marketing and purchasing boards were essential to farmers during hard times, though, like the New Deal agencies in Nebraska, they might come be seen as impediments during the plush times. Provincial hospital and motor vehicle insurance were popular throughout Saskatchewan, but they were particularly helpful for farmers and their families. Because the farmer was self-employed, he had no employer

to help out with medical insurance. And because farmers frequently owned valuable on-road vehicles, such as pickups and straight trucks, in addition to private cars, they benefited more than the average urban driver from low-cost premiums.

One of the more striking parallels between Norris and Douglas during the years that they were both members of the federal legislature was in their reactions to the arms build-up before World War II. Norris, who had opposed U.S. entry into World War I, had allies among the isolationists and the pacifists in U.S. society, but he was neither an isolationist nor a pacifist. Douglas shared his attitude toward peace and armaments with his CCF caucus, but he particularly spoke out about munitions and war materials, especially after his 1936 visit to Germany. Norris opposed U.S. entry into WWI because he thought Britain as guilty of imperialism and the disregard of neutrality as Germany, and because he believed arms manufacturers were stirring up a war hysteria to sell their goods. America could make the world safer for democracy, he believed, by staying out of the war (Norris 1945:193-96). Before WWI he had consistently pushed for smaller naval appropriations and more support for international arbitration mechanisms. Disputes were solved by the means at hand, he believed, and it was safer to make sure that one was supplied with agreed-upon international dispute resolution mechanisms than to be surrounded by warships (Lowitt 1963:154). During the 1930s, both men consistently argued against selling materials that could be used as weapons to countries that might turn out to be enemies. In his maiden speech to parliament, Douglas pointed out that the federal government could scarcely talk of peace while selling Mussolini nickel and oil. In the spring of 1939 he made the same point (echoing William Jennings Bryan, another Nebraska statesman), calling on Canada not to crucify "a generation of young men . . . upon a cross of nickel" (Lovick 1979:63). Norris, in the same year, similarly found it "heartbreaking" that the U.S. was selling scrap iron to Japan, airplane parts to Germany, and war materials to Italy. He proposed to keep materials out of the hands of aggressor nations by selling only on a "cash and carry" basis that would have allowed Britain to buy, but not Germany and Japan (Lowitt 1978:257-59).

Although at first blush this opposition to selling war materials to potentially hostile powers seems like a combination of pacifist-tinged ideology with plain good sense, it also has a relationship to region. Sincere as both Douglas and Norris were in their opposition to munitions, it is doubtful if representatives with their outlook could have been consistently re-elected to the Senate or the Parlia-

ment from war materials extracting or manufacturing regions. Even after the outbreak of war, the Plains benefited far less from wartime manufacturing than did those regions already engaged in heavy manufacturing, such as the Ohio and St. Lawrence valleys or the American West Coast and Southwest where the companies who had built themselves up as federal contractors in the 1930s were most successful in obtaining war construction contracts. Douglas, like all the federal members of the CCF caucus, except for J.S. Woodsworth himself, supported Canada's declaration of war in 1939, and when Japan bombed Pearl Harbor, Norris joined in supporting the U.S. declaration of war. Once committed, both men pressed their respective governments to provide adequate support for the troops. Norris pointed to Nebraska's central location and cheap plentiful electricity to urge the siting of weapons and aircraft plants in his home state, and he was fairly successful. The *Enola Gay*, the plane that dropped the atomic bomb on Hiroshima, was fabricated in Omaha, Nebraska. Saskatchewan received less in the way of manufacture, however. Except for the training of Commonwealth pilots, the prairies received little direct economic development during the war (Thompson 1998:138-40). During the cold war, however, Douglas and his CCF government endorsed and promoted uranium production, even though it was being used for weaponry (Thomas 1982:292; Harding 1995:432). It was not sold to the Russians or other obvious potential enemies.

Both Norris and Douglas, then, mitigated the poor fit of humid-area cropping techniques with a semi-arid environment by supporting foreclosure moratoriums and direct relief for farmers, by championing irrigation and public power, by changing the structure of government to be more responsive to the people, and by articulating humanitarian and commonsense arguments against the excessive development of other regions to the detriment of the Plains through the sale of potential war materials. In what ways could they or did they try to change the humid lands agriculture and economic system to fit the particular environment of the Great Plains or to mimic the past history of human land use there?

Variations on fee simple ownership and the mania for private property that seemed to have affected disproportionately Amer-European settlement on the Great Plains is one place to look. Farm tenancy on the Great Plains has conventionally allowed new farmers to work themselves into the land and older farmers to work themselves out, rather than leading to permanent tenancy of the share cropper version existing in the U.S. South. Leasing is a somewhat different proposition that has primarily been

applied to grazing and has allowed some approximation of the purposeful migrations of both the wild buffalo herds and the people who hunted them. Norris worked with fellow Nebraskan Moses Kinkaid to introduce a 640-acre homestead in 1908 to allow small ranches, especially in northwestern Nebraska's rugged Pine Ridge and Sandhills areas, but he later came to favour state ownership with leaseholds for cattlemen. Even a whole section was too small for a ranch, and the *Kinkaid Act* continued to result in violations of the law (Lowitt 1963:98). Norris was sentimentally attached to the *Homestead Act*, and in 1935 he sponsored a bill to create the Homestead National Monument near Beatrice, Nebraska (Lowitt 1978:134)—the site of the first homestead claim filed in the U.S., ironically though appropriately filed under false pretences by the ambitious and determined Daniel Freeman (Jaffe and Freeman 1967). Norris does not seem to have been particularly involved in the withdrawal of all public lands from homesteading in 1934 and the substitution of the *Taylor Grazing Act*, which enabled ranchers to lease federal land (White 1991:144, 479). By that time Nebraska was no longer a public land state. Almost everything was in private or state hands and thus was not affected by the *Taylor Grazing Act*. Norris certainly recognized that private landownership did not always serve the farmer, or particularly the rancher, but his intentions were fairly limited and small scale.

Canada had experimented with leases for cattle ranchers, particularly in Alberta, before the mass influx of homesteaders to the prairies. Public pressure had forced the opening of much of the grasslands to settlement and also expected ranchers to overgraze in order to be seen as more productive (Foran 2000:127-28). During the 1930s the CCF in Saskatchewan experimented with the idea of public ownership of agricultural land in two ways. The first, quickly repudiated, was to secure farm tenure through usufruct rights rather than through fee simple. The province would hold title to the land itself, but the farmer could use, bequeath, or even sell the usehold rights. Agnes Macphail, from the Ontario Farmers' Union, blocked the inclusion of such an idea from the Regina Manifesto, arguing farmers would never support anything but absolute ownership rights to the family farm, and the proposal was attacked from the right as a precursor to the collectivization of farms (Stewart 1987:104-05; Thomas 1982:77). After that the proposal was dropped altogether, but it is unfortunate that it did not receive more careful thought because it had both potential as a model for an environmentally sound land use policy and reflected on both past and present Native land use patterns. Accord-

ing to Douglas, usehold title would be a voluntary option by which the province would pay off the mortgage but maintain the farmer on the land, and it was intended as an alternative to letting farmers slip into tenancy or to lose the land altogether to foreclosure. The proposal's whole purpose was to guarantee owner-occupiers access to the land, the opposite of collectivization—though government programs do not always turn out exactly as planned. Usehold was the norm for the riverine horticulture practiced by plains peoples before the nineteenth century. Gardens belonged to individual women or coalitions of sisters or other female relations who maintained specific plots as long as those met their needs. Swapping up or down as the situation changed seems to have been fairly easy. The Five Tribes of the U.S. Southeast who were moved to Oklahoma had proved that such useholds could work in commercial agriculture, as big holders and subsistence holders neighbored with each other, allowing wild game habitats to be interspersed with small fields and larger areas of monoculture until the system was destroyed by forced allotment. As Pleasant Porter of the Creeks noted in 1904: "If we had our own way we would be living with lands in common, and we would have these prairies all open, and our little bunches of cattle, and would have bands of deer that would jump up from the head of every hollow, and flocks of turkeys running up every hillside, and every stream would be full of sun perch.... That is what we would have; and not so much corn and wheat growing, and things of that kind" (quoted in Debo 1940:132).

Could Saskatchewan have developed a successful usehold system? It is doubtful, given the excessive deference to private property that had developed on the Plains. Owning one's own land was a visceral response to the insecurities of European land tenure for peasant farmers as well as the reputed (and real) overcrowding of European and North American cities. Useholds that could be sold and thus have a cash value would not have provided the flexibility of the riverine farmer women or the Creek pastoralists to change fields according to circumstances. Of course many twentieth century Saskatchewan farmers owned their land only in conjunction with their friendly neighbourhood banker or money lender; so ownership may have been more in name than in fact for the very farmers that Douglas was trying to help. But the legal system was not based on usehold, and therefore security was indeterminate—not a very reassuring way to control your home and means of livelihood. Usehold had another economic pitfall that also bedevilled the communally owned land on First Nations reserves. The reason farmers were facing foreclosure in the first place was that they had borrowed money against

their lands. A mortgage was the cheapest and usually the only way a farmer could raise the cash for farm machinery, buildings, fences, and other improvements or for buying more land to make the farm more viable. Once land title was held by the province or, as with the reserves, by the federal government, it could not be mortgaged, a circumstance that has often retarded economic development in reserve communities. Theoretically this problem could be addressed, as it has been in some parts of Asia, with revolving development funds administered cooperatively, but that was not part of the CCF scheme, nor has anything like it yet been undertaken on the Great Plains. Usehold, which might have provided an innovative response to living with the normal climate fluctuations of the Great Plains, never got a hearing because it was discussed only in sentimental odes to the family farm or in terms of capitalism versus communism, neither of which systems is particularly relevant.

More successful than the abortive usehold proposal were the community pastures that are still part of Saskatchewan ranching. Again, there was an Aboriginal prototype, but this time closer to home and probably familiar at least in theory to some in the Saskatchewan government. The river lots of the Métis settlements had included community pastures behind crop and hayfields. Anglo settlements as well had employed community pastures and a herdsboy in the early days of settlement before individual farmers had the time or money to fence their fields. By including relatively large areas of land extending across various microclimates, community pastures allowed ranchers to utilize range more rationally than if each spread had to feed all its own cattle, especially in areas where there were separate summer and winter pastures. Because Saskatchewan does not have the variations in altitude of the mountain west nor, in the south, the oil and gas deposits of Alberta or U.S. portions of the mountain west, community pastures have presented a useful alternative to leased, multi-use pastureland that may encompass grazing, recreation and gas and oil exploration and extraction.

After the death of Norris and the election of Douglas as premier in 1944, one cannot, of course, make direct comparisons between Norris and Douglas, but tracing some of the triumphs, failure and draws of the CCF and its successor governments in Saskatchewan does test the validity of some of the assumptions of these two men—and of this paper. The year 1944 was in some ways a good year to come to power. The war was still fuelling the economy, but victory appeared to be in sight. After twenty years of hard times and five years of war, Saskatchewan was itching to experience the good times, and the CCF was

itching to provide them. Their 1944 platform called for security for farm homes, for real debt reduction, for social security measures such as support for pensioners, families and the disabled, for economic measures including collective bargaining and greater use of cooperatives, and for medical, dental, and hospital insurance (Thomas 1982:225). Most of these had been achieved by the time the CCF was defeated in 1964. Economic diversification through public ownership became much more of an issue during the early years of CCF government. Saskatchewan, it turned out, had much more oil and gas than Nebraska but much less than Alberta—although some of Douglas's detractors, such as Robert Tyre, the first to publish a book-length study of his regime, were so ideologically opposed to any kind of socialism that they seem to have convinced themselves that Saskatchewan oil trickled over to Leduc to protect itself from the ignominy of being discovered and exploited by Socialists (Tyre 1962:40). Saskatchewan also had potash, most of the world's potash, as it turned out. And potash was a necessary element in the fertilizers that were enabling the Green Revolution. In the north, Saskatchewan had uranium and forests that could be pulped. Nebraska had had small potash deposits that were worked out during World War II and subsequently abandoned. Nebraska also had small amounts of uranium that could be worked only by flushing them out with water. Unfortunately, this also forced uranium into the water tables of nearby farms and towns, raising the rate of colon cancer. Neither polity was particularly successful in moving into manufacturing beyond the primary processing of its resource or agricultural products. Although Nebraska is far more centrally located in terms of North America than Saskatchewan, perhaps centrally isolated might be a more descriptive term, for the state is too far from either large population centres or natural resources to develop secondary manufacturing. Raising calves and packing beef are essentially part of the same business and, as Saskatchewan would discover to its detriment, raising wheat and mining fertilizer are also too close to each other to provide real economic diversification. Post-war Saskatchewan did, however, have much more chance to diversify its staples production than did Nebraska, and their economic paths diverged substantially.

From Douglas on, CCF/NDP leaders in Saskatchewan have consistently argued that Saskatchewan can succeed with a slow and easy approach, making sure that extractive industries cut the province in on their profits by back-ins, farm-outs, training and hiring people from Saskatchewan, and developing the secondary industries to provide the parts and supplies for the extractive industries (Thomas

1982:290-97), although, as Richards and Pratt argue, since 1947 Saskatchewan has not really been able to live up to its promises to capture the extractive profits for the people of the province (Richards and Pratt 1979:143-44). Furthermore, Saskatchewan has been only partially successful in reinvesting extractive earnings into social services, education, and quality of life issues from the first provincial bill of rights to collective bargaining to the arts. In addition, this prudent approach, again as Pratt and Richards show, has not been particularly popular with the Saskatchewan business community, with farmers who have become agribusiness managers in their own right, or with outsiders who decry socialism. And NDP leaders have been as over-optimistic about the rising profit curves of potash and petroleum as the free marketers. As Pratt and Richards point out, Ross Thatcher came to power partially on his promise to bring Saskatchewan greater prosperity through the free market, and he was in power when the technological solutions to mining Saskatchewan potash were developed. Confidently claiming that CCF arguments about Saskatchewan's economic disadvantages were only a cover for CCF business failures, he predicted that potash, the free market and the Liberals would make Saskatchewan a "have" province. But the Liberal government and the capitalists who bankrolled Saskatchewan potash over-invested in the mines and failed to foresee that, because potash was valuable only as fertilizer, it was tied into the agricultural economy and would fall in price as agricultural products such as Saskatchewan wheat fell in price (Richards and Pratt 1979:197-204). Similarly, the NDP under Alan Blakeney, like Ottawa and Edmonton, developed wonderful castles in the clouds based on the premise that oil prices would continue to rise during the 1980s (Harding 1995:427). They did not. The Conservatives under Grant Devine announced Saskatchewan open for business in 1982, sold off all the valuable parts of the Crown Corporations (Pitsula and Rasmussen 1990:passim), and collapsed in scandal over road construction kickbacks. Ironically, cutting the corruption out of Liberal highway programs had enabled Douglas's first CCF government to afford its initial reforms (Stewart 2003:168). Meanwhile the increasing wealth of Saskatchewan's far fewer farmers had led them, like their Nebraska and other Great Plains counterparts, to identify with the large corporations and to oppose the social safety net and labour laws the CCF and NDP had traditionally espoused (Richards and Pratt 1979:197, 200).

George W. Norris and Tommy Douglas were admirable men, certainly among the best, the brightest and the most honourable of all long-time Plains politicians. Both ended their political careers on the Plains with electoral defeats

and were replaced by men who represented their antithesis, Norris losing his Senate seat in 1942 to the budding McCarthyite Kenneth Wherry, while Douglas's successor as premier of Saskatchewan was defeated, after Douglas's own defeat in the Federal election, by the Liberals under Ross Thatcher, who took it as his personal mandate to rid Saskatchewan of socialism (Eisler 1987). Yet Nebraskans supported Norris for forty years, often against the odds, and Weyburn, Saskatchewan, supported Douglas for more than twenty-five. Both leaders left legacies on the Great Plains, the most obvious being those that mitigate the effects of geography and enable humid-region agriculture and social structure in a semi-arid, grass-based environment. Public power, rural electrification, and hydro development, though neither started nor completed by Norris and Douglas, were largely shaped and organized by their initiatives. Availability of water and electricity has enabled some economic diversification, mostly in terms of service industries, such as insurance in Nebraska and mineral extraction in Saskatchewan. Nebraska's continuing status as an all public-power state, and Nebraskans' satisfaction with that status are a continuing tribute to Norris's vision of Plains life. Power can be generated and consumed in Nebraska and exchanged through the grid with neighbouring states, making it, unlike manufacturing, viable and cheap in a centrally isolated small state.

Although neither Norris nor Douglas was a pacifist, both were able to mount, during the 1930s, reasoned arguments for preparedness through building international institutions for conflict resolution rather than building warships. Both strongly opposed the strategy of selling munitions and war materials to countries that might turn on the United States and Canada, and both opposed "peace" treaties that imposed such heavy reparations as to destroy the economies and thus create widespread social unrest in the vanquished countries. Versailles, they could see, had led to the rise of Hitler. Such lessons have still not been learned. Saskatchewan uranium, mined while Douglas was premier, was part of the 1956 CANDU package that allowed India to develop nuclear weapons and would lead to the possibility of nuclear war between it and Pakistan (Stewart 1987:104-05). Although Nebraska was not specifically involved, it was one state among the United States that managed to help arm Osama bin Laden and Saddam Hussein, now supposedly its worst enemies.

Both Norris and Douglas introduced structural changes to their own polities that have remained in place and that distinguish Nebraska and Saskatchewan from surrounding states and provinces. Although the unicameral legislature has not proved as impervious to lobbyists as Norris had

hoped and although it sometimes works on partisan lines, it is efficient, effective, and economical. Most Nebraskans are quite proud of it, and even its detractors oppose its non-partisanship more than its unicameral nature. Douglas's changes involved, not the structure of the legislative assembly, but rather of the bureaucracy and its relationship to both individuals and industry. Saskatchewan is still a sparsely populated province heavily dependent upon agriculture and to a lesser extent upon mineral extraction. According to Richards and Pratt, the CCF principles of social control and planning were at least as useful for the province as private ownership, but the CCF itself lost the nerve required to take the risks that would make social ownership as successful as it might have been, while the privatization attempts of Ross Thatcher and Grant Devine were not successful (Richards and Pratt 1979:143, 186-88, 203; Pitsula and Rasmussen 1990:283). Despite its mistakes—detouring local entrepreneurship into small secondary industries that really had no chance of long-term survival, allowing northern fish, fur, and timber crowns corporations and cooperatives to undercut small private entrepreneurs such as sawmills (Richards and Pratt 1979:118-21)—Douglas's first CCF government, especially in its first two years, did more to rationalize a sparsely populated, staple-producing province within a market economy than any other Plains government before or since. Provincial education, hospitalization, and medicare itself are deeply entrenched, and even enemies of the NDP admit that no government in its right mind would consider tampering with them (Tyre 1962:36). Once the discipline of twenty-five years of privation and war had worn off, and once large farmers had become part of the business elite instead of floursack-wearing populists, however, people from Saskatchewan responded the way most North Americans, particularly westerners, responded to the slow patient slog of reinvestment, social equity, and the gospel of comfort rather than riches. They repudiated it. Like the casinos Saskatchewan would eventually erect, jackpots in the economy and the appeal of being a "have" province, capable of flashing its overflowing billfold in front of Québec and the Maritimes and even Manitoba, was definitely appealing. At this writing, it seems that Saskatchewan is poised to once again reject the precariously governing NDP, especially with the troubles arising from the Mad Cow crisis, and try once again for market solutions.

Neither Norris nor Douglas nor their supporters, however, has ever really dealt with the implications of grassland ecology and the kinds of economic and social structures that might be most complementary upon it. Much of Saskatchewan's resource economy is north of the Great Plains.

While Norris was never attuned to either the dispossession or the strengths of the land knowledge of the Indigenous peoples of Nebraska or the U.S. in general, Douglas and the CCF-NDP tried valiantly, but mostly unsuccessfully, to deal with dispossession issues, but not recognizing or utilizing strengths tended to doom, or at least to blunt, reforms. For example, the ambitious legal aide program launched by the Blakeney government in response to the Carter report soon foundered. It stayed within the framework of the Anglo-Canadian legal system, focussing on the issue of individual access to the courts rather than, as the commission had intended, involving the whole community, and particularly Native communities, in advocating for social justice, change, and meaningful Aboriginal involvement at all levels of the political and justice systems (Abell 1995:173-220). By 1978, in relation to the negotiations ongoing about a gas pipeline through Indigenous lands in the Mackenzie Valley, Douglas as an MP insisted that no development should be undertaken without agreement on the part of Native inhabitants (Lowitt 1963:276), something that had not been done with uranium development in northern Saskatchewan (Barron 1997:143-44). The Berger Commission's study of the Mackenzie Valley pipeline gave status to a Native viewpoint against the market and changed the rhetoric and timeline of development in the North, learning from Northern people, if not from the mistakes the governments had made in dealing with Indigenous Plains peoples. Like the Plains, the North is an ecosystem very different from the moderate, humid climates of northwestern Europe and the St. Lawrence and Ohio valleys which were the implicit norms for continental development in America north of Mexico.

The legacy of Norris and Douglas is one of honesty, peace, good will, and successful mitigation of the grassland ecosystem to fit Amer-European norms of land use and participation in the market system. Their emphasis on altruistic cooperative handling of the environment worked for white-stream society on the Plains as long as it was not overwhelmed by prosperity itself. Their legacy also displays the great loss to both Natives and Newcomers of their inability to "Walk in Indian Moccasins." Farming is always a gamble with the weather, the land, and the markets, and in North America, gambling is always supposed to pay off with a jackpot. One never reads in the newspaper the lists of the thousands of names of people who lost the lottery. Both Norris and Douglas believed that what most people wanted was freedom from want, a decent level of comfort, and security for themselves and their families. Perhaps that was not enough.

One can scarcely fault Norris and Douglas for not working completely outside the paradigm of market-based humid lands society, yet it seems somehow a waste that, since they were challenging the status quo anyway, these leaders did not have access to a frame of reference that would have allowed them to plan reforms that started out with the great fact of the land and the thousands of years of history of its use by humans. But the Great Plains is always in transition. Unlike redwood forests that last for centuries, grasslands change from month to month and from metre to metre. Mad Cow disease, drought, and the melting of the glaciers that feed the rivers of the Plains are all forcing change right now. The experiences of Norris and Douglas illustrate the limits of mitigation and could challenge us, the plains dwellers of the twenty-first century, to look to what they missed—the ecology of the grasslands, the adaptations of native flora and fauna, and particularly the land wisdom still miraculously resident, despite over a century of suppression, in the Indigenous communities of the Great Plains. To rewire Plains white-stream societies in this way would require planning and government intervention in ways Norris and Douglas could not have dreamed of, and “planning” is now almost as dirty a word on the Great Plains as “socialist” or even “liberal” used to be. For that kind of change to happen, we would have to rethink the whole concept of “planning” for economic development on the Great Plains, starting with its importance to the Saskatchewan CCF, including economic development theory, and examining the work of Frank and Deborah Popper—which makes perfect sense in terms of the Plains as undifferentiated space locked into staples dependency but is of very little help in conceptualizing a dynamic grasslands heartland. But that is the subject of the next chapter.

## Note

- \* A different version of this paper is forthcoming in the *American Review of Canadian Studies*.

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# *Still Liberal Welfare States?*

## *The Reform of Welfare Policy in Canada and the USA in the 1990s\**

Christian Lammert

### **Introduction: The Reform of the Welfare State in Canada and the United States**

**R**eforming the welfare state is a central issue in all developed democracies. The international integration of markets for goods, finances and services, the financial weakness of the state and changing societies have placed powerful pressure on the structure of social programs all over the developed world, including Canada and the United States. Popular social programs on both sides of the border have been subject to successive waves of retrenchment and restructuring and an intense discussion about the social role of government in general (Banting 1997). This paper tries to evaluate the recent reforms of the welfare state in Canada and the United States. How are both countries reacting to the mentioned pressure from globalization and societal pluralism? Are they converging towards some kind of a common model of social policy or do we see growing divergence in how governments behave when markets fail in preventing poverty and inequality (Myles 1996)? A special attention will be given to redistributive function of the welfare state.

The way governments correct market incomes is a central feature of a successful welfare state. Central indicators in this regard are poverty rates and the degree of income inequality. These are especially interesting in a

comparative perspective. Conventionally comparative welfare state theory is focusing on the social transfer system (cash benefits) to measure the capacity of the welfare state to redistribute income. This paper, however, focuses on alternative ways of distributing income through the tax system. This is mainly done through the income tax system. As I will show in the next chapter of the paper, there are important differences between the welfare states in the way the tax system influences the extent of social transfers. A third way of transferring cash benefits will be discussed in chapter 3: tax expenditure transfers. Tax expenditures are benefits in the form of reductions in tax liabilities operated through the tax system by income or tax allowances, tax exempted income, and special rate reliefs (Ervik 1998:3).

A special attention will be given to recent efforts in the United States and Canada to refashion the income transfer system by adopting Negative Income Tax (NIT)-style policies. The comparative welfare state theory has little to say about such tax policy instruments in social policy. Most likely that reflects the fact that these theories have been devised in times of welfare state expansion. Their main focus is on the longer historical trajectories of different welfare state models. At least since the 1980s, however, most welfare states are in a process of retrenchment (Pierson 1994). Governments have to look for alternative ways

STILL LIBERAL WELFARE STATES?  
THE REFORM OF WELFARE POLICY IN CANADA AND THE USA IN THE 1990S

**Table 1. Gross total social expenditures 1997 (percent of GDP)**

	UNITED STATES	CANADA	GERMANY	SWEDEN
Gross public social expenditures	14.7	17.9	26.4	31.8
Pensions (old age and survivors)	6	5.6	10.9	8.4
Disability spending	0.9	0.9	1.4	2.5
Sickness benefits	0.2	0.1	0.3	0.9
Unemployment	0.3	1.0	1.5	2.1
Public expenditures on health	5.9	6.3	8.2	6.8
Others	1.4	4.0	4.1	11
Gross mandatory private social expenditures	0.4	0	1.2	0.4
Gross voluntary social expenditure	7.8	4.2	1.0	2.6
Pensions	3.6	3.1	0.9	2.1
Health	4.2	1.1	0.1	0.4
Gross total social expenditures	22.9	22.1	28.6	34.8

Source: OECD 2000

of financing social programs, and the comparative welfare state theory has little to say about the changing dynamics, actors and processes in that regard. Thus some important and interesting aspects of the reform of welfare policy in the 1990s in the United States and Canada are left outside the scope of more recent studies. In this paper the focus will be on those social policy tools that closely link the income transfer system and the tax system.

This paper is divided into four parts. In the first part the concept of the liberal welfare state regime will be analyzed. Both, Canada and the United States are characterized in the comparative welfare state theory as liberal welfare states. That raises questions about the shared characteristics and persisting differences between the welfare state regimes of the two countries. In this part the *traditional* design of the welfare states in Canada and the United States prior to the latest reforms will be analyzed, reforms that determine future political options to a large degree. The second part takes a closer look at the welfare state reforms with special attention given to tax policy instruments in delivering social benefits. Part three deals with the output side of the welfare state regimes. How successful are the different models in preventing poverty and inequality as two important functions of the welfare state regimes? In the concluding part of the paper I will address some questions about how the welfare reforms in the United States and Canada might change the way a liberal welfare state is described. Can we talk of a new type of welfare regime or is it merely *old wine in new bottles*?

### The Concept of the Liberal Welfare State: Its Meaning and Its Limits

Viewed from a European perspective, both Canada, and in particularly, the United States, are typically portrayed as welfare state laggards (Kurdle and Marmor 1981). In these countries, modern social legislation was adopted later than in Europe, and, when it was finally written into law, major programs often retained an adherence to traditional principles of means-testing and modest social benefits. Such a classification of welfare states in a comparative perspective is mostly restricted to looking at the gross public social expenditure.

Table 1 provides a snapshot of what welfare states spend in a comparative perspective. As we can see, gross public social spending in the United States is 14.7 percent of GDP. Canada is spending a little bit more (17.9 percent), but both North American countries are spending less than Germany (26.4 percent) or Sweden (31.8 percent). The differences between the United States and Canada are narrowing if we look at total social expenditures (adding gross mandatory private social expenditures and gross voluntary social expenditures). In comparing this category of spending we see clear differences between the welfare states in North America and in Europe in focusing social expenditures on private individual initiatives. Measured in gross total social expenditures, the gap between the United States and Canada on the one side and the European Countries on the other side is narrowing a little bit.

Comparative analysis of the distributive effects of separate parts of the social welfare system seems problematic for several reasons. One problem is that welfare states

**Table 2. Net social expenditures, 1995 (percent of GDP factor cost)**

	UNITED STATES	CANADA	GERMANY	SWEDEN
Gross public social expenditures	17.1	20.8	30.4	36.4
Net current public social expenditures	17.5	17.9	25.9	25.4
Gross mandatory private soc. exp.	0.5	-	1.8	0.4
Net direct mandatory private soc. exp.	0.5	-	1.0	0.2
Net publicly mandatory soc. exp.	1.8	17.9	26.9	25.6
Gross voluntary soc. exp.	8.6	5.1	1.0	2.3
Net direct voluntary private soc. exp.	7.8	3.5	0.8	1.4
Net direct private soc. exp.	8.3	3.5	1.8	1.6
Net total soc. exp.	24.5	21.2	27.7	27.0

Source: Adema 2001:27.

differ on the principle of taxation of social transfers. The importance of taking the tax system into consideration in comparative and institutional analyses has been recognized (Korpi 1989; Palme 1990). Also in a more recent study of net social expenditures in OECD-countries (Adema 2001) highlights the importance of taking income taxes into account in comparative analysis of social transfer systems. According to Adema, direct income taxes and social security contributions in some welfare states do significantly reduce public social effort, something that makes countries more similar in this respect. Yet, previous analyses of the relationship between particular transfer and income equalities do not deduct taxes paid on social insurance benefits (Jäntti 1997; Pedersen 1999)

The point of departure for Adema's calculation of the net social expenditures is the gross social public expenditures (see table 2). His first correction concerns the way taxation affects spending by the public sector on social protection. Taking into account the correction for taxation, net current public social expenditures is highest in Germany, followed by Sweden and Canada, leaving the United States still at the bottom of the ranking, although it is catching up with Canada. Except in the United States, the overestimate of public social spending due to failure to account for taxes on transfers exceeds the underestimates resulting from the neglect of tax breaks and mandatory direct social spending. Hence, net publicly mandatory direct social spending is significantly lower than suggested by gross budget data. For Sweden the adjustment leads to lowering the net indicator by 10 percent points of GDP at factor costs compared to the gross measure. In contrast, the budget data for the United States slightly underestimates publicly controlled social efforts. The result of these adjustments is a noticeable convergence of social expenditure levels across countries, driven mainly by two

factors: the inclusion of private social benefits, which are particularly important in the United States, and the impact of the tax system.

At look at the expenditure side alone, however, is not enough to describe the distributive mechanism of welfare state regimes. It is not just the amount of spending that counts, but the manner in which the money is distributed, especially looking at criteria like eligibility for, and coverage of, social programs. As I mentioned already it is long standing academic practice to classify the welfare states in North America as so-called liberal welfare states. In a liberal regime, citizens are primarily viewed as individual market actors, and benefits mainly cater to a clientele of low-income, usually working class, state dependents (Esping-Andersen 1990:26). The progress of social reform has been severely circumscribed by traditional liberal work-ethic norms. Entitlement rules are therefore strict and often associated with stigma. A second regime type is the conservative one, where the liberal obsession with the market efficiency and commodification was never pre-eminent. Thus, granting of social rights was hardly ever a seriously contested issue. What predominated in this type of regime was the preservation of status differentials, and, following this logic, rights were directly related to class and status. The third regime cluster is composed of those countries in which the principles of universality and de-commodification of social rights were extended also to the new middle class. This type of regime is called the social-democratic regime type (Esping-Andersen 1990:27). This regime type is found in the Nordic countries of Sweden and Denmark. Social citizenship and universality of social programs are important key words to describe this kind of welfare regime. Canada and the United States, on the other side, have continued to rely on more intense use of means-tested (residual) forms of welfare on the one

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hand, and private, market-based, insurance on the other hand (Myles 1996:120). Esping-Andersens welfare state regime approach is highly useful, for it takes the discussion beyond the narrow world of social spending and turns the attention to the larger institutional complex in which this social spending took place (Myles 1998:342). He distinguishes the respective welfare state regimes by their explicit or implicit ways to regulate the transaction between the three basic institutions from which individuals derive their welfare: the market, the family and the state. The liberal welfare regime in this regard is focused mainly on the market to provide welfare. As a consequence, the volume of social spending in this type of regime is low and inequality higher.

From such a broad classification there are many similarities between the welfare state in Canada and the United States, especially if we look at the social expenditure rates. If, however, we take another important distinguishing feature in Esping-Andersens regime approach and look at the respective approaches to questions of income security and equality (Myles 1998:344), we do find important differences between the two systems. A closer look at poverty rates and degrees of income-inequality in Canada and the United States shows that a nearly identical input of expenditures may lead to quite different outcomes (Wolfson and Murphy 1998). That is the most important point here: aside from the similarities in the respective types of Esping-Anderson welfare regimes, there are significant variations in how welfare states raise and distribute funds, and these differences have significant consequences for shaping distributional outcomes (Pierson 1994). The average worker in the liberal welfare state is expected to rely much more on the market than in other welfare regimes, but if we look at the Canadian and the U.S. experiences, there are sharp differences in what happens to individuals and families if they “fail” in the market. That can not be explained with regard to the modest differences in their spending levels, but it is due to profoundly different ways the spending is financed and distributed.

In all advanced welfare states in the postwar years, social programs were designed around three basic building blocks (Myles 1998:350): (1) a residual *social assistance* model of means-tested benefits for the poor, (2) the industrial achievement model of *social insurance* based on labor market performance, and (3) a *citizenship model of universal flat-rate social benefits*. Every welfare state may be characterized as a specific configuration, or mixture of these three blocks. In the terminology and concept of Esping-Andersen the liberal welfare state is based primarily on the first block of residual and means-tested benefits, the

conservative welfare state regime is dominated by the second block of social insurance and in the social-democratic version social citizenship is the most important block. A closer look at the Canadian and U.S. development of social policy shows, however, that there are important differences in the respective configuration of the above mentioned welfare blocks. These differences were less important in the formative years of their welfare state-building at the beginning of the twentieth century. Then the tradition of the poor law was dominant, and both states provided means-tested mother’s allowances to indigent women with children. Canada added a means-tested old age pension in 1927, the United States followed in 1935. Thereafter, however, in the “golden age” of welfare state expansion that extends into the 1970s, the welfare state trajectories in Canada and the United States had followed different directions and we find important shifts in the relevance of the basic welfare blocks:

1. *social assistance*: In the United States, means-tested social assistance for the non-elderly was provided in the form of cash payments (Aid to Families with Dependent Children, AFDC), food stamps, and medical insurance (Medicaid). Traditionally, AFDC was restricted to single-parent families. The primary means-tested assistance program in Canada is social assistance. Unlike the U.S. American-system, single persons and childless couples are included, and the benefit levels are considerably higher than in the United States (Myles 1996:122).
2. *social insurance*: In two main areas, Canada and the United States have followed the social insurance model (earnings-related income security): old age security and unemployment. The elderly in both countries rely for most of their income on public pensions (Canada: Canadian/Québec Pension Plan; USA: OASI). Until the 1970s income replacement rates for the average worker were quite low in both countries. Both systems were modernized as a result of legislative changes in the mid 1960s in Canada and the early 1970s in the United States. Replacement rates rose and were quite similar for the average worker in the 1980s. Despite the importance of social insurance in the income package of the elderly, the liberal character of the North American welfare states remains evident in their more extensive reliance on private pensions and property income. The unemployment insurance

(UI) in the United States is entirely state run, and benefits and eligibility criteria differ widely among the states. Before the UI reform in 1971, Canadian benefits were below the U.S. levels. After these reforms, benefit levels and durations of benefits are clearly above the U.S. levels.

3. *universal citizenship entitlements*: Universal programs are quite unknown to the U.S. citizen. The closest approximation is Medicaid, which, despite being insurance based, provides health care coverage for 99 percent of the population over 65 (Myles 1996:126). In contrast, Canada established a universal program of family allowance in 1944 and universal old age benefits in 1951. A universal insurance to cover hospital fees was established in 1957.

Altogether the Canadian trajectory of social-program design was headed more in the direction of the social democratic way of social spending. In the 1970s the Canadian welfare state design looked more like that of Sweden and was closely identified with a political culture of “social citizenship” (Marshall 1950) reflecting the underlying core of universal entitlements financed from general revenues. So the Canadian design might be described as form of social liberalism (Olson 2002:39), an approach somewhere between the American exceptionalism and Swedish social democracy.

A comparable development to a universalistic design of the welfare state did not take place in the United States. In summing up the development of the U.S. welfare state, the design established from the 1930s up to the 1970s could be characterized as a social insurance welfare state for the elderly and a largely unchanged poor law or means-tested welfare state for the working-age population.

### **New Instruments in Social Policy: Taxation and the Welfare State**

At least since the 1970s the old politics of welfare state expansion have been transformed into politics of retrenchment (Pierson 1994). Both North American governments were shaped by similar contextual pressures: an increasingly conservative, anti-welfare state climate of opinion on the one side and on the other side fiscal pressures and a federal structure that allowed political executives to circumvent the weakened pro-welfare state interests. Especially in the North American context efforts to refashion the system of income transfers by adopting NIT-styles policies became more and more popular. These concepts

were initially proposed by Milton Friedman in 1943 and are based on a relatively simple idea: in good times workers would pay taxes to governments and in bad times governments would pay taxes to the workers (Moynihan 1973). Eligibility would be determined exclusively by income reported in the tax return. All NIT models are defined by three parameters:

1. the guarantee level (the maximum benefit) (example: \$ 15,000),
2. the tax back rate (the rate at which benefits are reduced as earnings rise) (example: 27 percent),
3. and the break even point (the income level at which benefits disappear) (example \$55,500).

The guarantee level is the maximum benefit level for each family. It varies by family in size and configuration. In our example, the benefit level for a family of four with no other source of income other than the NIT is equal to a guarantee of \$15,000. The tax-back rate comes into play when a family has sources of income other than the NIT. The reduction rate of 27 percent means that for each dollar of income other than NIT, the NIT benefit is reduced by 27 percent. The break-even income level is the maximum level at which NIT benefits can be received.

A higher guarantee level is desirable to ensure adequate incomes, and a low tax back rate is desirable to encourage people to work. A high guarantee level combined with a low tax back rate, however, means the break-even point is very high and so are the costs. Consequently most NIT-type proposals for the working population provide a low tax-back rate but also a low guarantee level. Another important feature of such programs is that they can reach well into the middle classes, albeit at a diminishing rate. And because such programs are not just for the poor alone, they are in principle able to generate sustaining political coalitions (Myles 1998:352). They can draw on broad support from the business community as an alternative to both social benefits for middle-income workers and minimum wage laws (Haddow 1993; Quadagno 1994).

By means of simple numerical example, Friedman illustrated how the benefit formula would work and why it provides incentives to work by permitting welfare recipients to experience an increase in take-home income if they worked more. Work incentives, however, were not the only advantages Friedman saw in NIT (Friedman 1962). He also noted that the NIT has the advantage of providing support to poor families solely on the basis of their income, and not on the basis of some characteristics purported to correspond to need. A second important feature,

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if we follow Friedman, is that NIT provides cash, which is the best form of support from the recipient's point of view and it is less expensive than the existing systems by saving administrative costs and by concentrating benefits more easily just on the poor.

In Canada as well as in the United States proposals to create NIT/Guaranteed Income (GI)-type programs emerged almost simultaneously in the early 1970's but were rejected in both countries. They continued, however, with two other, what Myles called almost accidental and originally modest, initiatives (Myles 1998:352): a Guaranteed Income Supplement (GIS) for the elderly poor designed along NIT lines were proposed in Canada in 1966, and the United States introduced the Earned Income Tax Credit (EITC) in 1974, a modest wage subsidy for the working poor families (Hotz and Scholz 2001; Ventry 2000).

The GIS in Canada was the first income transfer program that followed the NIT-design, provided a modest but real guaranteed annual income for all those of age 65 and over. Benefits were income-tested but not means-tested, and that is a central difference to traditional liberal style program design. Rather than the 100 percent tax-back rate of common social assistance programs, those benefits were reduced only by 50 cents for each dollar of additional earning. GIS provides single persons with a guaranteed income equal to 54 percent of the median for single households and 59 percent for couples (Myles 1996:123). The strong connection between NIT-style programs and the politics of retrenchment became obvious in the late 1970s. Because of financial stress, the Trudeau government decided in 1979 to reduce the monthly benefits of family allowance (Myles and Pierson 1997:18). To soften this cut, a refundable tax credit designed on NIT-principles was targeted at families with children. That was a starting point for the government in Canada to reform major parts of the social income security system along NIT lines. Until the 1980s, Canada had several major income security programs that could be considered universal in the sense of not imposing income-based qualifying conditions. Here we find a major assault on universality starting in the 1980s and going further in the 1990s. In 1989, Old Age Security was subjected to a *claw back* that effectively transformed it into an income-tested program by 1991. Eligibility was determined, at least since the mid-1990s before benefits are paid out, on the basis of net-income as calculated in the annual income tax form, so that upper-income seniors do not receive an OAS-cheque. The reforms of elderly benefits had an important redistributive impact in increasing the benefits for low- and middle-income seniors while reducing or removing payments to upper income seniors.

The Conservatives 1988 income-tax reform shifted most expenditures and deductions to non-refundable credits, thus reducing their value for higher-income seniors. In 1994, the Tories imposed an income test on the age credit, reducing or removing tax savings from middle- and upper-income taxpayers. Furthermore, the Mulroney government made fundamental changes to the tax/transfer system, ending in full indexation in 1986. The age credit was partially de-indexed and the pension income credit frozen. These changes increasingly eroded the value of the tax breaks. While the Liberals restored full indexation to the federal tax/transfer system, they did not fully restore tax credits and thresholds to their original value.

No area of Canadian social policy has seen more changes over the past two decades than federal child benefits (Battle and Mendelsohn 2001). The move from universality to income testing was essentially the same as for OAS: first a *claw back* on Family Allowance in 1989, and, second, a full income testing with the 1993 Child Tax Benefit (CTB) that replaced Family Allowance. The Canada Child Tax Credit (CCTC), which replaced the CTB in 1998, involved mainly an increase in, and equalization of, benefits for low-income families (Battle 2001:22). The reforms of the 1990s have made a series of substantial increases to the CCTB that have boosted payments to low-income families. In 1997 the previous CTB paid a maximum of \$1020 per child, plus earnings supplement worth up to \$500 per family. It was replaced in 1998 by the CCTB, which eliminated the Working Income Supplement for the working-poor in favor of a larger, equal maximum benefit for all low-income families (whether working or on welfare). Here we see a clear trend in Canadian social policy: the displacement of demogrants and needs-tested benefits by income-tested benefits delivered through the income tax system.

Altogether the income tax system played an important role in major changes to the income security policy. Both levels of governments deliver substantial income benefits through the personal income tax system by means of a welter of non-refundable credits and deductions that reduce income tax or deliver cash benefits to those below the tax-paying threshold. Those expenditures increased from \$121.5 billion in 1988/89 to \$149.1 billion in 1994/95, declining slightly to \$140.1 billion in 1998/99 (Battle 2001:5). Income security and the tax system have become very much intertwined. Partial de-indexation of the personal income tax system eroded the after tax-value of benefits that are taxable (OAS, FA, EI and CPP). Partial de-indexation of the rates of refundable credits and income thresholds, including GST credit and CTB both eroded

benefits and reduced their coverage. On the positive side, Canada's trend to tax delivered income-tested programs is one of its major social policy accomplishments.

The United States has taken much more modest steps in modernizing means-tested programs. After the political failure of Richard Nixon's Family Assistance Plan (FAP) that aimed to provide a guaranteed annual income for all American families, the United States implemented the more modest Earned Income Tax Credits (EITC) for the working poor in the early 1970s. This development was aided by three events (Hotz and Scholz 2001:5). First, from 1960 to 1970 the payroll tax rate has increased to 4.8 percent from 3 percent (on both employers and employees) and it increased further to 5.8 percent in 1973, which focused the attention on the rising tax burdens of low-income families. Second, fostered in part by income maintenance experiments, there continued to be a great deal of intellectual attention paid to negative income taxes in think tanks, universities and governments. Third, a recession started in 1974. That prompted members of Congress to try to stimulate aggregate demand by refunding in 1975 \$8.1 billion in 1974 income taxes and cutting 1975 income taxes by an additional \$10 billion. So Congress enacted the EITC on a temporary, 18-month basis until it was made permanent in 1978.

EITC excludes the non-working poor, and that is a major reason for its popularity among American politicians. Such a program is consistent with basic American values. Benefits go only to those people who work for wages. In that regard, EITC reinforces the American work ethic. AFDC in contrast, allegedly undermines the work ethic by providing payments to those who do not work at all. Furthermore, EITC is consistent with the value of limited government. Because the program works through the tax code, the EITC eliminates the need for a large social-service bureaucracy. The appeal of this reaches well across party lines. In addition, unlike the safety net programs, the EITC has unambiguously positive labor market participation incentives. The EITC operates as a refundable tax credit through the federal tax system. In 1991 the maximum credit was \$1192 for the first child and only \$1235 for families with more children (Myles 1996:124). The EITC has become a central component of national income maintenance policy. By 1992, the program was estimated to benefit over 11 million families at a cost of \$9.4 billion (Myles and Pierson 1997:27). A further massive expansion introduced in the 1993 OBRA legislation—\$20 billion over five years—represented the largest funding increase in any program for low-income people since the 1970s (Myles und Pierson 28). By 1996, spending on the EITC

reached \$25 billion—more than double the federal outlays on AFDC. In 1999 the EITC has grown to \$31.9 billion. No other federal anti-poverty program has grown at a comparable rate (Hotz and Scholz 2001:1). The major tax bill passed by Congress and signed into law in May 2003, the *Job Growth and Tax Relief Reconciliation Act*, contains little support for low-income families (Lee and Greenstein 2003). Furthermore, the enormity of the tax cuts adopted in that Act and the 2001 *Economic Growth and Tax Relief Act* will severely constrain the federal government's ability to provide additional income support to working families for several years to come.

In addition, there were expansions in the Child tax credit (CTC) for lower-middle-income families. This tax credit was enacted to provide additional income support to families with children. The CTC is a partially refundable credit for working individuals and families with dependent children up to age 17. In a few short years, the child credit has become the second-largest social policy related individual tax credit. From a \$21.5 billion level in 1999, the CTC was expected to reach \$40 billion in 2003. In the same year these two income support credits, EITC and CTC will represent a combined \$75 billion investment in mostly low-to-middle income families (Gitterman 2003:18).

Combined with the 1996 welfare reform, these changes constitute a major shift in public-assistance programs in the United States in the 1990s. Federal dollars to support working low-income families increased from \$11.0 billion in 1988 to \$66.6 billion in 1999 (Blank 2002:1108). That suggests that the work incentives imbedded in the public assistance system should have increased markedly in the 1990s: cash assistance became far less available, welfare recipients were pushed much harder to find employment, the returns of low wage workers rose, and the availability of work supports like child care and health insurance increased to low-income families.

The important point is that, while the three traditional models of social provision came under attack, the NIT model won supporters and flourished in both countries, differing just in size and content. Starting in the late 1970s Canada began to refashion major parts of its income transfer system along NIT lines. Banting (1997:291) could show in his analysis to what different extent NIT style programs have been adopted in Canada and the United States: While the share of targeted cash benefits as a percentage of total income transfers in the USA held steady at around 20 percent between 1960 and 1992, in Canada, selective benefits rose from 21 to 52 percent of income transfer, rising most rapidly after 1975. This trend in Canada reflects the expansion of income-tested supplements. The EITC in

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the United States has grown exponentially during the late 1980s and 1990s. Another indicator of the success of EITC is the 1996 welfare reform. The tax program was the only welfare program which survived the Republican “onslaught” (Myles 1998:353) against federal poverty programs. The traditional means-tested program of AFDC did not survive and was replaced by a new program called Temporary Aid for Needy Families (TANF).

So at the end of this period of crisis and reform we find new designs of the welfare state in Canada and the United States. In the field of income transfers to the elderly, the USA relies on a mix of social insurance and traditional social assistance for income transfers. Canada relies on a mix of social insurance and NIT-style transfers. Concerning the system of income transfer for the non-elderly, the USA relies mainly on social assistance complemented by a small but expanding NIT (EITC). Canada has a mix of social assistance that declines, with social insurance declining too, but a comparatively large and expanding set of programs based on a NIT design (Myles 1998:353). What these differences mean for the distributional outcome will be analyzed in the next chapter.

Why, then, are NIT designed programs so popular in a period of retrenchment? In a period of financial stress, NIT-style programs possess a number of attractive features which allow them to compete successfully with traditional programs. The most important political reason is that NIT programs provide potential common grounds for a powerful political coalition. This coalition includes public and private actors interested in controlling public expenditures, those with an interest in increasing labor market flexibility, and those seeking to increase the incomes of the poor and the near-poor households (Myles 1998:357). On the more financial and administrative side, they are more effective in targeting benefits just at the poor so that governments might lower the public expenditures without leaving people to stay in poverty. In addition, such tax-based programs have lower administrative costs, and they provide much more work incentives than traditional social assistance programs. Because such programs are administered through the tax system, they increase the policy makers’ flexibility. This *hidden welfare state* (Howard 1997) or the *politics of stealth* (Battle 2001) limit the popular reactions against welfare state reform. The contemporary politics of the welfare state has become the politics of blame avoidance (Weaver 1986). Austerity means that reforms almost always require painful cut-backs in existing programs. So in operating through the tax system it might be easier for governments to present changes as relatively technical, or as part of a large and complex package deals.

Another important point, especially in the Canadian case is federalism. Adjusting benefits through the tax system proved to be far easier politically than adjusting traditional direct transfer programs. While social programs of all sorts have always represented contested terrain between federal and provincial governments, the tax system is the undisputed jurisdiction of the federal government. There are also differences on the side of the beneficiaries that must be mentioned. Traditional means-testing is based on a test of assets, as well as income, requiring families to spend down their resources to qualify. Beneficiaries are often subject to intrusive surveillance by public officials and moral codes of behavior. In the tax-based variant, criteria other than income are not considered. Eligibility is determined solely by an income test based on income reported in an annual tax return. There is no surveillance of beneficiaries, and administrative discretion is limited to that normally associated with the auditing of tax returns (Myles 1996:123).

These are the main reasons why NIT-style programs are so successful in a period of welfare state retrenchment. On the other hand, however, we have to explain the divergences in policy outcomes. Why are those programs in Canada more popular than in the United States? Three important factors can be mentioned here (Myles and Pierson 1997:4).

*First*, existing Canadian policy structures—the policy legacy of previous decisions – provided an effective bridge to a NIT-style design. Such legacies were small or non-existent in the United States. In that regard, we have to mention the GIS, which provided the opportunity for extensive policy learning concerning both the administrative and political advantages of these designs. A second element in this regard was the existing programmatic structure of a system of universal flat benefits financed from the general revenues. Unlike contributory programs that establish pseudo-property claims on benefits, claims based on citizenship alone are especially vulnerable to income testing.

*Second*, opposition to a basic guarantee has been much more intense in the United States. Any strategy that proposed to extend the NIT model beyond the working poor would ignite the traditional flash point of American social politics, namely race. As the history of AFDC in the 1990s bears out, racial antipathies have greatly weakened the political appeal of programs designed to provide cash transfers to the non-working poor.

*Third* is the fragmentation of national political institutions in the United States. This fragmentation has presented an additional obstacle to reform, giving those opposed to a more extensive NIT design an effective veto (Howard 1997:64-75; Ventry 2000).

## Measuring the Welfare State

What are the distributional outcomes of a NIT/GI design? The question has no single answer because it depends on the size and nature of the trade-off between new and old programs, on the one hand, and unknown behavioral responses by beneficiaries and future policy makers on the other hand. However, by comparing Canada and the United States with their different degrees of implementing, NIT-designed tax-transfer programs, we might draw some conclusion on the outcomes. Over the medium term, the evolution of the Canadian policy suggest an impressive formula for combining fiscal restraint with improved social protection for those in need. GIS benefits for the elderly have risen in real and relative terms, whereas the universal OAS and the C/QPP have stagnated. Rising GIS benefits have brought old age poverty down much more sharply in Canada than in the United States (Myles und Pierson 1997:35). Real child benefits for poor families have risen substantially since Canada began moving away from universal family allowance in 1978 (Myles and Pierson 1997:36). During a period in the late 1980s when the wages of young adults with children were falling, the Canadian tax and transfer systems have managed to stabilize child poverty rates.

Let us, however, take a more general look at the distribution of income in the United States and Canada. In the view of most welfare state supporters, social welfare programs help to raise the income of households with low earnings (Goodin, et al. 1999). The incomes of those at the bottom of the distribution are typically studied by analyzing poverty. A variety of studies have found that, across most affluent OECD nations, welfare state generosity is associated with low relative poverty (Brady 2001; Hicks and Kenworthy 2003; Smeeding, Rainwater 2001). It is no surprise that welfare state generosity tends to reduce relative poverty. Since relative poverty is measured as the share with incomes below a certain percentage of the median within each country, it is essentially a measure of inequality (Kenworthy 2004:2). It differs from the GINI coefficient or the 90/10 percentile ratio in that it takes into account only the bottom portion of the income distribution. Let us first take a look, however, at changes in pretax-pretransfer incomes and poverty. Kenworthy and Pontusson (2004) show in their study about *Welfare States, Real Incomes, and Poverty*, based on data provided by the Luxembourg Income Study, that the United States had the best performance of the analyzed countries in that market incomes at each of the percentiles were higher in 2000 than in 1975. That improvement occurred entirely

in the late 1990s. Between the mid-1970s and the mid 1990 real income levels declined. Canada was the next best performer. Here the income increased somewhat at the twentieth percentile, were stagnant in the fifteenth, and declined at the tenth. What can we say about absolute pretax/pre-transfer poverty? Here we find that the poverty level of the USA and Canada decreased slightly over the 25 year period. That is in large part due to the better employment performance of the North American countries, especially compared to Europe. Of course, employment is not always a cure for poverty. Much research in the past two decades has emphasized the large number of working poor in the United States, people with paying jobs but whose earnings are below the poverty line (Schwartz and Vogel 1992). However, in comparative terms employment seems to have been important in influencing trends in pretax/pretransfer absolute poverty.

Labor market performance is an essential part in measuring poverty in terms of inequality, but if we focus on specific welfare state regimes and in particular on different welfare state designs as we did in this paper, it is more important to look at changes in posttax/posttransfer incomes and poverty. What matters is the disposable income, and that is heavily affected by government transfers and taxes. During the last 25 years both countries see a reduction of absolute poverty. If we compare the trends in pre- and post-tax/transfer poverty, we see an interesting feature: In the United States the net government transfers to the poor increased only minimally, so that the post-tax/post-transfer poverty levels and low-end real incomes tracked relatively closely with pretax/pretransfer poverty and incomes (Kenworthy and Pontusson 2004:20). In comparison to this trend, a sizeable increase in net transfers allowed Canada to maintain a relatively low level of post tax/post-transfer poverty in the early 1990s despite a jump in market inequality.

Similar conclusions can be drawn from other data. Wolfsohn and Murphy (1998:8-19) compared earnings, inequality and polarization indicators for the effective labor force participation in 1974, 1985 and 1995 with inequality and polarization indicators for family disposable income, adjusted for size and composition of family for the same years.

A principal conclusion of Murphy and Wolfson's analysis is that the conventional wisdom holds that the United States is both a richer and a more unequal society than Canada. Looking at the labor market income, the earning inequalities rose in the United States from 1985 to 1995, while the polarization of earnings fell over the same period. In other words, the proportion of the "middle class

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**Table 3. Indicators of inequality and polarization of income (pre- and post-tax/transfer in the United States and Canada, 1974, 1985 and 1995**

Indicator	Canada			United States		
	1974	1985	1995	1974	1985	1995
Gini-coefficient (pre-tax/transfer system)	0.407	0.428	0.423	0.436	0.447	0.467
Gini coefficient (post-tax/transfer system)	0.324	0.313	0.306	0.346	0.368	0.394
Polarization coefficient (pre-tax/transfer)	0.408	0.454	0.431	0.463	0.462	0.440
Polarization coefficient (post-tax/transfer)	0.271	0.272	0.264	0.304	0.334	0.350

Source: Wolfson and Murphy 1998

earners” increased in the United States in the period from 1985 to 1995. Both earning inequalities (Gini coefficient) and polarization (Polarization coefficient) fell slightly in Canada over the same period (table 3). With respect to family incomes (post tax/transfer), the most striking result is that a substantial fraction of Canadian families was absolutely better off in 1995 than their U.S. counterparts at similar points in the income spectrum.

Ferrarini and Nelson (2003) analyzed the disposable income inequality in different welfare states for the mid-1990s and calculated not just the GINI coefficient before and after tax/transfer, but also a GINI reduction coefficient that measures the difference in inequality pre- and post tax/transfer. The higher this coefficient, the more successful is the tax/transfer system in reducing labor market income inequality. Here we find comparable results to those of Wolfson and Murphy. The GINI reduction coefficient is 16.4 in the United States and 25.9 in Canada. Just to compare it with other welfare state regimes, the coefficient in Sweden is 47.5 and in Germany 29.7 (Ferrarini and Nelson 2003:26).

Altogether Canada is better compared to the United States in balancing growing market income inequality and poverty through the tax and transfer system. It is hard to explain this solely by the more intense use of NIT-style social programs; other important parts of the welfare state and the labor market policies in general have to be considered. Contrary to the U.S. system, the Canadian welfare state focuses also on the non-working poor. NIT style programs that were implemented in the United States were only targeted on the working poor. The reform in Canada provided redistribution from high-income families to low- and middle-income families and was, therefore, able to reduce poverty and inequality, despite a growing market inequality in the 1990s. The tax expenditures in the United States just went to the low- and middle-income working population. Trends of growing market income inequality and a rise in poverty could not be absorbed by the tax/transfer system.

### Conclusion: Still Liberal Welfare States?

Among the families of nations (Castles 1993) that make up the developed capitalist democracies, Canada and the United States give pride of place to the market as the site from which individuals and families are expected to draw their welfare. Within those two countries, however, are large differences in the way benefits and services are delivered and financed. Building on a legacy of universal benefits financed from general revenue, Canada has managed to pass through an era of retrenchment and cost saving and is comparatively successful in stabilizing, though not reducing, poverty rates. Failure to transcend the poor law tradition in the formative years of the American welfare state foreclosed this option (Myles 1998:361). That Canada, as well as the United States, has moved towards targeted tax/transfer systems reflects the political appeal of such programs in an era of austerity. The central question is: is this just a period of welfare state retrenchment or can we talk of a period of lasting welfare state restructuring resulting in some kind of new welfare state type? It is important to note that this restructuring has differed dramatically in form and degree in the United States and Canada: on the one hand in the United States the implementation of a narrowly focused wage subsidy program and in Canada, on the other hand, the introduction of a more generalized redesign of the welfare state based on NIT principles (Myles and Pierson 1997:32). The distinct policy legacies in Canada and the United States were mentioned as a central factor in explaining the divergences. Canadian development of a NIT design for social transfers rests on the social democratic base of welfare state development. That includes universal, flat rate benefits and citizenship as the principal qualifying condition. In an age of retrenchment a shift toward a NIT-like welfare state represents a quasi-natural transition for such welfare states. The absence of universal components of the welfare state is the central reason why NIT-like designed programs

are relatively underdeveloped in the United States. The natural bridge is missing here and a dramatic redesign of program schemes would be necessary to implement such reforms. Another important factor that might explain the differences between Canada and the United States is more ideological: there is strong opposition in the United States to anything like a Guaranteed Income, especially for the non-working poor.

A central question will be if the expansion of NIT/GI designed programs is just a product of an era of retrenchment and austerity or if it is a viable future option for welfare state design. That depends largely on the political support these programs have. Until now these programs have remained popular in Canada, largely because they reach well into the middle classes. The main problem is that such a process we saw in Canada can happen only once: now that the benefits of higher income Canadian families have been reduced or eliminated, they are no longer available to finance future expenditure growth for low income families. Should the number of low-income families rise again as a result of greater market inequalities, the additional costs could be met only through a process of welfare state expansion, not retrenchment (Myles and Pierson 1997:36).

Speaking of a new welfare state design fits more to the development of the Canadian welfare state. Battle (2001:19) identifies several key concepts of this “new” design that correspond well with the findings of this paper and with the developments in Canada during the past 20 years. First of all, a broad-based and progressive income testing replaced demogrants and needs-tested income programs. That goes hand in hand with a stronger interaction and links between social programs and the tax system to prevent unintended work disincentive effects of social programs. The reforms of the welfare state in the United States, in general, and the more limited scope of the established NIT-styled programs, in contrast, is more congruent with the principles of the liberal welfare state regime. Benefits from the EITC are just targeted at the working poor. Such a narrow approach that is intended to provide work incentives are suited well to the welfare state to work reform in 1996. Here we find similar mechanism like in the old liberal distinction between deserving poor and non-deserving poor. Only those who work for their wage are worthy of getting benefits. That is a major difference from the Canadian development. Here we find no distinction between working and non-working poor. Benefits allocated through the income tax system are targeted on both groups. Such a design is more compatible with the concept of a guaranteed annual income. So coming back

to the question in the title, “Still liberal welfare states?” we can say yes in the case of the United States. Answering the question in the Canadian case is much more complex and difficult. As we have seen, classifying Canada as a liberal welfare state up to the reforms in the 1980s and 1990s is problematic. Strong universalistic elements put the Canadian welfare state somewhere between a liberal and social-democratic regime. If the recent reforms in Canada will lead to a new type of welfare state or if it is just a temporary retrenchment type is still an open question. What we could show, however, and this is very important for the comparative research on welfare state, considering the tax system has become an essential feature to understand different types of welfare state designs.

## Notes

- \* A different version of this paper appeared as “A New Canadian Architecture? Die Reform des kanadischen Wohlfahrtsstaates in den 1990er Jahren” in the *Zeitschrift fuer Kanada-Studien* Volume 48, Number 1, 2006, 9-27.

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# *Liberal Competition, Tory Cooperation: Nonprofit Organizations, the State, and Social Services in the United States and Canada*

Sam Ladner

Nervously comparing ourselves to our neighbours to the South is a favourite Canadian pastime. The popular press often ask why, how, sometimes if Canada differs from America. Whether the comparison is about politics, the economy or social policy, Canadians seem to have a peculiar need to explain the root cause for the differences. One theory suggests that differences between the two countries stem from American liberalism and Canadian toryism. These two ideological stances provide an easy, dichotomous lens through which social policies can be viewed; the first is individualistic, anti-statist, and egalitarian, whereas the second is collective, statist, and elitist. One well known proponent of this thesis, Seymour Martin Lipset, has examined voluntary organizations in the two countries as a means of comparing the role of philanthropy within liberal and tory states. Lipset concludes that American voluntary organizations are better supported by liberal individualism, which creates private philanthropy. The implications of this conclusion are far-reaching: proponents of the American liberal model exhort Canadians to favour more individualistic policies, which implies a privatized provision of social services. Those that advocate a liberal model for Canada are effectively advocating a reduced role for the Canadian state in social welfare.

Given the implications of his conclusions, Lipset's work raises several questions. First, his assertion that America's

voluntary sector is stronger asks for the empirical examination of the two countries' nonprofit organizations: is Canada's nonprofit sector less robust than the American? Second, does state provision of services actually preclude or even impede the growth of such a robust sector? Finally, will Canada miss out on the potential civil benefits of nonprofit organizations because of its presumed Tory orientation? In other words, is the adoption of liberal, individualistic policies a necessary precondition to harnessing the potential benefits of nonprofit organizations?

Empirical comparisons between countries are notoriously difficult, but there are some data that can compare the relative robustness of the nonprofit sectors. The evidence fails definitively to support Lipset's thesis. Indeed, a recent reading of data paint a much more murky picture. Some factors seem to confirm Lipset's thesis: Canadian nonprofits receive more government funding, cooperate more with the government, and have more of a history of government-solicited dissent. Other evidence is decidedly neutral, despite having been touted as evidence of this Tory orientation. But recent events suggest a growing liberal and individualistic approach to social policy in Canada. Recent squabbles over nonprofits' ability to advocate, for example, suggest that Canada is moving closer to the American liberal model.

The other questions Lipset's thesis suggest are more analytical in nature. Work by other researchers suggest that

Lipset's fundamental assumption that nonprofits compete with the state to deliver services is false: Canada appears to follow a more European model that is characterized by cooperation. That suggests the American liberal model is not the ideal; adopting individualistic policies may well stop progress Canada's nonprofits have already made.

### What Exactly are Nonprofits?

Lipset uses the term "voluntary organizations," whereas others refer to the "voluntary sector" or sometimes the "nonprofit sector," "nonprofit organizations," or the "third sector." The imprecision of these terms speaks to the difficulty of analysis. The Johns Hopkins Comparative Nonprofit Sector Project produced the International Classification of Nonprofit Organizations (ICNPO) which provides five criteria for nonprofit organizations. They must be organized, as demonstrated by some institutional framework such as a constitution; they must be private, that is institutionally separate from government; they must be self-governing and autonomous; they must distribute no profits to their owners or directors; and they must have some meaningful measure of voluntary participation.<sup>1</sup>

I favour this definition for its precision and potential for data collection. (Organizations that are temporary or ad hoc present many data collection challenges). For this reason, I will use the term "nonprofit organization" or "nonprofit sector" instead of Lipset's favoured "voluntary organization" or "voluntary sector."

Quite broadly then, the organizations examined in this paper are neither profit-seeking nor operated by the state. They employ both paid workers and volunteers. This definition, while broad in scope, includes organizations that are typically involved in the provision of social services, such as health, mental health, welfare and other services.

There has been a significant Canadian effort to categorize these organizations that are neither government nor private. McMullen and Schellenberg, for example, use three broad classifications: for-profit; quasi public sector or "quango" (e.g., universities, public schools, hospitals); nonprofit. This system is particularly useful for Canadian analysis because of the large number of "quango" sector organizations. Quango organizations are much larger than most nonprofits and might have more in common with large, for-profit organizations. For this reason, McMullen and Schellenberg have separated them out of their analysis.

For the purposes of this paper, McMullen and Schellenberg's category of "pure" nonprofits is the subject of examination. These organizations typically have few em-

ployees and are more vulnerable to changes in government funding than the larger quango sector. Whereas hospitals, schools and universities are in the quango category, small social-service health, cultural, and recreational agencies are within the pure nonprofit group.

### The Origins of Nonprofits in North America

In his classic study *Democracy in America*, Alexis de Tocqueville focused on the special roles associations played in early American life. "[T]he Americans form associations for the smallest of undertakings," he wrote, suggesting that the will to associate was fundamental to the American psyche. De Tocqueville speculated that the American tendency to form associations was related to its liberal democratic political structure. He compared the American model to an aristocratic society: "Every wealthy and powerful citizen constitutes the head of a permanent and compulsory association, composed of all those who are dependent upon him or whom he makes subservient to the execution of his designs. Among democratic nations, on the contrary, all the citizens are independent and feeble; they can do hardly anything by themselves, and none of them can oblige his fellow men to lend him their assistance. They all, therefore, become powerless if they do not learn voluntarily to help one another" (de Tocqueville 1998:149). The American will to associate, according to de Tocqueville, rises from the pragmatic realization that there is no Leviathan to order collectively oriented work; volunteerism is an attempt to mitigate the competitive state of nature that American democracy necessarily entails. De Tocqueville's analysis cuts to the heart of the differences between the development of American and Canadian nonprofit organizations. In the presence of a powerful elite, nonprofit organizations become unnecessary; elite-driven initiatives have an automatic, if not voluntary, cadre of assistants. Lipset suggests that this is the very dynamic that forces Canadian nonprofits to play a lesser role in society than American nonprofits.

In the absence of such an elite, voluntary association becomes not just advantageous but necessary. De Tocqueville's and Lipset's analyses connect the individualism of the American political system to the involvement in—and therefore the development of—nonprofit organizations. Lipset maintains that individualism and anti-statism, when combined with religiosity, are the recipe for a strong nonprofit sector: "The willingness of Americans to contribute considerable sums to philanthropic works, reaching heights undreamed of elsewhere, is not only the obverse of the lack of state commitment to supporting community

institutions; it is also linked to the interrelationship between voluntary religion and secular behaviour...” (Lipset 1990:143). Lipset implicitly suggests that the absence of the state in providing collective services is a contributing factor to a robust nonprofit sector. The American heritage is particularly indicative of a hands-off state.

The American Constitution and the Bill of Rights both promulgate the ideals of eighteenth century liberalism. This legal framework idealizes individual rights over collective rights and favours freedom of opportunity over duty to the collective society. This individual orientation makes policymaking a game of supporting this freedom of opportunity and not the protection of collective rights that state-delivered social services require. As Salamon writes, the American nonprofits “give institutional expression to two seemingly contradictory principles that are both important parts of the American national character: the principle of *individualism* ... and *solidarity*” (Salamon 2002:11). These two principles may seem contradictory, but there is an implicit assumption embedded within this statement: collective action relies on individualism. This adequately describes the American context, but not the Canadian.

While de Tocqueville was documenting the individualism that was shaping the new American republic, Canada was still firmly under the administration of the United Kingdom. The key legal framework that shaped Canadian social policy was the *British North American Act* (BNA Act). The BNA Act, which established the governance structure of Canada, created an important distinction for the delivery of social services in Canada. Charitable organizations, in deference to Québec’s strong Catholic Church, became a provincial responsibility. The *very act* of naming charitable work created a state commitment to such work. The state’s commitment to charitable work was also laid plainly in the hands of an existing social institution, the Church, thereby setting the stage for an elite-driven, collectively oriented approach to nonprofit work.

There is no such state commitment to the existence of nonprofit organizations enshrined in the American state-building documents—the American state is effectively silent on this issue. The Canadian provincial governments had an express interest in nonprofit organizations that was *explicitly stated* in a formative legal document. The structural difference paved the way for heavy state involvement in Canadian nonprofit organizations but not in American organizations. The treatment of nonprofit organizations in these two countries’ formative legal documents lends credence to Lipset’s tory/liberal divide.

Lipset makes much of these different political legacies. The tory heritage of Canada contrasts sharply with the revolutionary, liberal heritage of the United States. The social policies of the United States and Canada developed in different political contexts. The American Revolution brought an unadulterated liberalism to the American political scene. The American Revolution was a rejection of government interference in the private lives of citizens. This heritage of active anti-statism is not present in Canadian history. Canada was built in part by Americans who preferred to remain loyal to the British crown. The cooperation between citizen and state translates into a different kind of nonprofit organization in Canada. Whereas in the United States, as de Tocqueville suggests, nonprofits result from the rejection of state involvement, in Canada, nonprofit organizations work in tandem with other state agencies. This cooperative model is not necessarily inferior to the U.S. model, simply different. Canada’s pro-state sentiment has shaped social policy to make it distinct from the United States’ version of the fully privatized notion of social welfare.

In a sense, Lipset is both correct and incorrect. The Canadian context is different from the American. But nonprofit organizations are not affected the way Lipset might predict—Canadian nonprofits are not hampered by this heritage of state involvement. The sector is robust and in some cases even stronger than the American.

### **The Relative Size of the Nonprofit Sectors in Canada and the United States**

Comparable data on the two countries’ nonprofit sectors is difficult to find. In recent years, international efforts to coordinate and standardize research methodologies centering on the nonprofit sector has helped, but there continues to be a dearth of information that provides a reasonable comparison between the two countries.

While the exact number of nonprofit organizations is not known in either the United States or Canada, in 1998, it was estimated that there are 175,000 Canadian organizations, compared to 1.2 million in the United States. McMullen and Schellenberg estimate there are about 60,000 Canadian nonprofit organizations that employ at least one paid employee. Using the “ten times” rule of thumb that corresponds to the relative size of the two populations, there “should” be 1.75 million American nonprofits if the two sectors were equivalent. But Salamon points out that many American religious organizations are not counted in this estimate, perhaps suggesting that the two sectors are comparable in terms of number of organizations.

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It is clear, however, that the American nonprofit sector does employ more people than the Canadian. The Canadian nonprofit sector employs 900,000 Canadians, or 5.9 percent of all full-time employment. In the United States, by contrast, this figure is 7.8 percent of employment. Salamon estimates that this amounts to 11 million American workers in the nonprofit sector. Canada, nevertheless, has more employees in the nonprofit sector than the average of 22 countries studied by Salamon and Anheier. See table 1 for details.

**Table 1. International comparison, full-time equivalent employees in nonprofit organizations**

Country	Percent of Full-time Equivalent Employees
Netherlands	12.5
Ireland	11.5
Belgium	10.5
Israel	9.2
United States	7.8
Australia	7.2
United Kingdom	6.2
CANADA	5.9
France	4.9
Germany	4.9
22 Country Average	4.8
Spain	4.5
Austria	4.5
Argentina	3.7
Japan	3.5
Finland	3.0
Peru	2.4
Colombia	2.4
Brazil	2.2
Czech Republic	1.7
Hungary	1.3
Slovakia	0.9
Romania	0.6
Mexico	0.4

Source: (McMullen and Schellenberg 2002; Salaman and Anheier 1999)

The relatively larger number of nonprofit paid employees in the United States could be due to more hospital employees counted as “nonprofit”, whereas they might be counted as “public” employees in Canada. Salamon estimates that 43 percent of American nonprofit employ-

ees are in health, whereas McMullen and Schellenberg estimate only 4.2 percent of Canadian nonprofit workers, outside of government and the quango sector, work in the health field.

Nevertheless, this difference in the share of total employment in the nonprofit sector is significant. It does lend credence to Lipset’s thesis that nonprofit organizations flourish in the American liberal environment. Perhaps the American sector is more robust and can therefore employ relatively more people. Perhaps the Canadian sector is more reliant on volunteers than the American.

Lipset’s thesis is not confirmed, however, with a careful comparison of volunteer rates. Following his original edition of *Continental Divide*, Lipset is taken to task by Curtis et al. for his analysis of volunteerism. They conclude from a second reading of Lipset’s data used that Americans were only more likely to be involved in religious associations than Canadians. (That also, incidentally supports the notion that there are, in fact, more nonprofit organizations in the United States that are not accounted for.) Lipset’s conclusion of an overall lower rate of volunteerism in Canada was not borne out when labour union involvement was factored in. The authors also pointed out that the volunteer rates for English-speaking Canadians actually exceeded those for Americans.

As Curtis and his colleagues point out, comparing volunteer rates between the two countries is a difficult task, with many judgment calls required that compromise the final comparison. More recent research from Statistics Canada has improved the availability of data, but the different methodologies used by American and Canadian statistical agencies still make direct comparisons difficult. Nevertheless, it appears that Canadians volunteer slightly more of their time than Americans. In 2000, 6.5 million Canadians aged 15 or over volunteered their time—that is 27 percent of the adult population .

In the United States, the Bureau of Labor Statistics estimates that only 21 percent of Americans aged 16 and over, or 59 million people, volunteered in 2000.<sup>2</sup>

**Table 2. Adult volunteer rates, U.S. and Canada, 2000**

	Total Volunteers	Percent of Adults*
Canada	6,500,000	27
United States	59,000,000	21

\* In Canada, adult is defined as aged 15 and over. In the United States, adult is defined as aged 16 and over. The American estimates might be somewhat smaller, therefore, than a direct comparison with the Canadian. Source: National Survey on Giving, Volunteering and Participating, Statistics Canada; Current Population Survey, Bureau of Labor Statistics.

These similar numbers contradict Lipset's research on volunteering rates, but correspond with Curtis et al.'s revision of Lipset's findings. That suggests that the Canadian nonprofit sector attracts just as many, if not more, volunteers than the American. The American liberal model is not necessarily a more robust one, at least in terms of volunteer rates.

The liberal model certainly supports less government funding. In this area, as Lipset might have predicted, Canadian nonprofits rely on a relatively higher amount of government funding than do American nonprofits. In 1994, for example, Canadian nonprofits received 60.2 percent of their funding from the government, whereas in 1990, in the United States, nonprofits received only 30 percent of their funding from the state. One could assume that this level has shrunk, given that American nonprofits have had their government funding steadily erode since 1980. By contrast, British nonprofits received 40 percent of their funding from the state in 1990. This comparison suggests that the state does play a larger role in Canadian nonprofit organizations, as Lipset has suggested. Canadian nonprofits appear to rely more heavily on the state than American nonprofits.

### **The State and Nonprofits: Liberal Competition, Tory Cooperation**

Implicit in Lipset's analysis of the Canadian and American nonprofit sectors is the assumption that less government involvement means more nonprofit activity. Does government provision of social services preclude a robust nonprofit sector? Lipset's assumption that it does draws on a major theory of why nonprofit organizations exist at all—the so-called “market failure” or “market/government failure” thesis. This thesis argues that the private market cannot provide all services to all people because the market does not provide services that are not profitable. Inevitably, a minority will demand services that the market cannot profitably provide. Likewise, government fails because it can serve only the majority; minority interests remain unanswered, thereby providing a space for nonprofit organizations. This theory suggests nonprofits are necessarily and essentially tied to minority interests, interests that are frequently frustrated in a democratic system that favours competition over consensus.

The American political system, like the Canadian, favours a competitive system of individual voting. Both countries complement this political voting with a free market as a means of allocating resources. But the Canadian system goes further than the American to compensate for

the “tyranny of the majority.” The Canadian state provides more redistributive policies than the American, effectively reducing—economists would say “distorting”—the role of the market. Both proponents and critics of the market would agree that policies based on market logic do not work when mixed with policies that are not market-based. The Canadian context is indeed such a mix.

The market failure thesis fails to explain adequately the dynamics behind the Canadian approach to social services, where the state's redistributive policies more effectively represent minority interests. Nonprofits do not “compete” with the Canadian state; market failure thesis assumes this competition.

Campbell questions the suitability of the market failure thesis to explain the Canadian context. He points out that the Canadian state frequently funds nonprofit services: “this is not ‘government failure’—just government provision by other means” (Campbell 1993:6). The market failure thesis focuses solely on the “demand” for social services, completely failing to explain why anyone would “supply” such services in the first place. Governments frequently engage in activities that cannot be explained by public demand, calling into question the market failure framework.

Underlying market failure is the assumption that the relationship between the state and nonprofits is competitive, indeed, that the allocation of resources as a whole is based on the competitive instinct. Only when this competitive logic inherent in the market fails does market failure theory provide an explanation for why nonprofits exist. That understanding is suited to the United States but not to Canada.

In his examination of relations between nonprofits and the state, Young offers three theoretical frameworks for understanding these relations: complementary, supplementary, and adversarial. He argues that in the United States, these relations are adversarial and are exemplified by tension over key issues such as fundraising and tax regulations and by state attempts to exert more control over the nonprofits sector through changes to policy and legislation. The adversarial model corresponds to the market failure thesis in that it assumes a zero-sum game between nonprofit and state activities. It is a fundamentally competitive understanding of social policy in that it conceives of nonprofits as competing directly with the state to deliver services. This model has embedded within it the liberal tradition of individual competition, a denial of collective or corporate action as either legitimate or practical.

Salamon suggests that this model is the implicit one that Americans use to understand nonprofit organizations. Policymakers assume the market failure thesis as given and build policy around that assumption. Such an either/or approach is fully in line with the liberal tradition, and usually in the United States, the thrust of policy is to get the state out of the way in order to make way for individuals to organize action themselves.

International evidence suggests that this adversarial model does not apply to countries other than the United States. The Johns Hopkins Comparative Nonprofit Sector Project compared nonprofit organization in 22 different countries. Researchers found examples of a cooperative model between the state and the nonprofits in European countries and in Japan. Nonprofits in countries such as Germany and the Netherlands and even in the United Kingdom tend to deliver services in tandem with state policies. Thus, the American model of adversarial relations was not representative of all the countries studied. Unfortunately, Canada was not part of this comprehensive study, but it seems to correspond to the cooperative model as well.

The Canadian state has demonstrated a cooperative approach to nonprofit lobbying, for example. Canada handles opposition significantly differently from the United States. The Canadian state has a history of soliciting input from nonprofit organizations. There are examples of significant policy shifts resulting from nonprofit input. In her comparison of American and Canadian gender equality, LeClerc noted that the Canadian state was far more open to nonprofit lobbying than the American state. Canadian feminists succeeded in having gender discrimination recognized in the *Charter of Rights and Freedoms*, whereas American feminists failed to have the Equal Rights Amendment be ratified by all states. Although there were important structural differences that played a role, LeClerc notes that Canada has a distinct quality: "Canada is unique in that it funds its own dissent" (LeClerc 1991 116).

Canada's social welfare system is also distinct. A large portion of Canada's welfare-state provisions are universal, suggesting that Canada's model is closer to what Guest called the "institutional" model of social welfare services. The only universal feature of the American welfare state—and the most politically resilient—is the social security pensions for the elderly. The American welfare state is closer to Guest's "residual" model, which is characterized as a "last resort" system that is punitive and stigmatizing.

Using Guest's framework, it would follow that the American nonprofit sector *is* in competition with the state. Welfare provisions once provided by the state have now been left to nonprofit organizations. In the zeal to

reduce administrative "duplication," the provision of welfare services is perceived to be an either/or undertaking. Lipset's analysis assumes that this competitive structure is the only model by which nonprofit organizations operate. There is much evidence to suggest that Canada—like others—employs a more collaborative model and yet still has a robust nonprofit sector. Calls to embrace the liberal competitive model are more about a wider neo-liberal agenda of eliminating the state than it is about improving nonprofit organizations.

### Shift toward more liberal approach in Canada

While it appears that the Canadian state favours a tory approach to nonprofit relations, there has been a trend toward a liberal model. Over the past 10 to 15 years, the Canadian government has shrunk. There have been moves to compensate for this loss of staff and services by increasing the load and roles the nonprofit sector currently plays in delivering services. This shift seems to be taking the form of the individualistic, privatized approach to philanthropy adopted in the United States, however inappropriate it might be for Canada.

For example, funding patterns are shifting. In their study of nonprofit organizations in Ontario, Reed and Howe found that only 35 percent of the revenue of the nonprofits studied were from federal, provincial or municipal *grants*, whereas 47 percent of their revenue came from federal, provincial or municipal *contracts*.

The 1997 national Survey of Giving, Volunteering and Participating, the first comprehensive survey aimed at the nonprofit sector, found that nonprofit organizations received 57 percent of their revenues from government. Another 32 percent of revenue was derived from commercial or fee-for-service arrangements (some of which includes government-awarded contracts). The rest was made up by corporate and individual donations. Recent rises in grants for nonprofits in Canada are due mostly to the increase in fee-for-service arrangements and not to direct grants. The fee-for-service arrangement, particularly with state agencies, has made nonprofits more conscious of the need to compete with other nonprofits and even with state agencies for coveted government contracts. Where once there were direct grants, now there are contracts. The relationship has shifted from one wherein the state collaborates with nonprofits to complement its policies to one wherein the state employs nonprofits to *replace* the state. Canadian nonprofits are becoming independent contractors to the state, as they already appear to be in the United States. The state is now the client of the nonprofits, instead of the

supporter and funder. This shift is more in line with the American liberal model that implies a healthy nonprofit sector necessitates that the state “get out of the way” and not “compete” with nonprofits.

Another sign of the shift toward the American model is the current conflict over nonprofit advocacy. In 2002, the Institute for Media, Policy and Civil Society (IMPACS) released its report “Let Charities Speak” which publicly questioned the government’s restrictions on charities’ rights to advocate. Currently, Canadian tax law states that registered charities can spend only 10 percent of their revenue on advocacy work. If their advocacy budget exceeds this 10 percent, or if their work is determined by Canada Customs and Revenue Agency to be excessively “partisan,” a charity can lose its charitable status. IMPACS, in partnership with the nonprofit umbrella group the Canadian Centre for Philanthropy, criticized this law as analytically fuzzy and morally unfair. IMPACS cites the example of a YWCA in Ontario which was forced to remove a phrase referring to the rights of women in its charitable status application. IMPACS’s campaign has garnered significant media attention but only the agreement for “consideration” by CCRA.

The Canadian model, which currently ascribes to the state more effective control over what autonomous and private nonprofit organizations can do, suggests a tory approach. The state sees nonprofits as an extension of itself, and therefore attempts to control their activities. The American liberal system, by contrast, allows for a wide range of “partisan” activities for charities, which can include up to 20 percent of the annual budget. While this appears to offer more freedom to nonprofits, this freedom comes at a price for less mainstream nonprofits. Those nonprofits that are not backed by large corporate sponsors have relatively less “freedom” to advocate, simply because their meager revenues allow for little advocacy work. Nonprofits that are popular with corporate donors, however, are free to spend enormous sums of money, up to \$1 million per year, advocating for their primary constituents. Freedom to advocate, in this example, comes with a significant price tag.

The current disagreement over advocacy indicates a favoured approach to the American liberal model, which clearly benefits those nonprofits that support, rather than challenge, the status quo. Adopting the American model may free up advocacy dollars, but policymakers might well ask advocacy for whom and for what before the liberal model is adopted.

### Unintended Consequences: The Liberal Model in Canada

Canadian policymakers may adopt the liberal model in the mistaken belief that reducing state-provided social services would result in nonprofits picking up the social-service slack. If the state “gets out of the way,” so the logic goes, the nonprofit sector will become more robust and enjoy more support from both taxpayers (lightened from their tax burden) and private companies.

Evidence from the United States, however, suggests otherwise. As Salamon (2002) notes, the decrease in state funding to American nonprofits was *not* accompanied by an increase in private donations. While overall giving increased in absolute terms, the share of nonprofit revenues from donations actually decreased from 18 percent in 1977 to only 12 percent in 1997. Instead of effectively replacing the state, nonprofits are forced to scramble for funds, spending ever more of their time applying for shrinking grants and government contracts.

The implicit belief that providing social services is a matter of competition has had further unfortunate consequences in the United States. Nonprofits are now in direct competition with *for-profit* organizations that are moving in on the previously untapped market of social services. Large corporations such as Lockheed Martin are now in the business of administering state-level welfare services. The increased pressure from for-profit firms is intense as the nonprofit “market share” has been declining rapidly. Between 1982 and 1997, nonprofits had lost significant ground to for-profit organizations in key social service industries, as noted in table 3.

**Table 3. Decline in nonprofit market share, selected industries, 1982–1997**

	Percent Share in 1982	Percent Share in 1997	Percent Change
Daycare	52	38	-27
Home Health Care	60	28	-53
Rehab Hospitals	70	36	-50

Source: Salamon, 2002

This shift toward competing with the private sector is exacerbated by the ways in which governments fund nonprofits. Fee-for-service is now common, but what is new, particularly in the case of the United States, are subsidies for “consumers” of these social services. This forces nonprofits to compete actively for potential clients in order to receive any state funding.

Large American firms, now in competition with American nonprofits, could rely on the North American Free Trade Agreement to gain access to the nonprofit market here in Canada. Conceivably, services performed very recently by the state could be provided by American multinationals such as Lockheed Martin. Is that what Lipset had in mind when he suggested that the American system is better? Is that what Canadian policymakers envisage when they see a smaller state and more robust nonprofit sector?

The competitive liberal model clearly has some advantages. Nonprofit organizations in the United States have more freedom to advocate on behalf of their clients. The need to compete with large for-profit organizations conceivably could force nonprofits to be more innovative and to capitalize on their nonprofit status as a competitive advantage. But there is no evidence to suggest that the American system actually supports more or better nonprofit organizations. Indeed, there is some evidence to the contrary.

What is at stake here is no less than how Canadians decide to allocate their resources. Although the Canadian state has chosen a more tory approach when it comes to nonprofit organizations, there is now a noticeable shift to the American competitive model, but without the accompanying evidence that the American model is, in fact, superior. Flying headlong into an American approach will inevitably mean flying headlong into American problems: fewer resources for those who need it most. Canadian policymakers would be well advised to note that the Canadian system *is* distinct and consequently requires distinctly Canadian approaches. Adopting the American model without questioning either its efficacy or appropriateness represents a potential loss of what has been an essential element to Canadian social policy.

## Notes

- 1 This does not preclude the presence of paid employees. Indeed, those organizations that have no paid employees at all frequently lack the institutional characteristics that INCPO requires. For this reason, nonprofits usually include both volunteers and paid employees.
- 2 This compares with a study conducted by the nonprofit organization The Independent Sector, which estimates 44 percent or 83.9 million people over 21 volunteered. The significant discrepancies between the Independent Sector's estimates and the BLS's might be explained by a difference between "formal volunteering" and "informal volunteering." The BLS and Statistics Canada both provide exact text of the survey instruments; both instruments define volunteering only as being done through an organization. Since the Independent Sector's exact methodology is not available, I will rely on the BLS survey for comparison with Statistics Canada.

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# *Comparative Issue Definition in Risk Related Public Policy*

Dana Lee Baker and Shannon Daily Stokes

Discontent drives continual redefinition of public issues within the cultural and temporal contexts of sovereign nations (Slovic 1993; Considine 1998). When a social condition becomes recognized as an urgent problem, the public—either in general or as influential stakeholders—delineates, promotes, or accepts specific definitions of issues to be potentially addressed by government (Gross and Aday 2003; Yioutas and Segvic 2003). Issue definition is, therefore, the result of deliberately shaped and politicized interpretations of human circumstance (Jeon and Haider-Markel 2001). The lasting influence of issue definition on the policy process (Baumgartner and Jones 1993; Tarry 2001; Yioutas and Segvic 2003) might be expected to be most differentiated in the more domestic and culturally specific aspects of governance (Brouwer, et al. 2003; Baker and Stokes forthcoming). However, in the context of globalization, there is rising concern that issue definition will become homogenized, resulting in a decline of the role of government in shaping society's choices and future (Peters 1997).

In current globalization, knowledge construction of all kinds is becoming less bounded by the geographic lines of nations (Hajer 2003). This blurring of boundaries is particularly evident for neighboring nations that are socio-cultural peers (Salter and Jones 2003). Nationally specific issue definition in the current era is an intriguing, yet insufficiently explored aspect of international interaction and globalization (Kamieniecki 2000). The following is a comparison of the definition of modern public health issues in Canada and the United States. The central ques-

tion of the analysis is: Does issue definition in Canada and the United States relating to public health appear to be nationally specific or continentally convergent?

Three issues were selected for analysis of the question including: West Nile Virus; potential for contamination of blood products by mad cow disease; and stem cell research. These topics were chosen for three primary reasons. First, the set issues involve three common types of health policy challenges from the spectrum of public health related circumstances: 1) contagious disease (West Nile Virus); 2) negative externalities of human (commercial) activities (contamination of blood products with mad-cow disease); and 3) cutting-edge scientific research (stem cell research). Second, these issues potentially affect the public at large rather than a particular segment of the population. Finally, a variety of feasible problem definitions and policy responses exist to address each of these issues.

In conducting the issue definition analysis, public discourse is examined. We employed a modified version of the technique developed by Frank R. Baumgartner and Bryan D. Jones described in *Agendas and Instability in American Politics* (1993) and used in their ongoing Policy Agenda Project (funded by the National Science Foundation). This method has been previously used to study construction of issues and problem definition in of a wide array of policy areas such as air bag safety (Houston and Richardson 2000), tort reform (Tarry 2001) and disability (Jeon and Haider-Markel 2001). Because our focus is issue construction as opposed to problem definition, we have used government discourse to establish context and have focused the preponderance of the analysis on the media sources.

### Issue Definition and Scientific Dissensus

Deliberate, competitive transformation of human circumstance into challenges to be addressed by government has been described as a crucial step in both policy development (Rocheffort and Cobb 1994; Kingdon 2002) and in developing an understanding of subsequent policy trajectories (Dery 1984). Modern public health issues are often defined through articulation of potential risk (where probabilities of harm can be meaningfully assigned) and uncertainty (where probabilities of harm are unknown) (Baumgartner and Jones 1993; Brouwer, et al. 2001; Gross and Aday 2003; Young 2003). A plethora of public health issues have been recently articulated motivated by circumstances connected to the general health and wellbeing of human populations.

Risk and uncertainty, as recurring components of public discussion, give science a transforming and transformative role in the definition of public health issues (Van der Belt and Gremmen 2002; Myhr and Traavik 2003). Scientific certainty is elusive and depends on accumulation of results over time. In a democratic context, diffusion of information about scientific discoveries often results in hasty demands for policy change (Slovic 1993; Hajer 2003; Salter and Jones 2003). As a result, scientific innovation and policy development become intertwined. In fact, because policy change can be “viewed as analogous to technological innovation” (Juma and Clark 1995:127) innovations in policy have been culturally linked to circumstances of broad-based scientific engagement by a given society (Polsby 1984).

The pace of information diffusion has increased dramatically in recent years. Stakeholders, including those who reflexively minimize the role of scientific in decision making, have greater access to scientific results (Kamieniecki 2000). In the modern era, public issues are defined and translated into public problems under greater scientific dissensus (Slovic 1993; Baker and Meers 2005). Since public problems are “not objective entities in their own right” (Dery 1984; Murnaghan 2004), public action resulting from a new issue definition often takes place in the absence of scientific certainty (and often in the face of it) (Rayner 2003).

Stakeholder access to scientific results has increased to the point that policy makers are under frequent pressure to act on the contradictory opinions surrounding a particular scientific question, rather than form a policy based on an accepted scientific certainty (Kemshell 2000; Van der Belt and Gremmen 2002; Baker and Meers 2005). As the relationship between science and society changes, issues are

frequently assigned to specific policy arenas, components of government, funding structures, and policy solutions long before a scientific consensus is reached. As a result, the issue definition process can have transcendent influence on both the course of policy implementation and the future direction of scientific discovery.

One aspect of this shaping influence is the construction of public knowledge (Slovic 1993; Greer 2002). Public knowledge refers to the preferred modes by which a public issue is considered, taught, described and managed (Rocheffort and Cobb 1994). Public knowledge surrounding a particular issue tends to be constrained to a limited number of identifiable interpretations of the issues—at least in terms of the types of knowledge that are accorded legitimacy (Kemshell 2000; Rayner 2003). When the issue is deemed in the reasonable purview of government, these limited issue definitions are translated into public problems within what John Kingdon (2002) described as the “problems stream.” Policy entrepreneurs then seek to promote linkages between issues in the problem stream and favored policy solutions in the “policy stream” (Kingdon 2002). The creation of official public knowledge about issues has implications for access to the governing and policy process (Kamieniecki 2000) including which stakeholders and policy entrepreneurs participate in the development of policy surrounding a given issue (Kingdon 2002; Rayner 2003).

During a period of scientific uncertainty, potential harm of both action and specific remedial actions is unknowable. Under these contexts, stakeholders within a given society typically become concerned with defining, identifying and measuring potential risk (Moldrup and Morgan 2001). The expectation that interpretation of risk will be culturally subjective has been articulated by Mary Douglas (and others) as the cultural theory of risk (Houston 2001). In this view, “risk operates as a primitive way of maintaining conceptual boundaries between ‘self’ and ‘other,’ of distinguishing between what is pure and polluted, of allocating the blame for perceived danger” (Houston 2001). Partly as a result of this subjectivity of risk, international initiatives designed to guide decisions surrounding scientific uncertainty and risk (regardless of context), such as the Precautionary Principle, have been met with limited acceptance, particularly outside the realm of overtly environmental policy (Slovic 1993; Myhr and Traavik 2003). This limited acceptance is likely to be partially due to dissonance and difference in issue definition between countries. It is our hypothesis that, even in neighboring nations that are socio-cultural peers, a difference in issue definition in circumstances related to

public health will exist, in part as a result of differences in society's preferred approaches to risk management.

### **Method**

In order to examine the question of issue definition convergence, we employed a multi-level case study approach. Case studies are commonly used in comparative policy analysis (see for example True and Mintrom 2001; Clark 2002; Greer 2002). As is described above, Canada and the United States were selected as national cases because the two nations have strong economic ties and many cultural similarities. Not only is the potential for cultural imperialism of particular concern in this context, but it is under such circumstances that independence of issue definition might be expected to be least likely.

Selection of issue cases presents, of course, the challenge of distinguishing idiosyncratic elements from generalizable findings. As is true of research based on case studies, it is important to be especially cautious about external validity. A primary mechanism of alleviating some of this concern is to select cases from across the spectrum of similar cases (see for example Radaelli 2000; Simmons and Elkins 2004). In this study, three issue cases were selected from the two extremes and, more or less, the center point along the continuum of causality of public health challenges from human (stem cell research) to natural (West Nile Virus) origin.

Formal issue definition analysis was used to examine the translation of each of these human circumstances into public issues. The analysis of these cases proceeded as follows. First, contextual histories were developed by examining government discourse. Legislative acts concerning each of the public issues were catalogued to generate case summaries and timelines of government action. Government websites were then searched for issue related documents.

We then analyzed the issue definition process reflected in the print media. The articles were collected using Lexis-Nexis because this database was determined to be both the best available and most comprehensive source of articles. The headlines of the articles were chronologically catalogued. Headlines are typically used in issue definition analysis as indicators of the way in which an issue is described and the degree for which a particular problem is considered to be in need of government action.

Standardized frequency of article appearance was then plotted over time, from the point at which the issue was first discussed in the press until 1 July 2004. This reveals temporal patterns such as seasonal variation, connection

with events in the political process including elections, correspondence with other public issues. Peak coverage periods indicate a new event or linkage affecting issue definition and to draw out commentary from the issue stakeholders.

Finally, the analysis of the tone and content of a random sub-sample of article headlines was conducted. Instead of the positive, negative or neutral coding employed in much issue definition analysis, a Likert scale of risk was employed. This scale was employed because, as Douglas and Wildvasky originally discussed in 1982, in the modern era, science and technology are often recast as "sources of danger in the public consciousness" (Moldrup and Morgall 2001). The use of a Likert scale for risk is in keeping with a subjective understanding of risk, particularly Dean's interpretation of risk as ordered reality (Houston 2001). The headlines were coded on a four-point scale as follows: 0 = no risk, 1 = minimal risk, action necessary at some point; 2 = moderate risk, action necessary soon; 3 = urgent risk, action necessary immediately. The average risk scores were then plotted over time.

Lastly, a content analysis of headlines was conducted using a thematic dictionary specific to each issue. The purpose of this step was to compare use of issue descriptors. As Rochefort and Cobb (1994) describe, elements of rhetoric used to describe an issue shape definition of the problem and selection of possible policy solutions. Observable rhetorical differences within a particular issue indicate further independence in the issue definition process.

## **Case One: West Nile Virus**

### ***Case History***

West Nile Virus, first identified in Uganda in 1937, is a mosquito-borne virus (Petersen and Marfin 2002). The virus can result in flu-like symptoms and death (Sampson, et al. 2000). West Nile Virus is currently considered a "seasonal epidemic in North America" (Centers for Disease Control 2004).

The first recorded outbreak of West Nile Virus in the United States occurred in New York City 1999 (Rappole, et al. 2000). West Nile Virus has been reported in all but three states (Oregon, Hawaii, and Alaska) and has resulted in over 15,000 illnesses and 500 deaths. In Canada, West Nile Virus was first identified in southern Ontario in 2001. The virus is in five provinces and has caused over 1700 illnesses and more than 25 deaths.

### ***Governing West Nile Virus in Canada***

A search of the documents from the Parliament between 1996 and 2004 for “West Nile Virus” generated 108 documents and the search of the federal government website produced 2,897 hits. During the period examined, West Nile Virus was discussed in venues such as: the Standing Committee on Health; the Standing Senate Committee on Social Affairs, Science and Technology; Standing Senate Committee on Energy, the Environment and Natural Resources; the Proceedings of the Standing Senate Committee on National Finance; and in Senate debate. Nevertheless, the only reference in federal statutes and regulations found in the search of the Canadian archives was in the Health of Animals Regulations (SOR/91-525), which addresses West Nile fever as an element of consideration in the transportation of animals. These regulations are enabled by the *Health of Animals Act* and were updated on 30 April 2004.

The government discourse focused on multiple threats to the safety of Canada and Canadians. Different aspects of the issue were discussed as having different levels of risk and urgency. For example, transmission through blood was discussed as a low risk aspect of the issue whereas the role of the federal government in responding to “health emergencies such as SARS, West Nile Virus and Bovine spongiform encephalopathy (BSE)” (Standing Senate Committee on Social Affairs, Science and Technology 2003) was also discussed. The dominant focus of the non-parliamentary discussion is on promotion of personal safety measures individual Canadians should take, including a travel advisory for Canadians traveling to the United States.

Health Canada also has a website dedicated to West Nile Virus (<http://www.hc-sc.gc.ca/english/westnile/index.html>), which is designed to keep the general public informed about the issue. When “West Nile” is entered into the basic search engine of Health Canada, the first hits are news releases from the West Nile Surveillance program reminding Canadians to protect themselves from the virus. The focal point of official knowledge emphasizes low risk and personal responsibility. For example, “It’s Your Health” explains: “For most Canadians, the risk of illness from West Nile virus is low, and the risk of serious health effects is even lower. Nevertheless, it is important to know the symptoms of illness related to infection and how to minimize your risk, especially if virus activity is reported in an area near you” (Health Canada n.d.).

The information on provincial government website constructs knowledge about West Nile Virus along the

same basic themes. The scope of situations addressed is broader and varies by province. For example, the Ministry of Labor in Ontario discusses concerns about West Nile Virus and the workplace, emphasizing the role of the worker and employer to jointly find solutions. The website for British Columbia parks and conservation highlights that the B.C. Centre for Disease Control is leading a multi-agency group to monitor the issue in light of the provincial parks. Local governments are also discussed as key players in the defense against West Nile in British Columbia.

### ***Issued Definition of West Nile in the Canadian press***

Six hundred eighty-one articles on West Nile Virus were found in the Canadian press between October 1999 and July 2004. The earliest appeared on 3 October 1999, in the *Toronto Sun* under a headline proclaiming: “Outbreak: When it Comes to Infectious Diseases, Everyone in the World is at Risk.” Initial coverage coincided with the discovery of the virus in New York City. Early media attention was minimal, perhaps because West Nile Virus had not been identified in Canada.

The standardized frequency of article appearance for West Nile Virus is shown in table 1. In Canada, the mean number of articles per month was 14.8. The modal month was September 2002 (67 articles). Peaks months—with statistically significantly higher article appearances—also included August 2002, May 2003, June 2003, July 2003 and August 2003. As can be seen in figure 1, until the fall of 2002 coverage in both countries followed a similar pattern. During the summer of 2003, peak coverage happened in Canada prior to the United States.

The average risk scores of the risk-coded subsample are shown in figure 2 below. As can be seen in figure 2, during peak months the average risk score tended to be high.

### ***Governing the West Nile Virus in the United States***

The emergence of West Nile Virus in the United States surprised government officials. Testimony of the Emerging Threats Subcommittee of the Senate Armed Services Committee provides the first mention of West Nile Virus by the president of Kansas State University. On 27 October 1999 Dr. Jon Wefald described the discovery of West Nile Virus in New York City as a “fireball in the night” (US Senate 1999). The initial outbreak in New York City had an immediate impact on exports with Hong Kong halting the importation of live poultry from the United States in October 1999 (U.S. Congress 2000).

Figure 1. West Nile Virus standardized article frequency.

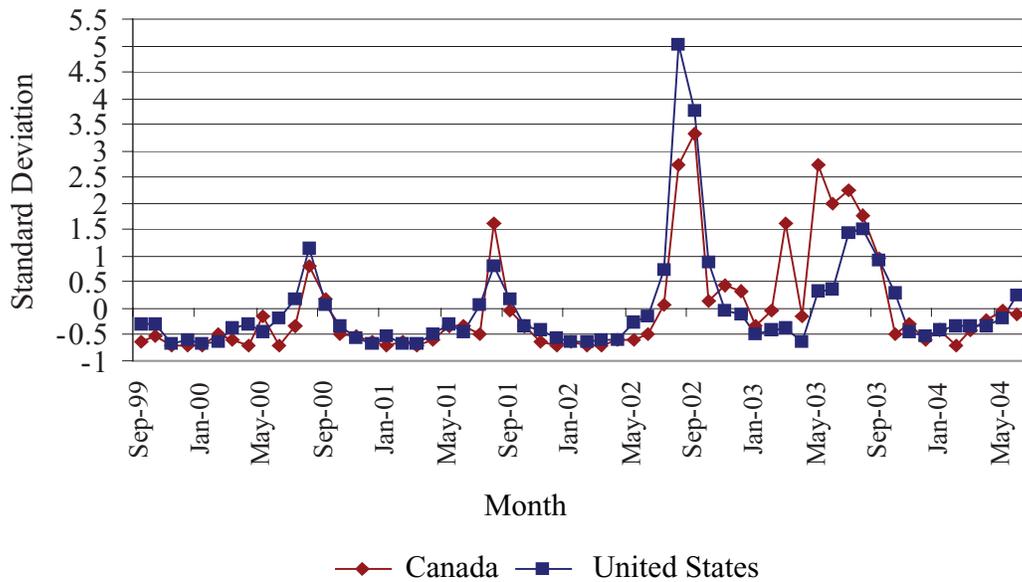
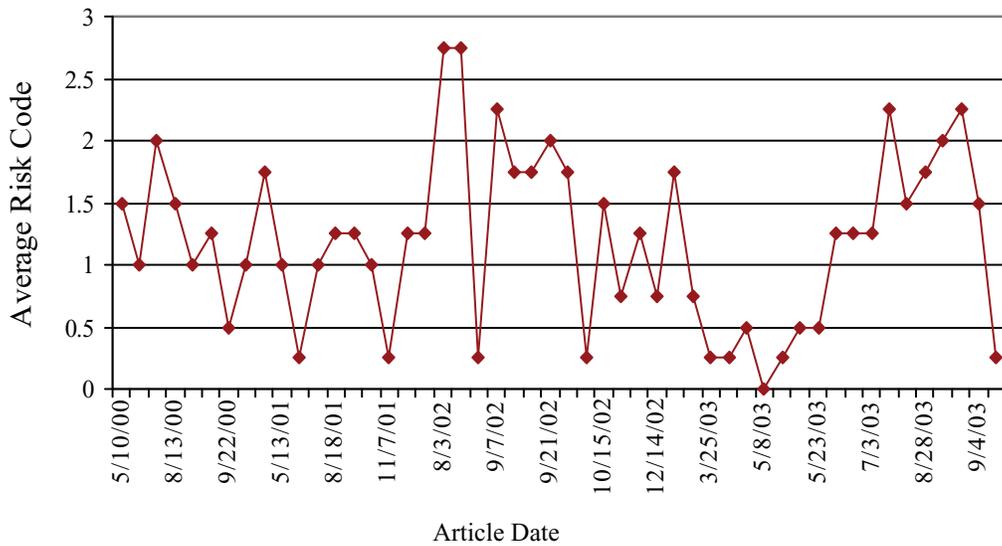


Figure 2. Average risk score for subsample of Canadian articles on West Nile Virus.



Given this introduction as a public issue, the flurry of government discourse surrounding the issue is hardly surprising. Entering the phrase “West Nile Virus” into the United States federal government homepage produced in excess of 1,000 documents. The majority documents presented focused on surveillance and monitoring efforts

of the disease. Several documents discussed the progression of discovery of cases of the West Nile Virus in different American states. The majority of the documents were produced or published by the Centers for Disease Control. Nevertheless, other agencies, such as the Department of Defense, the United States Senate, and the United States

Geographical Services also produced documents about West Nile Virus. For example, in May 2001, the American Forces Information Services put out a press release called “Military Bug Chasers Help Track Down West Nile Virus” (American Forces, 2001).

Initial discussions on West Nile were followed by funding for eradication efforts in Washington DC and money for the Department of Health and Human Services to study the issue. A focal point of the discourse was the federalist aspects of the issue. The issue was discussed as one that was best managed by the state and local governments, with funding assistance from and monitoring by the federal government. For example, the strategies developed to monitor the spread of West Nile Virus in both humans and animals included local surveillance with results then submitted to the Centers for Disease Control. The state documents were also much more focused on prevention measures that individuals could take than were the federal documents. For example, when state documents were searched for West Nile Virus, 408 documents were found. The titles tended to reflect the focus on prevention efforts. For example, Michigan’s state discourse includes a document called “West Nile Virus Precautions Important to Remember” (Michigan State 2002). The states’ documents also included discussion of efforts made to control the spread of the virus. For example, South Dakota’s government discourse includes a document called “South Dakota West Nile Virus Response Aerial Spraying Project” (South Dakota 2003).

In spite of the attention paid to West Nile Virus at the federal and states agency levels, there were no legislative actions located designed specifically to address West Nile Virus. A search of federal bills from between 1983 and 2004 for “West Nile” generated no documents.

### ***Issue Definition of West Nile in the Press of the United States***

Two thousand eight hundred ten articles on West Nile Virus were located in the press of the United States published between September 1999 and July 2004. The first two articles appeared on 25 September 1999 in the *New York Daily News* with the headline “2nd Virus Strain Eyed: City’s Encephalitis May Be from Africa” and in the *New York Times* with the headline “African Virus May Be Culprit In Mosquito-Borne Illnesses” coinciding with the discovery of the virus in New York City.

The mean number of articles about West Nile Virus in the United States press was 48.45 per month with a standard deviation of 69.4. The modal month was Au-

gust 2002, for which 396 articles were located. As can be seen in figure 1, September 2002 was also a peak coverage month. The number of confirmed human cases in additional states, combined with the first reports of West Nile Virus transmission through blood transfusions and organ transplants, accounts for the sharp upswing in the number of newspaper articles in 2002. It also coincides with the first two peak months in the located Canadian coverage.

The average risk codes in the subsample over time are shown in figure 3. The pattern suggests that definition of the issue as a public health risk was rather erratic, but stayed consistently lower during the summer of 2003 (perhaps a reaction to the previous summer).

## **Case Two: Mad Cows and Blood Products**

### ***Case History***

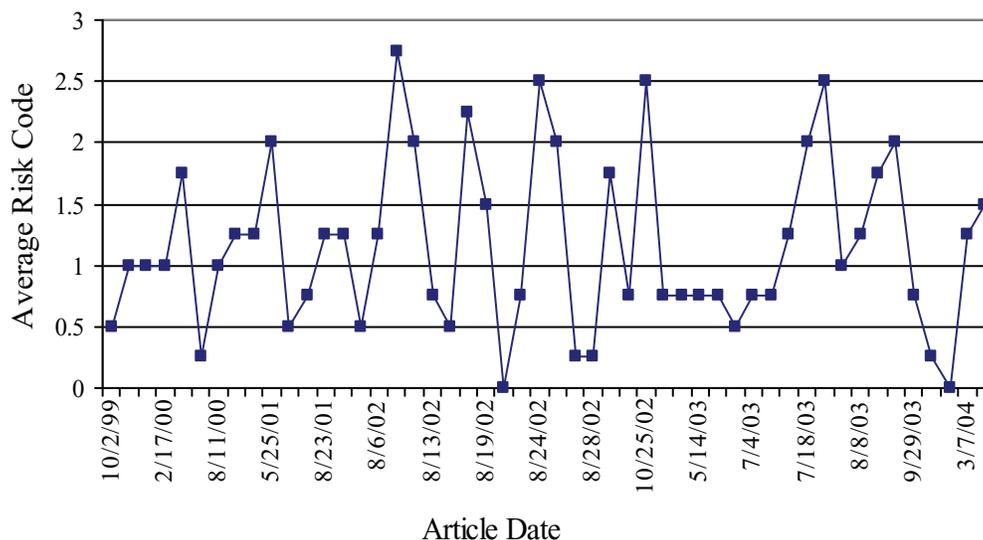
The concern that a variant of Creutzfeldt Jacob Disease (vCJD) could be transmitted through blood or bone marrow transfusion predated any scientific evidence of the phenomena (Brown et al. 2001). This disease, which is the human equivalent of mad-cow disease, was first identified in the United Kingdom in 1996, 10 years after the discovery of the condition in cows. The identification of CJD as the human variant of mad cow disease also took place three years after the peak year of identification of the disease in cattle (1,000 cases per week were discovered in the U.K. in 1993). vCJD typically kills human patients within 13 months of observed symptoms but years, if not decades, after infection.

Largely as a result of their previous experiences with HIV, blood agencies were quick to implement policies addressing the potential for transmission of the disease through blood transfusions and products (Kumanan et al. 2001). In December 2003, the first reported deaths a donor-recipient pair was reported in Britain. There is no direct evidence that the infections were the result of the blood transfusion (which took place in 1996) as opposed to through independent infection through the consumption of infected meat products. Nevertheless, as was demonstrated by the AIDS crisis, the potential for undetectable contamination of blood supply represented significant potential risk for the general populations of Canada and the United States (Finucane 2002).

### ***Governing blood and vCJD in Canada***

The Canadian national blood agency began deferring donors who spent more than six months in the United

Figure 3: Average risk score for subsample of articles from the United States on West Nile Virus.



Kingdom since 1980 in July 1999. In late 2001, the policy was expanded to include those who had spent a cumulative total of three or more months in the United Kingdom or France, had spent more than five years in Western Europe, or had received a blood transfusion or blood components in the United Kingdom since 1980.

Entering the words “blood donation and vCJD” into the search engine of the Canadian government’s website generated 53 government related documents. A search of documents for Parliamentary sessions between 1996 and 2004 for vCJD generated five documents including proceedings from the Standing Senate Committee on Social Affairs, Science and Technology in 2003, the Standing Committee on Health in 2002, and a debate in the Senate in 2002. The only place where there was direct discussion about blood donation and vCJD was in Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology (SSCSAST) in September 2003: “There are considerations for human health and public health that go beyond food safety. Health Canada has had a blood donor deferral policy that relates to the BSE status of a country and the length of residence in a country. There are a number of other therapeutic products that include pharmaceuticals, medical devices, biologics and vaccines, natural health products and cosmetics that may contain an active or other ingredient that may be a derivation of a bovine source” (SSCSAST 2003).

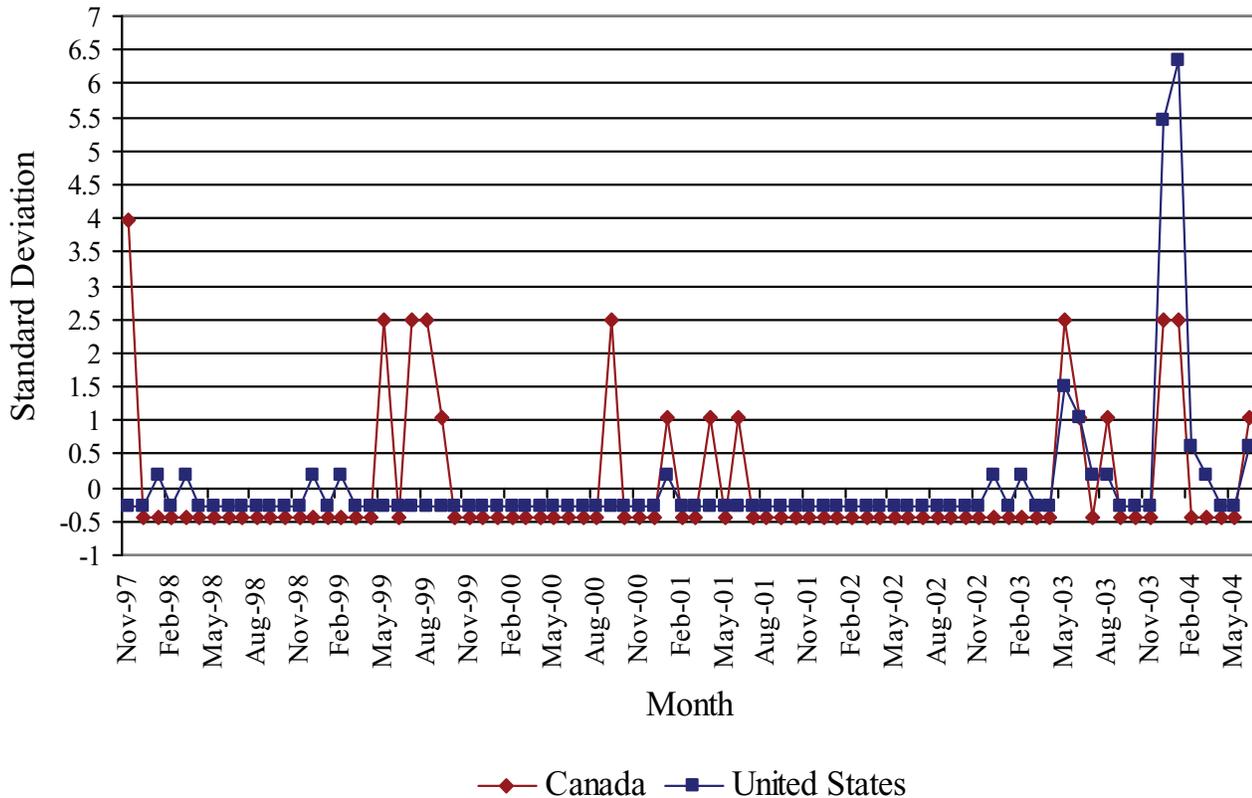
The public discourse surrounding the vCJD continuously discussed theoretical risk. No explanation—scientific or otherwise—is provided or discussed as to the mechan-

ism of decision or measurement by which decisions about the period of time are made. There is discussion of differences from United States’ policies (such as the Canadian decision to defer donors who had spent time in France), but no discussion of the reasons for the difference. The remoteness of the risk for Canadians is highlighted. For example, an informational briefing produced by Health Canada in August 2000 headlined “Managing the risks: Variant CJD and blood” explains: “The key objective of risk management is to ensure that every reasonable step is taken to protect the health of Canadians. But in determining what is ‘reasonable,’ we need to take into account all the risks, not just the obvious ones.... However, because science is rarely 100 percent certain about anything, decision-makers must take into account the best available knowledge, and weigh it against the most likely predictions of the outcome of choosing one approach over another” (Health Canada 2000). The article then goes on to discuss risks incurred by deferred potential blood donors, particularly with regard to shortages or losses of potential donor/recipient matches for blood products.

**Issue definition of blood and vCJD in the Canadian press**

The blood products issue proved to be a relatively low profile. Only 24 articles were located from the Canadian press between 11 November 1997 and July 2004. The first article to appear was in the *Toronto Star* and was called

Figure 4. vCJD and blood donation standardized article frequency.



“New ‘mad cow’ strain sparks blood alert U.K. doctor urges tighter donor screening” (11 Nov. 1997).

The small size of the sample of located articles complicates standardization. The average number of articles located per month was 0.3 with a standard deviation of .68. Months during which more than one article appeared were, therefore, peak months and included: November 1997, May 1999, July 1999, August 1999, September 2000, May 2003, December 2003, and January 2004. November 1997 was the modal (and inaugural) month, with three located articles. The standardized number of articles on vCJD and blood donation located in the presses of both Canada and the United States is plotted over time in figure 4 above.

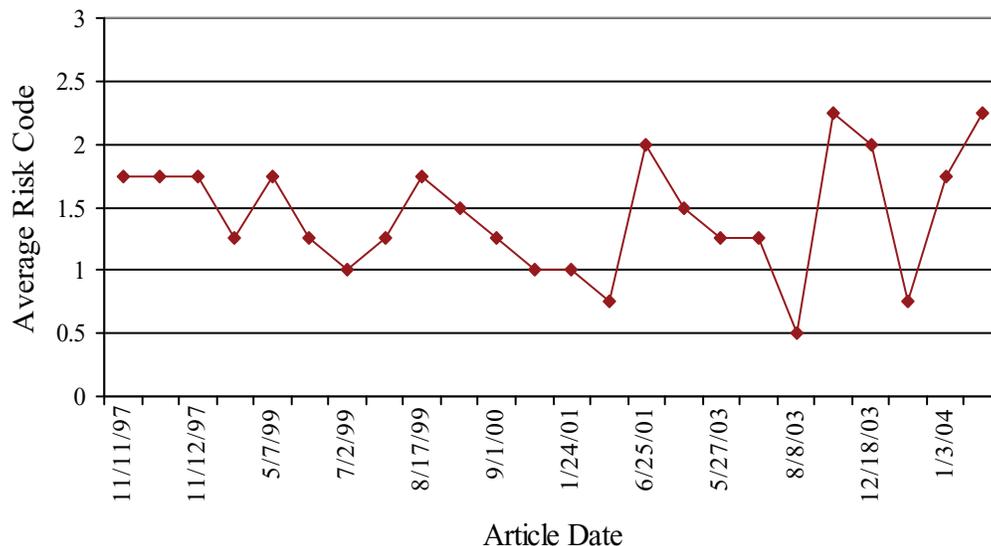
Due to the small number of located articles, all of the located vCJD and blood donation headlines were coded. The average code score are shown in figure 5. As can be seen in figure 5, the level of risk vacillated, but ultimately rose over time.

**Governing blood and vCJD in the United States**

Searches of the government archives and websites produced substantial government discourse on the issue. Five hundred forty-three federal agency documents were located when the words “vCJD blood” were entered into the search engine and 183 were returned when the search was narrowed to those including “donation.” However, unlike as was the case with West Nile Virus, there was little state level discourse on this issue—only one document from South Dakota’s Department of Health in 2002 was found when state agency documents were searched for “vCJD and blood.”

Successive federal policies of donor deferral were discussed in the federal level government discourse. The Food and Drug Administration of the United States developed a policy deferring donors who had lived or traveled in the United Kingdom for six months or more in August 1999. In January 2001, an advisory panel recommended expanding deferrals to all those who had spent more than 10 years living in France, Ireland or Portugal since 1980. All blood agencies, including the Department of Defense, currently have standards deferring donors. Furthermore,

Figure 5. Average risk codes of vCDJ and blood articles in the Canadian press.



in July 2001, the United States announced that it would no longer accept European plasma products due to concerns about vCJD. In spite of the obvious implications of these deferral policies, the focus of many of the federal documents was on the low risk associated with the transmission of vCJD through blood products. For example, testimony from the Red Cross headlined “Blood Supply Safer than Ever” was presented and discussed (Red Cross 2001).

One hundred fifty-four bills addressing blood donation were located in the search of archive of bills introduced at the federal level between 1994 and 2004. However, when the words “mad cow,” “BSE” or “vCJD” were added to the searches, no bills were located. Most of the bills on blood donation focused on expanding blood donation, rather than putting limits on the practice. This willingness to allow the formulation of deferral policies to take place completely at the agency level also suggests that the issue, while assigned urgency due to the experience HIV, was not considered a public emergency to which the legislative branch of government must attend.

**Issue definition of blood and vCJD in the press of the United States**

Articles about the implications of mad cow disease for blood products began appearing in papers from the United States on 6 January 1998. This is intriguing given that the earlier articles in the Canadian press focused on decisions made by a government agency in the United States. The first article located was headlined “FDA, blood banks guard

supply against disease” and appeared in *USA Today* (Manning 1998). Forty-nine articles about the blood products aspect of mad cow disease were located in papers from the United States between January 1998 and July 2004.

The mean number of articles per month was only 0.61, however the standard deviation was 2.27 because most months had no articles. The modal month was January 2004 (15 articles), which was right after the first cow with mad cow disease was found in the United States. The only other peak month was December 2003 (13 articles). These two months corresponded with the last two peak months in the Canadian press.

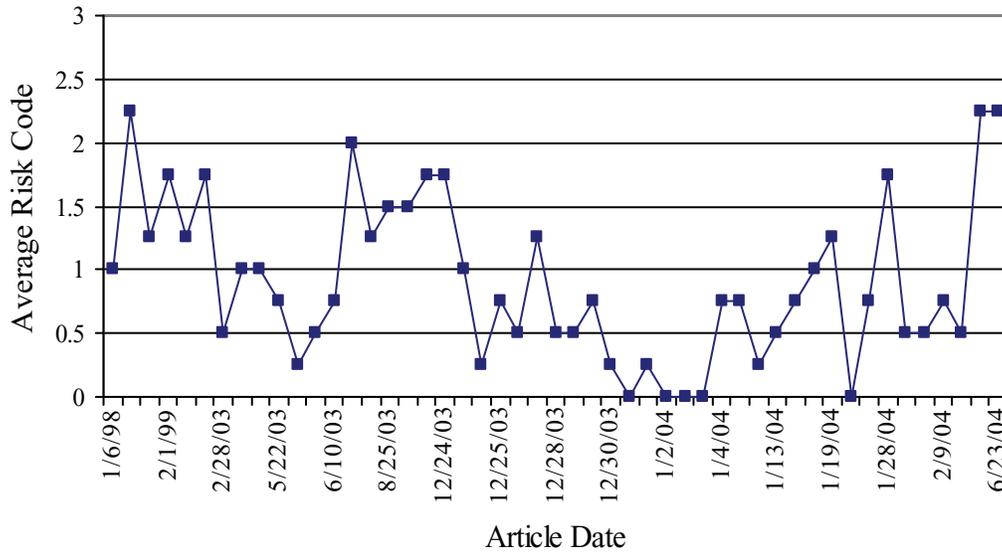
The average risk codes for the vCJD and blood headlines from the United States press are shown over time in figure 6. Interestingly, the peak months were months during which the headlines tended to suggest a less urgent public challenge.

**Case Three: Stem Cell Research**

**Case history**

A stem cell is a precursor cell with the capacity to develop many different types of cells. This unlimited reproductive capability of stem cells suggests the potential to cure or treat many illnesses and conditions that have thus far proven elusive (Burt, et al. 2002). Because stem cell research can involve the use of fertilized human eggs, it is a policy issue surrounded by political, ethical and scien-

Figure 6. Average risk codes for vCJD and blood headlines from the U.S. press.



tific forces (Holm 2002). Forays into the realm of stem cell research brought age-old political and ethical debates surrounding the definition, source and meaning of (human) life to the foreground of modern political debate (Doerflinger 1999).

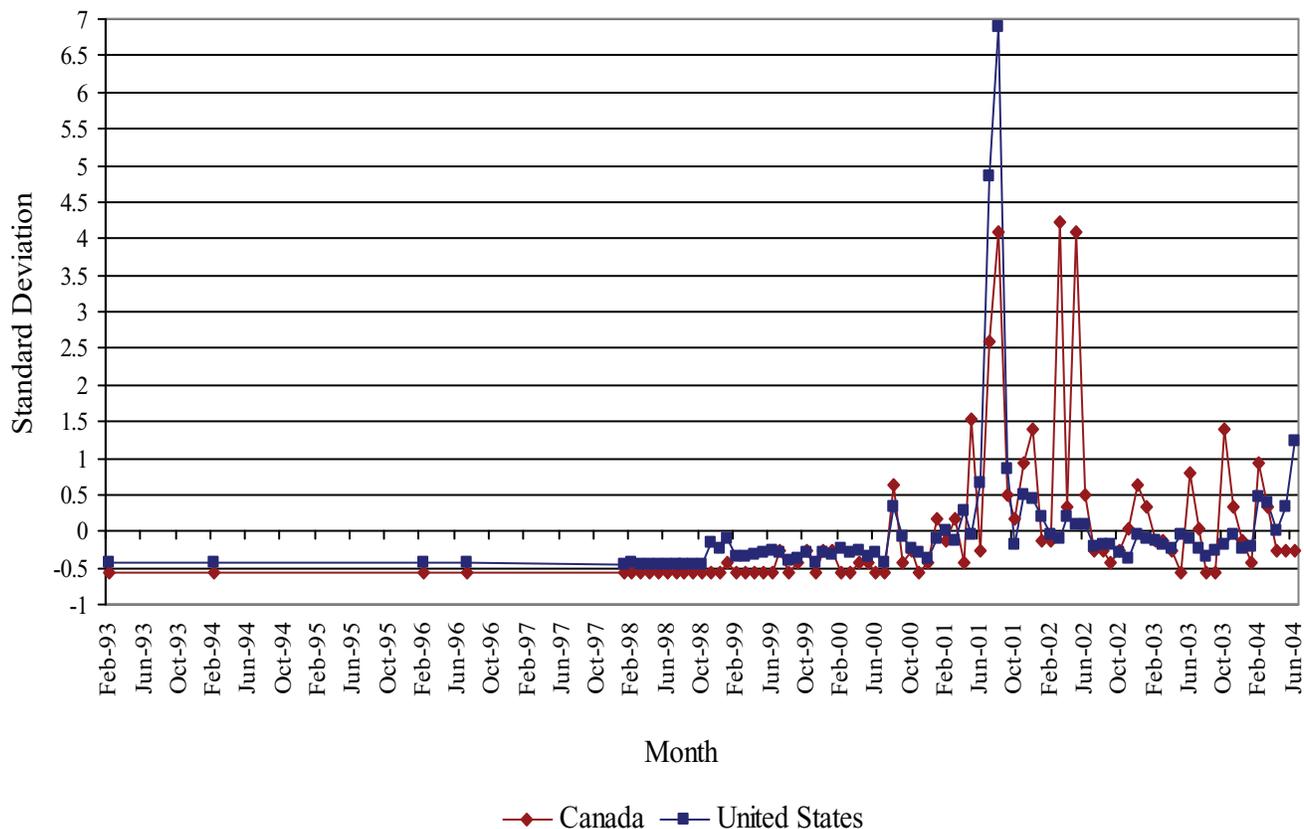
**Governing Stem Cells in Canada**

Stem cell research is mentioned in the 430 documents from Parliamentary discourse between 1996 and 2004. A search of Canada’s federal government website for “stem cell” generated 1,028 documents. Unlike the other issues examined, stem cell research has been addressed as an issue as a whole in Canadian policies. The Human Pluripotent Stem Cell Research Guidelines were released by the Canadian Institutes of Health Research in March, 2002 and the *Assisted Human Reproduction Act* was assented on 29 March 2004. The Act was designed to “this enactment prohibits assisted reproduction procedures that are considered to be ethically unacceptable” (*Assisted Human Reproduction Act* 2004). Essentially, the Act requires written consent from original gamete providers before any research is conducted. This is not surprising given that one key focus of Canadian government discourse on stem cell research was the need to ensure tracking of each stem cell.

The issue of stem cell research was widely discussed in Canadian Parliament during the time examined. The venues that considered the issue included the Standing Committee on Health and the Standing Senate Committee

on Social Affairs, Science and Technology. The modern experience of the public sector being put into action prior to the development of scientific consensus was directly mentioned. For example, while providing evidence before the Standing Committee on Social Affairs, Science and Technology in February 2004, a scientist mentioned that “my laboratory has published, I believe right now, the only three papers that have been peer reviewed in the human embryonic stem cell field” (SSCSAST 2004). Also, unlike as is the case in the United States, the government discourse surrounding stem cell research in Canada tended to focus much more on potential benefits. For example, in evidence presented to the Standing Committee on Health (SCH) on 2 December 2002, testimony from an expert from the United Kingdom began with: “I will outline that role and pay particular attention to showing how we ensure that embryonic stem cells are created legally and ethically. It’s clearly very important in maintaining public confidence, not only in embryo research generally but particularly in stem cell research, which we regard as a new and promising territory for medical science” (SCH 2002a). Similarly, during a discussion before the same committee in October 2001, it was said that “I think stem cells, and the issues raised by them, are just an illustration, if you will, of the power and promise of health research in this new century to impact on human health and to deal with emerging threats, which we’ve become all too familiar with in the last few weeks” (SHC 2002b).

Figure 7. Stem cell research article frequency.



The public discourse located in the search of the federal government website was on the whole more technical than that found for other issues. The focus was on specific guidelines for stem cell research, predominantly released by the Canadian Institute of Health Research. There is significant emphasis on the collaborative strategies used to generate the guidelines and on the (traditional) role that the Parliament will play in restricting agency action on the issue. For example, in a press release on 12 March 2002, it is explained:

These guidelines are the product of a lengthy consultation process, involving the release of a consultation paper in March 2001 and subsequent input from 27 organizations and 89 individuals. It is important to note that the CIHR guidelines were drafted in consultation with health care professionals, scientists and numerous groups and individuals. These guidelines are consistent with the principles set out in the government’s May 2001 draft legislation on Assisted Human Reproduction... It is understood that, should there be differences between the CIHR guidelines and legislation passed by Parliament, the guidelines will be adjusted to reflect the legislative provisions (CIHR 2002).

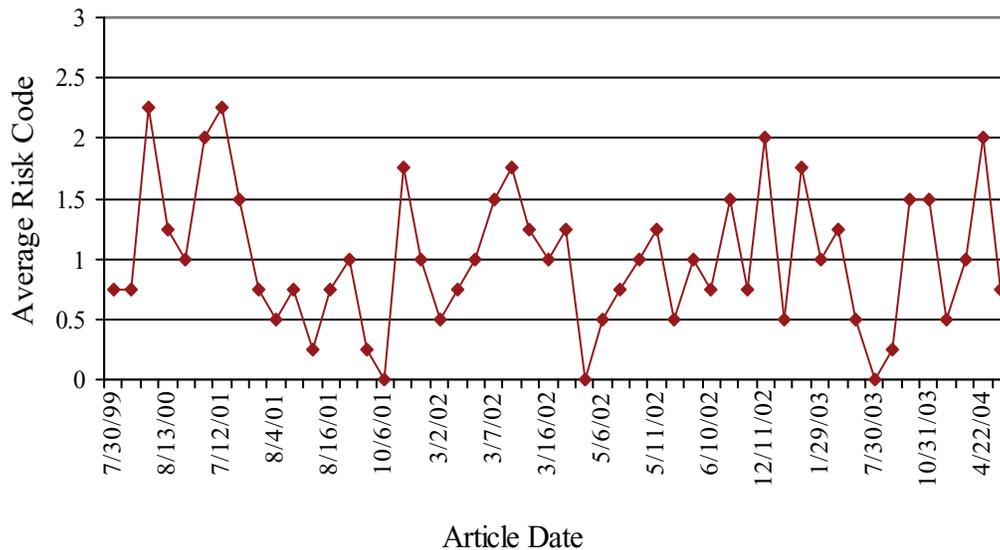
As of July 2004, regulations for monitoring of stem cell research were still being developed. The clear emphasis of the public discourse remains on ensuring a clear and transparent research process and on protecting the general public’s collective rights.

**Issue Definition of Stem Cells in the Canadian Press**

Three hundred fourteen articles were located in the Canadian press between 23 January 1999 and 1 July 2004. The first article to appear about stem cell research was on 23 January 1999 in the *Gazette* under the title “U.S. to Fund Embryonic Stem Cell Research.”

The number of articles per month in both the United States and Canada is shown on figure 7. The mean number of articles located was 3.83 per month with a standard deviation of 6.66. The modal month was March 2002 during which 32 articles were located. The other peak months included: July 2001, August 2001 and May 2002. The May 2002 peak coincides with the Parliament’s consideration of a bill restricting human cloning.

Figure 8. Average risk of stem cell headlines in the Canadian press.



The pattern of risk as expressed in the headlines in the Canadian Press is shown in figure 8. As can be seen in figure 8, risk codes vacillated without much of an observable pattern over time. The articles coded with the highest level of risk were in the earliest days of the issue.

### Governing Stem Cells in the United States

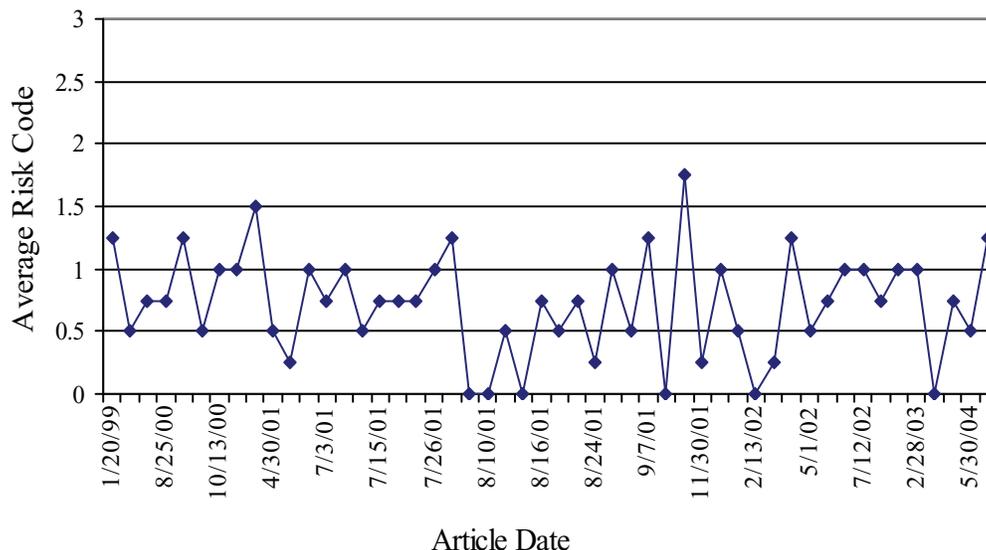
Stem cell research became a high profile issue in the government discourse. A search of the United States government agency websites generated over 1,000 federal documents discussing stem cell research. The issue was less actively discussed in the state level discourse, though 31 state agency documents were located. The focus of the federal documents was diverse.

While there was no outright ban on federal funding for stem cell research prior to 1994, regulations and administrative actions prevented direct funding. On 4 February 1994, a request was made for funding on transfusion research including “blood safety, blood storage, and stem cell research” (House Committee on Appropriations 1994). Federal funding did not become possible until after a 1994 report detailing guidelines for the use of human embryos was issued by the Human Embryo Research Panel, convened by the National Institutes of Health. One of the recommendations of the Panel resulted in an Executive Order from President Clinton to prevent the development of human embryos for the express purpose of research. Congressional action, in the form of appropriation pro-

hibitions, effectively prevented implementation of guidelines and federal funding for research.

In 1998, a private firm started funding stem cell research. Policy makers reexamined the issue of federal funding bans. On 28 January 1998 the President of the American Association of Blood Banks, Edward Snyder, endorsed funding for “transplantation of stem cells collected from cord blood.” Mr. Snyder did comment that the “initiative is expected to pose new questions on the proper use of stem cells and cord blood” (House Committee on Appropriations 1998). The issue of human cloning, an area of research often mixed up in the stem cell research debate, brought the ire of Representative Dick Armey in his comments to the House Commerce subcommittee of Health and Environmental Cloning (February 12, 1998): “... And then there are the biotech and pharmaceutical industries. They too say they do not want to use cloning to create human embryos, but they want to do ‘promising stem-cell research’.... If that makes me a zealot, so be it. This legislation is the right thing to do, at the right time, for the sake of human dignity” (House Commerce 1998). The definition of the stem cell issue as threat to human dignity culminated in a televised address to the nation by President George Bush on 9 August 2001 when he declared his intention to limit stem cell research to existing lines. However, the deaths of Ronald Reagan and Christopher Reeve brought stem cell research back into the news in summer and fall of 2004. Both families support lifting the ban on stem cell research as a potentially

Figure 9. Average risk of stem cell headlines in the U.S. press.



promising source of discovery of treatments for life threatening conditions.

**Issue Definition of Stem Cells in the Press of the United States**

Between February 1993 and July 2004, 1,964 articles were found about stem cell research in the United States press. The first article, “Rural College Town Becoming Center for Biotechnology,” appeared in February 1993 in a Cleveland, Ohio paper (Greene 1993). A few articles appeared over the course of the next five years but coverage did not pick up until 1998. This lack of coverage during the intervening years is interesting to note since the first definitive government document on the issue was published in 1994. The mean number of articles per month was 24 with a standard deviation of 52.63. The modal month was August 2001. The other peak month was July 2001. This period of time surrounds President Bush’s announcement regarding limits on stem cell lines eligible for federal funding. This period of peak coverage coincided with Canada’s first peak of coverage, a variation from other issues examined in this paper.

The average risk codes for the stem cell subsample are shown in figure 9. The risk in the headlines was consistently moderate or lower. This is intriguing given the polar morality of the issue. Headlines for stem cell articles rarely called for immediate action.

**Content Analysis Results**

As is demonstrated by the nature and degree of both government and public discourse on the West Nile Virus, vCJD and blood donation, and stem cell research, each of these has been successfully differently defined in Canada and the United States. In each of these cases government action has preceded even the most tenuous and temporal scientific consensus. However, the timing was similar but not identical in the two countries.

In order to further examine the nature by which these issues are being defined as elements of the ongoing government agenda, a content analysis of headlines using indicators of government action was conducted on a random subsample. The indicators include both generic elements of issue definition and agenda setting (government action, federal agency, branches of government, subfederal governments, judicial action, and elections) and others connected to public health challenges (death, illness, experts and study).

The percent of headlines from the subsample with each of the indicators is shown in table 1 below. The percents varied both by issue and by nation. This variation testifies that the issues are differently defined during the period examined.

The results of the content analysis illustrate similarities and differences between definition of issues in Canada and the United States. Government action was mentioned in

**Table 1. Percent of headlines with issue definition indicators**

	vCJD & Blood		West Nile Virus		Stem Cell Research	
	Canada	United States	Canada	United States	Canada	United States
Government Action	46%	14%	20%	24%	34%	38%
Federal Agency	13%	6%	6%	2%	4%	8%
Executive Branch	0%	0%	0%	0%	8%	16%
Judicial Branch	0%	2%	2%	0%	2%	4%
Legislative Branch	0%	0%	0%	0%	22%	8%
Sub federal Government	4%	2%	12%	20%	0%	6%
Elections	4%	0%	0%	2%	6%	10%
Death	17%	8%	18%	22%	8%	4%
Illness	25%	10%	24%	28%	12%	18%
Experts	33%	16%	8%	18%	30%	16%
Study	8%	6%	2%	6%	22%	28%

20 percent or more of headlines in all cases, except for blood and vCJD in the United States. However, it was this issue for which government action was mentioned most frequently in Canada (46 percent).

Specific types of government actors were mentioned less frequently. This is perhaps because the issues are still in the process of being defined and, therefore, at the stage at which policy linkages are being forged by policy entrepreneurs behind the scenes. The executive branch of government is rarely mentioned. The only article headlines in which the executive branch was mentioned were in the headlines of articles about stem cell research. In articles about this issue, mentions of the executive branch appeared in eight percent of the headlines from Canada and 16 percent of the headlines from the United States. Similarly, the judicial branch was very rarely mentioned in headlines from either country. However, the legislative branch of government was mentioned only in stem cell headlines, and more often in those from the Canadian press where it was mentioned more than 20 percent of the time. Furthermore, as might be expected given the government discourse about the issue, subfederal government was mentioned most frequently in articles about West Nile Virus, especially in the United States where it was mentioned in 20 percent of the sampled headlines.

As was found in previous studies, experts were mentioned more frequently in Canadian titles in both vCJD and blood and stem cell research. Interestingly, for West Nile Virus, experts were mentioned more than twice as often in the United States. In Canada, illness is mentioned as frequently in titles of vCJD and blood as in West Nile

Virus, whereas in the United States, illness was associated with West Nile Virus more frequently.

## Discussion

Dynamic development of public policy underscores that societies perceive similar circumstances differently. As a result, different governments—both within and between nations—create different policies to address the same circumstance defined as within the public purview. Nevertheless, significant policy transfer takes place between governments and across national borders (Dolowitz and Marsh 2000; Clark 2002). Furthermore, globalization is expected to increase policy transfer (Evans and Davies 1999).

While policy learning across national borders is desirable if it affords the opportunity to share best practices, there is the also potential to limit or misalign policy solutions in the absence of distinct issue definition. The spread of public policy across governments has been described as policy diffusion (True and Mintrom 2001). Although issue definition and policy formulation are generally discussed as separate, interrelated components of the policy cycle, policy diffusion is not necessarily restricted to the formulation (or implementation) phases of policy development. Policy diffusion has been found to be especially prevalent between countries that are socio-cultural peers (Simmons and Elkins 2004). Policy diffusion is also considered to be especially likely to take place between geographically proximate governments.

Whether or not distinct issue definition takes place is likely to have long term implications on the policy area, especially if substantial policy diffusion is taking place in

implementation of policy within particular policy subsystems. If a given country's socio-cultural peer is more economically or politically powerful, there is an increased likelihood of deliberate policy convergence (as opposed to unintentional policy harmonization) (Evans and Davies 1999). As a result, there will be a misalignment of shared policy solutions with the problem as defined in the less powerful nation (Ralaelli 2000). Alternatively, distinct issue definition may prevent policy diffusion entirely and, potentially, hinder policy coordination (which may or may not be desirable depending on the particulars of the case).

Canadians have long been concerned about cultural imperialism originating in the United States (Belanger 1999; Armstrong 2000). Studies have focused on whether policy convergence (e.g. cultural imperialism) or divergence (e.g. a reactionary response to cultural imperialism) is taking place across the forty-ninth parallel (Hoberg 2001). Less attention has been focused on the likelihood that convergence and divergence occur simultaneously in distinct policy subsystems and in different stages of public policy development. Our findings support the view that while cultural interaction takes place between Canada and the United States, the timing, tenor and content of issue definition is observably different in the two countries. Although there is harmonization or convergence of the particular circumstances that are being defined as public issues, there is difference in the issue definition itself (and, sometimes, divergence as was the case in stem cell research).

Previous studies of comparative issue definition in North America have tended to focus on transcendent human circumstances, rather than emerging conditions. Examining human circumstances where there is less culturally embedded history already in the issue reveals whether that cultural history becomes attached to cutting edge issue definition. The spectrum of public health challenges we have examined demonstrated limited, but important distinctions of issue definition in public health in Canada and the United States.

## **Conclusion**

Issue definition was found to differ between neighboring nations in emergent public health challenges along the continuum of human to natural causality. New challenges posing near identical public health risks on both sides of the border are discussed and shaped differently in Canada and the United States. Whereas globalization unavoidably brings an element of policy convergence at the level of

circumstances assigned to the public purview (Moldrup and Morgall 2001), the domestic aspects of governing and governance remains both identifiable and important (Peters 1997).

The interplay between governance and scientific discovery is believed to be expanding and, potentially, a threat to basic research based on scientific dissensus. Nevertheless, the role of the international scientific community cannot be overlooked. In the case of policy actions surrounding issues with an element of scientific uncertainty, there is a relative lack of guiding principles that transcend specific issues within the overarching policy area (Van der Belt and Gremmen 2002). However, the pace of science often misaligns with the definition of public issues through media and government action, thereby creating a need for action without certainty (Kemshell 2000). The implications of action under uncertainty are likely to be far reaching and well worth watching carefully, especially as different nations intentionally chart distinct courses.

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# *The Emergence of U.S. Trends in Canada's Healthcare System*

Ida R. Rayson

The restructuring of healthcare services and a convergence of healthcare systems around the globe indicates that Canada's healthcare system may take the path similar to that of its southern neighbour. This direction is due to the issue of affordability along with the disadvantages that come with a public healthcare system, one with which Canadians identify. These factors have pushed provincial governments to adopt practices used in the United States, such as managed care, an increase in the amount of outpatient procedures, ambulatory clinics, and the growth of private insurance. The convergence of the two healthcare systems is not only a result of Canada's problems maintaining an increasingly expensive public system but may also be attributed to the growing centralization of the United States' healthcare system. The point of this paper is not to compare the workings of the two systems but to show how each system and its problems and policies are becoming more similar.

## **Reasons for Convergence**

### *The State of Healthcare*

The convergence of the healthcare systems in Canada and the United States can be partly attributed to the similarities in the problems within the healthcare systems, such as budget constraints, as well as access to both healthcare and health professionals. The standard within the Canadian healthcare system has become unacceptable. The system has become paralyzed; politicians have become obsessed

with placing the blame on current conditions, rather than trying to work with them. The healthcare system is unable to serve its patients because of a lack of resources and an exhausted work force.<sup>1</sup> Unfortunately the system's many troubles will likely worsen before they improve. An aging and growing population, the introduction of more advanced technology, and patients demanding more control over their care will place further stress on resources already stretched to their limit.

Inaccessibility to care plagues residents of both countries. According to the 2000 U.S. Census Bureau, 44 million Americans, approximately 15 percent of the population, are without medical insurance.<sup>2</sup> Approximately 30 to 50 million have substandard care, and over 200 million do not have comprehensive coverage for things such as long-term care.<sup>3</sup>

Proponents of universal healthcare often boast that this is not the situation in Canada. Their argument is based on the principle that in Canada there is equal access to care, regardless of one's financial situation. In reality, however, the situation in the two countries does not differ significantly. Statistics Canada reported that 14 percent of Canadians are without a family doctor; that amounts to about 4.2 million people in Canada without a GP.<sup>4</sup> There is an equal percentage of the population with limited access to care in both countries. As well, even Americans without insurance have access to care via public hospitals and clinics; in fact, 44 percent of the United States' health expenditure is via public funding.<sup>5</sup> Clearly, socialized

healthcare is not the only method of providing greater accessibility to care.

The *Canada Health Act* outlines five principles: Universality, Accessibility, Comprehensiveness, Portability, and Public Administration; but even with the *Canada Health Act*, there are different levels of care in Canada. The principle of universality states that no person should be denied medical care because of financial hardship. It appears that this principle is put ahead of the other four principles. The values of Canada's healthcare system seem to be established on a hierarchical basis. For instance, a recent Québec court decision regarding a case on the issue of getting timely access to care suggests that universality is the most important principle. The judge ruled that the government was justified in adopting a system that benefits the majority, even if it limits the freedom of some individuals to buy healthcare care privately.<sup>6</sup> This decision proves that universality and inadequate access dominate timely access for some. Universality, even in inadequacy, appears to be the most important of the lot.

This situation seems to be changing in Canada, however, which indicates further convergence of Canadian and American attitudes towards healthcare. In a recent Supreme Court of Canada ruling, the restrictions on paying for medical services already provided by the provincial government were removed. The issue was the same with extreme waiting times for surgery and other healthcare services. In this case, the Supreme Court of Canada ruled that the patient's year long wait for surgery was unconstitutional because it violated his right to life, liberty, and security under s.7 of the *Canadian Charter*.<sup>7</sup>

Blomqvist writes that the problem is not that the principles are not being met, but rather that Canadians have unrealistic expectations, especially when it comes to accessibility. He states that the unrealistic notion is that everybody should have equal access to the best possible care; rather, it should be the best possible care for all.<sup>8</sup> When limits are placed on quality or access to service, such as they are with Canada's universal healthcare system, it gives way to open public debate. Additionally, with a public system, demand is infinite. Dr. David Gratzner believes that it is the nature of Canada's healthcare system that contributes to its accessibility problems. He believes that with Canada's "free" system, the demand for care becomes infinite. Dr. Gratzner notes that doctors practicing in a "free" system are not compromised financially compared to those practicing in a private system. He believes that doctors only suffer when billings are capped as they recently have been in some provinces in Canada. He states that with a universal or socialized system like that of Can-

ada, GPs can have a higher income than if they worked in a privatized system. In the five years before Medicare was introduced, the average income for a physician was 34 percent more than the average for other professionals. In the five years after Medicare was introduced, the average physician's income rose to 47 percent above the average for other professionals.<sup>9</sup> The government has recently taken measures to ensure that doctors' salaries remain competitive. That may be related to the issue of physicians leaving Canada and going south to the United States, where they believe they can earn more. As well, the provincial governments may just have realized that doctors, like any other profession, need to earn a decent living so that medicine remains an attractive profession. The Ontario government made a four year agreement with respect to physicians' salaries that will be worth about \$2.4 million. As part of the agreement, billing caps have been lifted and physicians will now be permitted to incorporate.<sup>10</sup>

### *Expenditures*

The main problem with Canada's healthcare system is that the government sets the healthcare budget. If this budget does not cover the costs of healthcare needs, waiting lists appear, care is rationed and the quality of care deteriorates as money becomes scarcer and costs become higher. As the cases discussed earlier indicate, that is happening in Canada, and it is not only putting the health of Canadians at risk, but the system is at risk as well. In the Canadian healthcare system, the vast majority of required resources are acquired through compulsory taxation. If Canada is to fix all of its healthcare system problems, greater efficiency and more revenue is needed. However, rates of taxation cannot be raised beyond an acceptable threshold, and Canada is already at or close to that point.

Recent healthcare expenditures in Canada and the United States are also an indicator that health policy in the two countries is converging. In 2004, Canada spent about \$4078 per person on health services.<sup>11</sup> Recent international data shows that Canada has a particularly expensive healthcare system in proportion to its wealth.<sup>12</sup> According the OECD, Canada spends about 9.2 percent of its GDP on healthcare, whereas the United States spends about 12.9 percent.<sup>13</sup> The difference is that in the United States, public share expenditure is rising, whereas in Canada they are remaining fairly stable. Moreover, an examination of public expenditures as a percentage of GDP indicates that there is not much difference between the two countries. In Canada, the rate of public expenditure is 6.7 percent, compared to 6.6 percent in the

United States.<sup>14</sup> Healthcare costs are rising and even more problematic is the fact that it does not result in a better quality of healthcare and its services. There are various reasons for increasing costs, such as service intensity and demand pressures, an ageing population, growth in biotechnology, system inefficiencies, inefficient management, cost-shifting between federal and provincial governments, growth in pharmaceutical expenditures, and inflation.<sup>15</sup>

### **Federal Cutbacks**

From 1975 to 1991, public spending on healthcare rose by 11 percent a year. For the next five years, spending stagnated as the provincial and federal governments restrained their budgets. In the past couple of years both public and private sector spending have increased at about the same rate, approximately seven percent.<sup>16</sup> Since 1990, the government has introduced a five percent cap on the growth of its support of social programs in the three wealthiest provinces: Ontario, Alberta, and British Columbia. For the other provinces, the federal share remains at 50 percent. Provincial governments have complained about the reduction of federal transfers. Provinces charged the federal government with “off-loading” the responsibility of healthcare financing and deficit onto them. That highlighted the fiscal difficulty facing many provinces attempting to fund expensive healthcare costs with reduced funding from the federal government. Various changes since 1982, when the Canada Health Act was created, have also reduced federal provincial transfers for health and education.<sup>17</sup>

Attempts to control costs in the provinces bring up concerns regarding the sustainability of a publicly financed healthcare sector and the extent to which the federal government can expect provinces to respect the five pillars of the *Canada Health Act* in future health reforms. That is apparent in the recent Supreme Court of Canada ruling, in numerous other cases, and in the growing popularity of private clinics and services. The Alberta government has expressed interest in compensating for the reduced funding by introducing market forces into the healthcare system. In 1999, the province tabled legislation to allow private clinics and surgical facilities to deal with excess demand for services. This move was challenged by the federal government, which considers the privatization of such clinics a challenge to the pillar of equality of access to healthcare services.<sup>18</sup> Recent changes to policy show that privatization of some healthcare services may be the only way to deal with the pressures of demand for healthcare services and the lack of or wait for the supply of them.

Transfers to the private sector are justified not only in terms of increasing efficiency and reducing cost but also in terms of greater consumer choice and control. The private sector is assumed to be more efficient because it has an interest in reducing costs in order to increase profits. The World Bank and other proponents of privatization argue that it is questionable whether the for-profit market can provide cost-effective healthcare.<sup>19</sup> Hospitals operated on a for-profit basis represent a policy alternative for Canada, but not one that will seriously be considered until a second tier of hospital care is officially approved by the government. Opponents argue that profit-oriented hospitals do not provide care any more efficiently or with greater public benefit than do non-profit institutions, and they definitely distort service delivery patterns. They avoid high revenue patients and vigorously avoid providing care to patient populations who are at financial risk.<sup>20</sup>

### **Prescription Drugs**

There is a growing trend in North America to medicalize the cycles of life, like giving birth and old age, and feelings of anxiety or stress. The problem that results is an additional strain on Canada's already scarce resources. The number of diagnostic categories that are outlined in the *Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association have increased from 106 in 1952 to 357 in 1994.<sup>21</sup> Loneliness, work-related stress, and other mental conditions were noted in the *British Medical Journal's* (BMJ) list of non-diseases.<sup>22</sup> Psychiatry brings an array of services that are not uniformly considered medically necessary, and thus they are not covered by provincial health plans.

Depression is becoming more prevalent in North American societies, whether or not it is better diagnosed or that other sentiments are being categorized as depression is unclear. It is treated with medications such as Prozac and other selective serotonin reuptake inhibitors (SSRIs). Although there are legitimate cases of depression that might require such medication, the drug's enormous market is virtually unlimited, for it treats other illnesses such as social phobias and anxiety, thus making it a treatment for illness as well as personality disorders.<sup>23</sup> Psychiatrist Duncan Double states in his article “The Limits of Psychiatry,” published by the BMJ, that there has been an expansion of psychiatry of the last century. Double shows how the number of prescriptions for anti-depressants has increased from approximately eight million per year in 1991 to over 20 million per year in 2000.<sup>24</sup> That leads to a greater demand for coverage outside of the public system,

whereby patients can get additional coverage for therapy and prescription drugs.

According to a recent report released by the Canadian Institute for Health Information (CIHI), public expenditures on prescription drugs have increased significantly over the past few years. The category of drug spending ranks second after hospital spending in terms of share of total healthcare expenditures. Drug spending increased about eight percent from 2000 to 2001. In 2003, prescribed drugs amounted to approximately to 81.6 percent of public drug spending in Canada.<sup>25</sup> In 1997, drug spending overtook spending on physician services. According to CIHI, drug prices have been relatively stable in recent years, so the increase in public drug expenditures cannot be attributed to the increase the price of drugs. Some factors to be considered include an increase of new drugs entering the market and an increase in the amount of drugs prescribed to residents of Canada.<sup>26</sup> This trend points to an increased medicalization within Canadian society both by the public and by the health sector. More people are relying on prescription drugs. That may also be attributed to society's state of health and an ageing population.

Canada cannot sustain medicare if it remains on its present course. Healthcare spending has not kept up with inflation, population growth, ageing, or medicalization. That is illustrated by the reduction in services, the closure of facilities, the reduction in the number of health professionals, the increased waiting times, and the forgoing of innovative but expensive new technologies. Medicare as Canadians know it can be sustainable only if Canadians are willing to accept fewer services or pay more taxes. Polls indicate that neither is acceptable. Yet Canadians' expectations are increasing for expensive health technologies, drugs and procedures, and for the normal demands of an aging population. Thus, medicare's problems are only going to grow.<sup>27</sup>

## Outcomes

### *Waiting Lists*

Currently the norm for healthcare in Canada is characterized by extended waiting periods for surgical treatments, overcrowded emergency rooms, limits on the amount of specialized care available, nursing shortages, and physician strikes. In light of these problems, Canadians are questioning whether medicare is providing access to needed services.<sup>28</sup> In response to growing national discontent, various levels of government in Canada have conducted numerous royal commissions, forums, and studies on healthcare. The

end result has been a lot of talk about reform with very few of these reforms being viable solutions.

Waiting lists for surgical procedures and specialist services in Canada continue to grow because of exhausted resources. Since 1993, waiting times have increased by 90 percent.<sup>29</sup> The Fraser Institute reported in its study, *Waiting Your Turn*, that in 2003, the average wait time to see a specialist from a referral from a GP was 8.3 weeks up from 7.3 weeks in 2002. The average wait time to receive treatment from a specialist from the time of the appointment was 9.5 weeks. Waiting times are even high for critical diseases. The shortest median wait is 6.1 weeks for oncology treatment, excluding radiation which takes longer. Extreme cases include more than a year median wait for neuro-surgery in New Brunswick. The median wait for an MRI in Canada is three months.<sup>30</sup>

There are regional differences in waiting times. Saskatchewan had the largest wait time of 26 weeks to receive treatment, and Ontario had the shortest wait time of seven weeks to receive treatment. It is also interesting to note that provinces with accessible borders to the United States, like Ontario and British Columbia, had the shortest wait times.<sup>31</sup> That can be interpreted as patients choosing to receive treatment elsewhere rather than waiting; other possible explanations include greater efficiency or coincidence. In all specialties there was a longer actual wait time than that clinically appropriate for treatment. According to the Fraser Institute, provinces that spent less per capita on healthcare did not necessarily have longer or shorter wait times to receive treatment.

### *Crossing the Border for Medical Treatment*

The number of Canadians heading to the United States to retain healthcare not only indicates the growing discontent with the Canadian system, but the convergence of health policy in the two countries. Ontario's provincial government has created contracts with some states for medical care in order to manage the surplus of demand for certain medical procedures.

### *Brain Drain*

The migration of physicians to the United States is the phenomenon known as *brain drain* and is a consequence of the problems that Canada's healthcare system is having. This consequence is also a factor in the inaccessibility of healthcare services. There are a number of physicians in Canada who believe that the financial rewards for practicing medicine are better in the open market for

healthcare. The public healthcare system allowed Canadian doctors to retain fee-for-service medicine, a practice increasingly threatened in the United States because of proliferation of managed care arrangements. Dr. David Gratzer discusses this trend in his book *Better Medicine: Reforming Canadian Health Care*. Gratzer raises the issue of Canadian medical school graduates immigrating to the United States as a possible cause for Canada's shortage of physicians. The migration of Canadian nurses and physicians to the U.S. has fuelled concerns about the so-called *brain drain* of healthcare providers. In 1996, 30 percent of medical school graduates in Canada chose to practice outside the country. Although some physicians may hold deep convictions about public health insurance, support for such a system is generally based on the potential to reap economic benefit from it. For most doctors, particularly specialists, reductions in health expenditures and restrictions on fees and billings jeopardize this potential.

The Canadian Medical Association (CMA) advocates a public debate on a different form of payment for medical services, specifically increasing the amount of services offered by privately funded providers of healthcare not covered by the government. The Canadian Medical Association polls suggest that 70 percent of Canadian doctors favour this type of two-tier healthcare system.<sup>32</sup> There is a net loss of Canadian physicians because of migration to the United States every year. This annual loss accounted for three percent of the decline in net physician inflow; however, the increase in medical school positions is expected to increase the amount of new physicians only by two percent.<sup>33</sup>

### **Technology**

Patients in a universal or single payer healthcare system, like that of Canada, gain some advantages but only in return for some lost choice. Unlike managed care systems in the United States and Britain, for example, residents in Canada still have a choice of which doctor they want to see or which hospital they go to. On the other hand, patients cannot shop around for the best process for procedures or services, and if a service is not included as part of the provincial health plan, they must pay for it out of their own pockets. Patients also lose access to the newest technologies, as witnessed by the slower proliferation of PET scanners in Canada versus that in the U.S.<sup>34</sup> According to the Fraser Institute, Canada ranks 21<sup>st</sup> out of 28 OECD countries with respect to access to CT scanners.

## **Factors Fuelling Convergence**

### **Sustainability**

It appears that this upward trend in Canadian healthcare costs has been halted; however, that has been fuelled primarily by a halt in public sector expenditure growth as real private sector expenditures continue to rise. As a result, the share of healthcare expenditures accounted for by the public sector now remains stable at around 70 percent. That is about a five percent decrease since 1990. Conversely, public spending in the United States is rising up about five percent since 1990.<sup>35</sup> The shift in the balance from public to private of healthcare expenditures is noted by the media and policy analysts; concerns are raised about the potential impact that the shift has on the quality of healthcare.<sup>36</sup>

Within Canada, there seems to be a continual debate about whether its medicare system should be discarded in favour of for-profit healthcare. There is a link between globalization and domestic policies that promote privatization. Privatization is a public policy goal of many governments around the globe, one that is frequently at the top of the agenda during high level trade talks, international summits, and economic forums. When international trade deals are signed they promise, among other things, to further domestic opportunities for multinational corporations. Private corporations are allowed to enter the once sacred healthcare market, thus treating health more like a commodity rather than a service. Public healthcare that was designed to serve the needs of all Canadians is being replaced by those services that will enhance the profits of corporate investors in the health industry. This direction is supported and increasingly required by Canada's major trading partner, the United States, and by a growing number of trade agreements signed by the federal government.<sup>37</sup>

### **Free Trade**

The Free Trade Agreement (FTA) allows for American companies to manage hospitals, ambulance services, clinics, nursing homes, and other social health services like medical laboratories.<sup>38</sup> That raises the question of how a public system can be run privately. Free trade does not affect services that are solely public; rather it has an affect only on those services that involve both private and public funding, such as physiotherapy.<sup>39</sup> Free trade has also contributed to the expanding variety of health insurance in Canada.<sup>40</sup> The first American takeover in the Canadian insurance industry was in 1995 when Liberty Mutual

took over Ontario Blue Cross. This sale marked a loss of non-profit alternatives to the for-profit insurance industry. Since then, the private health industry in Canada has been expanding. According to the Canada Health and Life Insurance Association, there are 140 private health insurance companies in the country, of these, 37 are American owned.<sup>41</sup>

## Indicators of Convergence

### *Growth of Private Insurance*

The *Canada Health Act* does not apply to prescription drugs used outside the hospital setting, and publicly funded drug coverage varies considerably from province to province. That differs from policies in many OECD member states, whereby publicly funded coverage is provided for prescription drugs as well as hospital and physician services. There is a clear correlation between insurance and income level since the rate of those insured is less than 40 percent for those at the lowest income level to almost 75 percent at the for at the highest income level.<sup>42</sup> Medicare is an insurance plan that is publicly financed but for the most part privately delivered by independent doctors and other healthcare professionals and by private not-for-profit hospitals and other facilities.<sup>43</sup> It is important to note that the provinces do provide drug insurance for low income seniors (residents 65 and over) and almost all provinces have a drug plan for higher income seniors as well. Like the United States, the government of Canada also has a drug insurance plan for First Nations and veterans. There are a growing number of those who seek private health insurance because there is a growing need for it.

### *Growth of Outpatient Procedures*

During the past few years, most healthcare system attention has focused on the comprehensiveness of the range of publicly funded services provided to Canadians and residents of Canada. One of the chief factors giving rise to this issue is the shift away from the use of hospitals, which has occurred for several reasons. First, there is an increased proportion of surgical procedures that are performed on an outpatient basis. Additionally, there is an increase in the proportion of treatments that can be provided at home. Finally, a notable downsizing of hospitals and rationing of medical services has occurred over recent years.<sup>44</sup> The shift away from inpatient hospital care has meant that drugs that were provided without charge in the hospital now become the responsibility of patients

or their private insurers for the population under the age of sixty-five. That fuels the demand for private insurance, making Canada's system more similar to the United States' healthcare system.

## *Privatization*

Before examining how the practice of privatization is taking place within Canada's healthcare system, it is important to determine exactly what is meant by privatization. The privatization of public services occurs when one or more the following circumstances occur: government stops paying for or providing a service; government still pays for a service, but turns it over to the private for-profit sector; and government still pays for a service, but requires the patient to assume part of the cost.<sup>45</sup> According to the *Canada Health Act*, provincial government health plans will fund any medical procedure or care that is considered medically necessary. These medically necessary services may not also be rendered for a fee by physicians in Canada. However, the list of that which is considered to be medically necessary in Canada is diminishing. In Ontario, it used to be that visits to an optometrist were covered for adults under the age of 65 every two years. Recently the government of Ontario has de-listed this service. Now if a resident chooses to see an optometrist it will have to be paid out of pocket or by a third party.

The private delivery of health services is not a new concept in Canada. The Canadian system provides universal, comprehensive coverage for medically necessary hospital in-patient and out-patient physician services. That is outlined in the *Canada Health Act* as part of the five pillars of the healthcare system.<sup>46</sup> At the same time, it was never free from private sector intervention. Today, Canadians pay for physiotherapy services, occupational therapy services and a host of other health services provided by medical and non-medical experts. Public sector workers, including those in healthcare, generally negotiate that the employer and employee share the cost of insurance so that employees can have access to a full range of important healthcare services delivered by the private, for-profit sector, or that are not currently insured by the government. In Canada, there are several levels of care. Private providers deliver services not insured by government, such as home care nursing services and nutrition counselling. In addition many practices successfully bill for services not insured by government, and in any event doctors are expected to make a profit when they bill for insured services. Others receive improved services because they are articulate, know how to manoeuvre within a system, or are better

able to use social capital. A large blindfold is necessary to sustain the belief that all Canadians currently have access to the same level of healthcare.

The theory of competition and the involvement of the private sector are strongly advocated by William McArthur, Cynthia Ramsay, and Michael Walker in *Healthy Incentives*. They believe that the private sector should be encouraged to play a larger role in Canada's healthcare system. They argue that Canadians need to have more choice regarding their medical care with fewer restrictions. That should be done through a greater emphasis placed on the market and allowing public and private services to compete with one another, while at the same time ensuring that tax dollars sufficiently cover the healthcare costs of those without the financial means to do so.<sup>47</sup>

For years specialists and some family physicians have been charging patients for incidental fees and services that are not insured and not expressly described in the benefits schedule but are considered to be part of routine procedure. Provincial governments have chosen not to notice this sort of revenue building.<sup>48</sup> For example, Dr. Gimbel of Calgary Alberta started private clinics where he would provide cataract removal surgery using the newest technology. Dr. Gimbel was the first surgeon in Canada to use ultrasound to remove cataracts. Dr. Gimbel billed the Alberta provincial health plan for his work and in addition billed each patient \$1200 to cover overhead costs like nurses and disposable equipment. These are costs for which hospitals receive funding.<sup>49</sup>

Some private laboratories, clinics, and ambulance services have also been permitted to enter Canada's healthcare system, although they all have to be licensed and regulated to qualify for public funding. The big difference now is that for-profit firms are being allowed or invited to deliver some of these publicly funded services. Non-profit organizations are adopting management strategies taken from these corporations. That has profound consequences on costs, quality, access, care, and accountability.<sup>50</sup>

The shift to for-profit firms and for-profit management techniques is not the only form of privatization taking place. Costs have also been privatized. Over the past decade the balance between public and private spending on healthcare has shifted significantly. Private costs including out-of-pocket payments by individuals and premiums paid by employee compensation plans have all risen. The public share, which accounted for 75 percent in the twenty years following the introduction of Medicare, fell to 70 percent by 1997. The public share has since remained stable at 69.2 percent in 2002.<sup>51</sup> Some provinces have privatized their healthcare systems even more aggressively, with Ontario's

public share dropping to 66 percent in 1998 and Alberta's to 69 percent.<sup>52</sup>

In recent years, the federal government has significantly reduced spending on health and repeatedly failed to enforce the pillars of the *Canada Health Act*, most noticeably refraining from using it to halt or limit the growth of privatization. On a few occasions, Health Canada has gone as far as specifically to register its approval in writing for provincial policies that clearly violate the *Canada Health Act*.<sup>53</sup> That shows less concern for preserving socialized care as costs and expenditures increase.

There is an ongoing debate of whether or not privatization actually contributes to the deterioration of Canada's healthcare system. Opponents of privatization argue that privileged Canadians will receive a higher level of care and that the private sector will expand at the expense of the public system. However, a two-tiered system already exists in Canada, exhibited by unequal levels of payment and funding to physicians and clinics.

Provincial governments are not able to maintain the public system and to extend it in ways that could both meet current needs and prevent privatization. In 2000, the government of Alberta introduced Bill 11, which allows private clinics to perform medical services that are both insured and non-insured by the provincial government. The Bill includes provisions to ensure that the principles of the *Canada Health Act* are upheld.<sup>54</sup>

### **Centralization in the United States**

Whereas there is enormous pressure on Canada to have more access to a private healthcare system, the opposite is true in the United States. The healthcare system in the U.S. is becoming more centralized with the expanded role of Medicaid and Health Maintenance Organizations (HMOs). Some large HMOs are responsible for more patients than some Canadian provinces. Kaiser Permanente, one of the largest HMOs in the U.S., serves over seven million people.<sup>55</sup> This type of HMO runs similarly to provincial health boards.

The principle of public administration states that provincial governments take on the responsibility of administering and overseeing the delivery of healthcare in Canada. Michael Walker holds the same opinion, stating that healthcare in Canada is like government run HMOs.<sup>56</sup> HMOs are one of the most popular forms of managed care in the U.S. With HMOs, a patient can see a doctor or receive healthcare from any of the HMOs physicians and facilities. In some cases, there is no charge aside from the agreement which differs depending on the HMO. In some

cases it is a small fee or a co-payment of nothing at all aside from your yearly or monthly fees. If a patient receives care outside of the HMO, the patient must pay the cost.

Additional evidence of a centralized system brewing in the U.S. is indicated by the percentage of physician revenue that was received by the patient. Over the past twenty years, there has been a decline in out-of-pocket payments for a physician's services in the U.S. and an increase in the growth of medical and private health insurance.<sup>57</sup>

### Prescriptions for the Future

Numerous reports and commissions have all had their own theory about how Canada can repair its signature universal healthcare system. None have these commissions or reports have actually come up with a feasible solution, and the future of universal healthcare looks grim. The most recent healthcare Commission headed by Roy Romanow has proven not to be useful. Romanow's recommendation for an immediate re-infusion of \$3.5 billion into the healthcare system, rising to \$6.5 billion in three years, was optimistic about what increased funding can do to sustain public healthcare. As indicated, problems with the healthcare system cannot be solely attributed to finances. In order to avoid the increased deterioration of basic healthcare services, investments in, and a reorganization of, capital and labour need to be made. The Kirby Report called for \$9 billion more; \$4 billion for existing hospital and physician services, and \$5 billion in new initiatives, requiring new resources.<sup>58</sup>

Whereas Romanow's recommendations sounded as though they were and still are what Canada needs to rescue its healthcare system, Romanow made no comment about how it will be paid for. Unlike the Kirby Report, which at least acknowledged the need to pay for improvements, there was no mention of where even the first \$3.5 billion would come from. Romanow reinforced income taxes as the appropriate source and suggested that Canadians were willing to pay more but does not recommend that taxes should increase, which was the ultimate paradox.<sup>59</sup> Injecting more money into the system does not ensure efficiency. More money is not the answer; better allocation of Canada's existing resources and greater efficiency within the existing system are key. This paper also shows that a reorganization of Canada's existing system is inevitable. There are forces beyond funding that show that Canada is changing and will continue to change its system to be more similar to the healthcare system in the United States and other OECD countries.

Romanow's report ignores that collective agreements recently signed with physicians and registered nurses will cost provincial treasuries a minimum of \$2.5 billion over the next two to three years.<sup>60</sup> That is the price of labour shortages; either healthcare professionals, specifically primary care physicians, are better compensated for their services, or the government needs to find a better means of retaining its existing healthcare professionals. The report recommends that Canada does not deal with its own labour shortage by poaching health professionals from other nations, but makes no mention of investment in training and upgrading the skills of existing and new healthcare workers. Additionally, the process for licensing international medical graduates already in the country needs to be reconsidered. Some international medical graduates are not currently working within the healthcare sector because of the difficulties associated with obtaining the necessary credentials.

### Cooperatives

Although healthcare cooperatives are a new concept in Canada, they have been around in the United States and in other countries around the world for quite awhile. Cooperatives have existed for centuries in other sectors, like banking and agriculture. In a cooperative, patients contribute an annual monetary amount collectively in order to improve the level of care that they receive from general practice. The types of insured and uninsured services are based on what members of the cooperative expect from their practitioners. Cooperatives bill governments in the normal way for provincially insured services their members received and the membership pays the difference in order to enable the cooperative to deliver appropriate and efficient care. Cooperatives are an example of a managed care system within Canada. Members may only receive uninsured services from physicians or go to facilities that are part of the cooperative. Additionally, the cooperative asks its members that they receive only insured services from physicians and facilities that are part of the cooperative.<sup>61</sup> That may not always be the most convenient; however, it is a way to gain increased access to care.

### Pharmacare

The issue of a national government funded pharmacare program is of ongoing debate, especially with drug costs increasing as they are. That would be a mechanism to preserve socially delivered healthcare. As Ontario premier Dalton McGuinty stated, "There is something pro-

foundly Canadian about this idea.”<sup>62</sup> However, it seems just as infeasible as Romanow’s suggestions were. When AIMS President Brian Lee Crowley was asked by CBC radio his opinion of the pharmacare program, he stated that “a totally public and universal national program is estimated to cost \$9–11 billion annually, which is likely to be unaffordable, and that the savings that can be achieved by ‘bulk purchasing’ through a single national agency are rather exaggerated.”<sup>63</sup> Expenditure on drugs may actually increase with the pharmacare program. Drug use seems to be different depending on whether or not there is a per prescription fee or whether a deductible, or complete insurance is used to cover or contribute to the cost of the drug. As drug expenditures increase for employer-sponsored health plans in the United States, employers have had to increase cost sharing methods for prescription drugs. Employers reported that their rising prescription drug costs appear to be slowing, partially as a result of increased cost sharing.<sup>64</sup> If there was no cost-sharing or fairly minimal cost-sharing there might be an increased use of prescription drugs in Canada.

## Conclusions

### *Canadian Attitudes*

In the past decade the federal government has decreased its fiscal responsibilities toward the provincial healthcare systems while simultaneously attempting to expand its political space through the *Canada Health Act*. Provincial governments have grown impatient with the federal government on issues of fiscal transfers and questions of jurisdictional boundaries in health and social policy. These centrifugal pressures have intensified as private market alternatives become more visible in the healthcare sector.<sup>65</sup> The strain of bearing the enormous responsibility of upholding the principles of the *Canada Health Act* is beginning to show.

Despite the passion that Canadians have regarding their healthcare system, there is still a considerable amount of concern that recent changes to Medicare may have opened the door to a system that is similar to the American healthcare system. Canadians remain unconvinced that the healthcare system will be there for them and their families when they need it. The continual problem of overcrowded emergency rooms during flu season and every season, long waits to gain access to advanced diagnostic technology and the need to send cancer patients to the United States for treatment only deepens the worries of Canadians. These problems are evident to those outside

Canada as well. Sensing an opportunity, some hospitals in Washington and New York have been researching the potential within the Canadian market to move more aggressively in offering their services to Canadian patients unwilling to wait for their respective treatments.<sup>66</sup>

The attitude of Canadians has shifted because of the growing discontent with the current state of Canada’s healthcare system. In 1999 a Pollara survey found that 73 percent of Canadians supported the right to pay for private health services if they did not have timely access healthcare services via medicare. In 2001, a Health Insider survey found that 60 percent of Canadians, including 64.4 percent of Quebecers and 54.8 percent of Ontarians, supported private parallel health services as long as the public system was not jeopardized. A 2001 Ipsos-Reid survey revealed that Canadians are partial to giving the private sector a larger role in the healthcare system, with 60 percent of those surveyed supporting the contracting out of public health services to the private sector.<sup>67</sup>

The United States is Canada’s largest trading partner, and their culture has many profound influences on Canadians; Canadians have access to American movies, television shows, novels, and magazines. There is an ample supply of American restaurants and food chains in Canada. Nonetheless, Canadians like to think of themselves as being distinct from their American neighbours.<sup>68</sup> Healthcare is an area where Canada is different from the United States. Universal healthcare coverage does not exist south of the border. Medicare is supposedly a very Canadian way of dealing with healthcare delivery; it is collective in nature. Arguments in favour of medicare encompass a strong anti-Americanism that appeals to Canadians. As Angus Reid states, “Far more persuasive in making the point that we really are a different society was the national Medicare system introduced by the federal liberals in the 1960s.... Medicare is like a badge that said Canadians did things differently than Americans did, notably with more compassion.”<sup>69</sup>

Smart political strategies usually capitalize on voters’ beliefs and concerns. The strength of the America card is no exception. Canadians believe that the American system of healthcare is inferior and completely undesirable. Most importantly, Canadians fear that elements of the American system might be found one day within their beloved medicare and, as recent evidence proves, they may be right. The same privatization forces that were at play in the early 1980s are still there in the pressures to control government deficits. Private sector involvement in the healthcare system does not have to be as obvious as single rooms with posh decor and an abundance of staff

members. Two-tier healthcare is apparent in Canada. Its appearance can be attributed to federal cutbacks, the move to ration services, free trade, and system inefficiencies.

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*Jane Roe v. Henry Morgentaler:  
The Abortion Debate in Canada  
and the United States Since the Late 1960s,  
an Example of North American Divergence*

Hélène Quanquin

At first sight, comparing the Canadian and American abortion debates since the late 1960s is not an easy task. Compared with the United States, sources concerning Canada are few; judicial and legislative activity, at least at the federal level, has been much more important in the United States;<sup>1</sup> the intensity and sometimes violence of the American abortion debate also tend to blind us as to the fact that abortion has been an issue in Canada, though in a different way than in the United States.<sup>2</sup> The difference between the two debates is best summed up in the figures which have come to represent the issue in both countries. According to John Fiske, the function of figures, which usually, but not necessarily, emanate from real-life people, is to “embody” political issues and debates and to facilitate identification on the public’s part:

If not figured into a living body, the clash of social alliances and of different histories can seem abstracted and distant, difficult to visualize, hear and engage with. Unembodied issues are appropriate for books, for an age of literacy and for the literate classes in this age; but for an age of electronic figures and of hypervisibility, embodied histories and politics are the ones that matter, the ones that people are most

ready to engage in, because alliances, for or against, are more easily formed with a figure than a political position. This process may be seen, negatively, as the individualizing of politics: it may, however, be understood alternatively as a way of transferring the liveness and inescapability of physical presence into the political arena.<sup>3</sup>

The Canadian abortion debate has thus been symbolically dominated by the figure of Dr. Morgentaler with whom the pro-choice side, as well as the whole abortion debate, have been associated: “Dr. Henry Morgentaler has been perhaps, *the* pivotal figure in the judicial history of the problem of abortion in Canada.”<sup>4</sup> The 1988 Supreme Court decision, which deals with abortion rights in Canada and is better known as the “Morgentaler decision”, was seen as the physician’s personal victory, even if two other practitioners were also involved and the Canadian feminist movement actively worked for the passage of the decision.<sup>5</sup>

Compared with the omnipresence of Dr. Morgentaler in Canada, it is difficult to find such an equivalent figure in the United States, for the abortion debate there has been characterized by a multiplicity of figures, men and women, who have at one point embodied the issue. Still, one of

them, just like Morgentaler, has represented the contemporary abortion issue in the United States since the early 1970s, namely Jane Roe, of *Roe v. Wade*, who also gave her name—or pseudonym—to the 1973 landmark Supreme Court decision which declared anti-abortion laws unconstitutional and who later went public under her real name, Norma McCorvey.

As figures, Dr. Morgentaler and Jane Roe have exemplified divergences that are significant of the way the abortion debate has taken place in Canada and the United States, but also of the specificities of the public sphere and the way it addresses political conflict in the two countries. Gender and professional status constitute important differences, as Henry Morgentaler-Dr. Morgentaler is a man, and a doctor, and Jane Roe-Norma McCorvey is a woman without the same status. This essential divergence, along with Dr. Morgentaler's almost continuous domination of the Canadian abortion debate since the late 1960s, is to be linked to the way abortion is considered in both countries. Under the influence of feminism, abortion has come to be defined, in the United States, as in most other western countries, as a feminist and women's issue seen in terms of women's rights. In the 1960s and 1970s, this definition progressively took over the medical perspective on abortion which originated in the first abortion debate in North America in the second half of the nineteenth century. At that time, doctors, who were just beginning to organize as a profession, lobbied in favor of state anti-abortion legislation to ensure a monopoly over every medical activity. In Canada, this medical definition of abortion, represented by the figure of Dr. Morgentaler, never really gave way to the feminist view which has become central in the United States. Dr. Morgentaler has also displayed remarkable consistency regarding abortion, and that contrasts with Norma McCorvey's evolution from a pro-choice to a more recent pro-life position, which is significant of the volatility, as well as the polarization, of the American abortion debate.

All these elements are related to the different roles played by political parties in Canada and the United States. In the United States, both Republican and Democratic parties have come to stand for the two opposite visions in the abortion debate, thus making of abortion, not only a political, but also an electoral issue. Conversely, Canadian parties have been reluctant to take sides on the issue, and, through the figure of Dr. Morgentaler, its medicalization can be seen as a way to neutralize a potentially dangerous and divisive issue.

### ***From Henry Morgentaler to Dr. Morgentaler, From Norma McCorvey to Jane Roe***

Although the lives of Henry Morgentaler and Norma McCorvey have been intertwined with the abortion issue, they have been so differently: whereas Henry Morgentaler sees no difference between himself and his figure, Norma McCorvey has found it more difficult to reconcile herself with Jane Roe.

### ***Henry Morgentaler and Dr. Morgentaler: From the Concentration Camps to Abortion***

The name of Morgentaler first came up in relation to the abortion issue during the debates on the modification of the abortion legislation, starting in 1967 and resulting in the passage of a new law in 1969. His first public intervention on the issue dates back to 19 October 1967: As the representative of the *Humanist Fellowships* of Montréal, Toronto and Victoria, he was the first to ask for the right for "abortion on demand" during the first trimester of pregnancy, at a time when others, feminists included, were only asking for the liberalization of the abortion right.<sup>6</sup> He then started giving press conferences and participating in radio and television debates on abortion.<sup>7</sup> However, only in 1968, that is one year after he first became involved in the debate, did he perform his first abortions.<sup>8</sup>

Morgentaler really became the leader of the Canadian movement in favor of the abortion right on 16 March 1973 when he called a press conference and announced that he had performed more than 5,000 abortions in his Montréal clinic, in violation of the *Criminal Code* which had been amended in 1969. Articles 251 and 252 then authorized abortion provided that it was approved by a therapeutic committee composed of at least three physicians who had to confirm that the woman's life or health was endangered by the pregnancy. Abortion remained a crime liable to life imprisonment for the physician and two years in prison for the woman, as well as for the person who had provided her with abortive substances. The publicity generated by Morgentaler's press conference is, in this context, of importance, for physicians had always been more systematically tried than women under anti-abortion legislation since the nineteenth century. By claiming that he had performed abortions on demand, which were illegal at the time, Morgentaler put himself in a more dangerous situation, at least in terms of the sentence incurred, than a woman publicly confessing to having had an abortion without going through the legal procedure. Morgentaler, in fact, was tried several times, in Québec first, and in

other provinces after 1983, when he decided to open clinics all over the country<sup>9</sup> and was even sentenced to 18 months in prison in July 1974.

When reading biographies of Morgentaler or interviews that he gave, it is very tempting to see in his life one entirely dedicated to the struggle in favor of the abortion right. Henry Morgentaler, however, has not always been “Dr Morgentaler”. He had a life before getting involved in the Canadian abortion debate, and he even had a life before becoming Canadian, for he was born in Poland on 19 March 1923.<sup>10</sup> He emigrated to Canada in 1947 after spending several years in concentration camps during WWII. It is significant that Morgentaler should establish a direct link between his two lives, as a victim of Nazism and as a warrior for the abortion right: “Au fond, en me battant pour le droit à l’avortement, je me suis retrouvé face à la même irrationnalité que celle dont j’ai été victime pendant la guerre.”<sup>11</sup> Furthermore, in the context of the abortion debate, and in a country where unity seems to be constantly at stake, it is probably only natural that the figure best representing it should be Jewish, which has catalyzed the hatred of some of his opponents,<sup>12</sup> and should be neither anglophone nor francophone nor even a native Canadian. His place is thus “in between,” which seems to be favorable to debate and to the projection of the ideas of each side concerned.<sup>13</sup>

Even if other figures, notably female figures, have sometimes occupied the central stage in Canada, as Barbara Todd and Chantal Daigle who, in 1989, had to fight in court against their ex-boyfriends who opposed their having an abortion, there are fundamental divergences between these women and Dr. Morgentaler. The first lies in his permanence as a figure representative of the abortion debate from the late 1960s until today. The second has to do with the physician’s desire for publicity, for he has always tried, through his actions, to attract attention on himself and his fight.<sup>14</sup> As figures, Barbara Todd and Chantal Daigle are, in fact, more similar to Norma McCorvey-Jane Roe, who was more successful in an American context.

***From Norma McCorvey to Jane Roe,  
Back to Norma McCorvey: “A Reluctant Icon”<sup>15</sup>***

Jane Roe was born Norma Leah McCorvey on 22 September 1947 in Lettesworth, Louisiana. In her two autobiographies, she describes her life, up until her 1995 conversion to Christianity, as a succession of failures: her parents got divorced when she was a child; her relations with her mother were always difficult, to say the least; at the age of 16, she married an abusive man from whom she be-

came pregnant for the first time; she had three unwanted pregnancies and gave up her three children for adoption, including the “Roe baby”;<sup>16</sup> she was a drug-addict and an alcoholic.

Contrary to that of Dr. Morgentaler, her involvement in the abortion debate was purely coincidental and based on a misunderstanding. Here is how she describes her becoming Jane Roe: “In February 1970 I was Norma McCorvey, a pregnant street person. A twenty-one-year-old woman in big trouble. I became Jane Roe at a corner table at Columbo’s an Italian restaurant at Mockingbird Lane and Greenville Avenue, in Dallas.”<sup>17</sup> In 1970, two young lawyers, Sarah Weddington and Linda Coffee, who were planning on having the Texas anti-abortion law overturned, were looking for a pregnant woman who would be ready to challenge the law in court. Norma McCorvey was at the time pregnant for the third time, and she met Weddington and Coffee through a lawyer who handled adoptions. She thought that they would help her get an abortion, and she agreed to be the plaintiff in the case, provided that she would remain anonymous. Her changing names can be interpreted in several, apparently contradictory, ways. First, unlike Dr. Morgentaler, she had no sense that she was working in favor of the right of other women, and her motives were purely personal: “I suppose it would be nice to say here that when I made that phone call—after which a woman named Linda Coffee called me back to set up a meeting—I realized I was making abortion-rights history. Or changing my life forever. [...] But the honest truth is that nothing like that even occurred to me. I was simply at the end of my rope. At a dead end. I just didn’t know what else to do.”<sup>18</sup>

At the same time, her anonymity, which lasted up until 1989 and which she presents as a way to protect herself from exposure, facilitated her representing not only herself but other women as well. That might explain why she describes the period from 1970 to 1989 as a period of dissociation between Norma McCorvey and Jane Roe. According to her first autobiography, she came out as Jane Roe because she felt that the abortion right was being threatened by the action of pro-life groups. Ironically enough, she then started working in an abortion clinic and became a public advocate of the pro-choice movement, but eventually met and was converted by Operation Rescue activists who had moved next door to the clinic where she worked. She completed her conversion with her baptism on 8 August 1995.

In the autobiography written in 1994, she presents her coming out as an act of reconciliation between Norma McCorvey and Jane Roe: “[W]ithout Jane Roe, without

a cause to fight for and a purpose for living, the original Norma would never have survived.”<sup>19</sup> In the second, published three years later she depicts her conversion as the resolution of a conflict and as a way for Norma McCorvey to get rid of a cumbersome persona:

Finally, I had found a love that was all-encompassing. On many occasions, Sarah Weddington had made it clear that to her I was nothing more than a name in a class-action lawsuit. Jane Roe was all that mattered to Sarah; the real Norma McCorvey was irrelevant.

In Jesus, I realized it was exactly the opposite. God did not view me solely through the lens of what I had done or how I had been used. Now, after I had been forgiven, Jane Roe was irrelevant. The woman he loved—the woman he saved—was Norma Leah McCorvey.<sup>20</sup>

Apart from the contradictions inherent in the life and opinions of Norma McCorvey, her figure is interesting as it contrasts with that of Dr. Morgentaler. As a woman who was involved in both pro-choice and pro-life groups, she best represents a deeply polarized and volatile American abortion debate influenced by the feminist definition of abortion as a feminist and feminine issue, whereas Dr. Morgentaler has been the ideal figure to embody a somewhat medicalized and more contained abortion debate in Canada.

### ***Roe v. Morgentaler***

Both Henry Morgentaler-Dr. Morgentaler and Norma McCorvey-Jane Roe have come to represent the abortion debate in Canada and the United States. Their status as abortion figures is not coincidental. It is rather symptomatic of the way abortion has been dealt with and the conflict is addressed in both countries.

### ***Abortion: A Medical and Feminine Issue?***

Morgentaler’s fight is all the more interesting because he claimed it was led, not only in the name of physicians who took great risks in order to perform abortions regardless of the 1969 law, but also, and above all, on behalf of women. He tended to present his action as a way to take the responsibility of abortion away from doctors—which was given to them by the 1969 law through the institution of therapeutic committees—to women, whose spokesman he became, as is suggested by the following remark made during the 1990 debate over Bill C-43: “Je suis contre C-43: les femmes y perdraient l’autonomie, la dignité et le

respect d’elles-mêmes que leur reconnaît la Charte des droits de la personne.”<sup>21</sup> It is paradoxical that Morgentaler should present himself as women’s representative because at the same time his being a male physician supposed to represent women might be read as a loss of their autonomy. As a matter of fact, Morgentaler’s dominating presence is ambivalent: he claims he is a proponent of women’s rights, but his very status shows that women have not really participated in the Canadian abortion debate, which has essentially taken place without them and without feminists.

In the second half of the nineteenth century, the medical profession in Canada, as well as in other countries such as the United States, made abortion a political issue. At that time, physicians were getting organized as a profession,<sup>22</sup> and they used the abortion issue to eliminate the competition of midwives and charlatans who advertised in newspapers. Physicians were, thus, at the origins of the anti-abortion laws which were adopted in both Canada and the United States in the second half of the nineteenth century. Ironically enough, in the 1960s, they were also the first profession, along with lawyers, to ask for the liberalization of these very same laws. Their new position was sanctioned in Canada by the 1969 law and in the United States by the progressive liberalization of anti-abortion state laws after 1963. The decisive influence of physicians in both countries in the 1960s can be easily explained by the fact that feminists had yet to impose on society their definition of abortion as a women’s issue, which they did progressively in the late 1960s and early 1970s. After the passage of the 1969 law, Canadian feminists organized an “Abortion Caravan” from Vancouver to Ottawa to make public opinion aware of the inequity of abortion legislation, and they actively worked for its reform, while the American women’s movement also tried to have abortion recognized as a reproductive right.

The two movements, however, had different results, as is shown by the two Supreme Court decisions, *Morgentaler, Smolling and Scott v. The Queen* and *Roe v. Wade*, and as their divergent outcomes show. *Roe v. Wade*, which overturned anti-abortion state laws in the United States, signaled, to a certain extent, that abortion was a women’s issue, recognizing a right to “privacy” and refusing to consider the fetus as a “person.” It considerably liberalized abortion, making it free during the first three months of pregnancy and accepting limitations on the states’ part in the second and third trimesters.<sup>23</sup> This decision contrasts with the Morgentaler decision in two ways. Firstly, it was issued fifteen years before the Canadian Supreme Court ruled on abortion; secondly, it fixed a legislative frame-

work, for the Canadian justices left it to legislators to draft new abortion legislation.

Moreover, even after twenty years or so of feminist actions in favor of the abortion right, the medicalization of the Canadian debate on abortion was still visible in 1988, when the Canadian Supreme Court ruled that the clauses of the *Criminal Code* pertaining on abortion did not conform to the 1982 *Canadian Charter of Rights and Freedoms*.<sup>24</sup> At first sight, the decision seems to have integrated, even partially, the feminist discourse on the issue, at least negatively, for it never mentions the rights of the fetus. However, the analysis of the four separate majority opinions shows that Justice Wilson, the only woman to intervene in this decision,<sup>25</sup> was also the only one to refer clearly to a woman's right to choose, whereas the four other Justices mentioned only the security of the person.<sup>26</sup> Compared with *Roe v. Wade*, the Morgentaler decision seems almost timid, which might also explain the different outcomes for *Roe v. Wade* is also seen as the reason which catalyzed the formation of a strong and determined pro-life movement in the United States.

In the absence of a decision defining the abortion right with precision and under the pressure of some groups, Canadian governments tried to work for the passage of a federal law.<sup>27</sup> In 1988, Mulroney's government introduced a bill which, along with five others, was debated in Parliament in 1988 and 1989. None allowed abortion on demand, however, which reveals the resistance of the Canadian public rhetoric to the feminist discourse on abortion, and that is confirmed by the fact that, even if none of them was adopted, the most restrictive one got the greatest number of votes at the House of Commons.<sup>28</sup>

More than a year later, in May 1990, Mulroney's government introduced a new bill, called Bill C-43, again showing the desire to avoid the inscription of both pro-life and pro-choice discourses on abortion in Canadian public rhetoric. The perspective was that already present in the 1969 law, insisting on both the criminalization and the medicalization of abortion, which would have been integrated into the *Criminal Code* as follows: "Est coupable d'un acte criminel et passible d'un emprisonnement maximal de deux ans quiconque provoque l'avortement chez une personne du sexe féminin, sauf quand il est provoqué par un médecin, ou sur ses instructions, qui en est arrivé à la conclusion que, sans l'avortement, la santé ou la vie de la personne serait vraisemblablement menacée."

Abortion was authorized in the first three months of the pregnancy on the opinion of a registered physician, and, after the first trimester, the opinion of two of them was required. In theory, this project liberalized abortion, notably

through the large definition given of the term "health" as "physical, mental and psychological." The text, however, uses a vocabulary which seems more neutral than the pro-life and pro-choice discourses on abortion: the woman was neither a "pregnant woman" nor a "mother," but a "female person;" the physician remained central in the procedure; and, abortion remained in the *Criminal Code*. Bill C-43 might also be viewed as the result of successive delegations, as far as the responsibility for the decision to abort is concerned, from the legislators to the Supreme Court, from the Supreme Court back to the legislators, from the legislators to the physicians.<sup>29</sup>

This contrasts with the American situation where the different branches and political parties have dealt with the abortion issue and where, first feminists, then pro-life groups, have successfully managed to force their definition of abortion in terms of either choice or life values. In Canada, however, as the success of Morgentaler as a figure shows, the women's movement has partially failed to impose itself as a legitimate and crucial actor in the abortion debate. It is, therefore, significant that whereas, as we have already seen, Morgentaler claimed he fought for a woman's right to have an abortion, which means out of the reach of physicians,<sup>30</sup> his relations with the Canadian feminist movement should have been described as "trying" ("en dents de scie"<sup>31</sup>). Canadian feminists, therefore, have found themselves torn between two different attitudes: on one hand, the recognition of the decisive character of Morgentaler's struggle; on the other hand, a desire to rehabilitate the part played by the Canadian feminist movement in favor of the advancement of the abortion right.<sup>32</sup> In the 1980s, they tried to distance themselves from Dr. Morgentaler and to make public opinion aware of the significance of their action: "To read the papers, one would come to the conclusion that Morgentaler, his lawyer, and the courts gave women reproductive freedom. What is almost entirely invisible is the massive mobilization by the women's movement for almost twenty years on the issue of reproductive choice. Without this public organizing, it is not at all certain that Morgentaler would have continued his actions in favour of choice, nor that the climate of public opinion would have been one in which the Supreme Court could make such a decision."<sup>33</sup>

This attitude probably has to do with the fact that, as one biographer indicates, Morgentaler "made himself more feminist than feminists themselves" ("s'est naturellement fait plus féministe que les féministes").<sup>34</sup> Although fighting for the abortion right on behalf of women, Morgentaler also prevented feminists from making their own discourse on the issue visible. The tense relations are very clear in

the very words of the physician, who criticized feminists for their lack of support: “Dans l’ensemble, j’ai eu de bons rapports avec les féministes ... Elles reconnaissent le rôle que j’ai joué pour le droit à l’avortement et moi, d’ailleurs, je me considère comme féministe ! Mais quand même, j’ai souvent fait cavalier seul. C’est sûr, elles m’ont apporté leur aide, leur appui moral, leurs manifestations, parfois une aide financière. Mais c’est moi qui me suis exposé, qui ai mené la lutte.”<sup>35</sup>

The situation reminds us of the tense relations Norma McCorvey claimed she also had with the women’s movement. Even in her first autobiography, the impression is that she felt she had been used by her two lawyers, who hid the fact that she would not be able to get an abortion as a result of the case. She also notes that she never was informed about the case: “I didn’t have much to do with the actual battle for *Roe v. Wade*. While I was having my baby and crushing myself under my own despair, *Roe v. Wade* was moving forward without me. In fact, after I stormed out of their office, I didn’t talk to Sarah or Linda until nearly a year after the *Roe* baby was born. None of this really mattered in the legal world, though.”<sup>36</sup>

This impression is confirmed in her second autobiography in which she provides the readers with more details about her estrangement from the feminist movement. The main reason she gives is her social background, which she claims disturbed elite members of the feminist movement: “That’s the way I was treated—occasionally held up as a useful figurehead when the camera lights were on, but made fun of as soon as the crowds went away. Though the pro-lifers saw me as their nemesis, the one responsible for killing all the babies, those on ‘my side’ looked at me as nothing but an inconvenient nuisance, a woman who had to be tolerated.”<sup>37</sup>

Despite similarities between Morgentaler and Norma McCorvey as far as their relations with the feminist movement are concerned, there are differences regarding what they might signify. In spite of his intentions, Morgentaler’s approach is obviously individualistic, which is confirmed by the fact that he never tried to build a real movement in favor of abortion rights, but rather, found himself at the center of an informal network of associations, which is similar to the “nonorganizational representation” described by James Q. Wilson.<sup>38</sup> That differs from the American situation in which a network of organizations was able to create a movement in favor of abortion rights, as well as a pro-life movement, which fueled one another mutually. It is, thus, of importance that Norma McCorvey should have solved the problem of her difficult relations with the women’s movement by becoming one of its opponents.

## Political Parties and Culture

The difference between the figures of Morgentaler and Norma McCorvey also relates to the way the political parties addressed the issue in both countries. Abortion has presented political parties with the challenge of its potential divisiveness, but the interesting point is that it was addressed differently depending on partisan structures.

In the United States, the key evolution as far as political parties are concerned has been the generalization of primaries after 1972 for the Democratic Party, and after 1976 for the Republicans. The process has encouraged the formation of organized groups to influence the nomination of candidates to the advantage of more extreme ideologies: “the decline of the official party and the constriction of party officials were key elements in the move by a convention as a collectivity toward the ideological extremes.”<sup>39</sup> That explains why abortion was mentioned for the first time as an issue in the 1976 platforms of the Republican and Democratic parties, the former supporting “the right to life to unborn children,” and the latter opposing any attempt to overturn *Roe v. Wade*. Abortion, thus, has become, not only a political, but also a partisan and an electoral issue, as the main two parties have come to represent the two opposite sides on the issue.

By contrast, Canadian political parties have not really been receptive to the pro-life and pro-choice ideologies, as Morgentaler’s domination proves. Even though they have considered female voters as an important constituency since the late 1970s, this concern has not been followed by a precise commitment in favor of women’s issues. The New Democratic Party might be one of the exceptions, but Henry Morgentaler remembers that his candidacy to the 1972 elections was refused by the NDP on the ground that abortion was too sensitive an issue. This relative lack of responsiveness of Canadian parties is not specific to pro-choice ideology, for pro-lifers have found it as hard to work for the advancement of their ideas.<sup>40</sup> That tends to confirm the idea expressed by Heather McIvor that abortion is a “political hot potato,”<sup>41</sup> but it also proves the difficulty of Canadian parties in dealing with ideological conflict: “The Canadian representative system has not adapted to the representation of special interests. Rather, local and regional identity has always been more than usually prominent in our political institutions.”<sup>42</sup> That stands clearly in contrast to the American situation where the issue has become an ideological as well as a partisan and electoral issue.

## Conclusion

The analysis of the abortion debate in Canada and the United States is a good example of the interest of the comparative method in general, as is suggested by Gérard Bouchard,<sup>43</sup> and, more specifically, in the case of Canada and the United States, as is shown by Seymour Lipset in *Continental Divide: The Values and Institutions of the United States and Canada*.<sup>44</sup> It helped us correct first impressions as to the status of the abortion issue in both countries: both the apparent irrationality and violence of the American situation and the apparent reasonability of the Canadian debate are perfectly understandable in specific cultural and political contexts, as the study of the two emblematic figures, Dr. Morgentaler and Jane Roe, has made us understand.

## Notes

- 1 As far as the two Supreme Courts are concerned, there have been five to six times as many decisions in the United States as in Canada.
- 2 There were, however, murder attempts against physicians in Canada, for instance in Vancouver in November 1994, in Ontario in November 1995, and in Winnipeg in November 1997.
- 3 Fiske, John. 1996. *Media Matters: Everyday Culture and Political Change*. Minneapolis: University of Minnesota Press. p. 71
- 4 Demers, Dominique. 1989. "Qui êtes-vous Dr. Morgentaler?" *Châtelaine*, mars. p. 5.
- 5 The name of the decision is *Morgentaler, Scott and Smoling v. The Queen*.
- 6 DeValk, Alphonse. 1974. *Morality and Law in Canadian Politics: The Abortion Controversy*. Montréal: Palm Publishers. p. 47-8.
- 7 Buruina, Michel. 1988. *Avortement: Oui et non. Dialogue en parallèle avec le Docteur Henry Morgentaler et l'Évêque de Gaspé, MGR Bertrand Blanchet*. Montréal: Humanitas. p. 20-1.
- 8 Halpern, Sylvie. 1992. *Morgentaler, l'Obstiné*. Montréal: Boréal. p. 59.
- 9 For example in Winnipeg in January 1983, and in Toronto in June 1983. In November 1976, the newly-elected government of the Parti Québécois, gave up all legal actions against Dr. Morgentaler and all the physicians who performed abortions.
- 10 Biographical elements are taken from Halpern 1992.
- 11 Quoted in Halpern 1992:102.
- 12 Some opponents to the abortion right sometimes offer an ambiguous reading of the Holocaust (See Venner, Fiametta. 1995. *L'Opposition à l'avortement. Du lobby au commando*. Paris: Berg International. p. 73-81).
- 13 Fiske defines figures as "social terrains." Fiske, John. 1996. *Media Matters: Everyday Culture and Political Change*. Minneapolis: University of Minnesota Press. p. 70. One of Morgentaler's biographers refers to him as an "arena" ("arène") Halpern 1992:183.
- 14 "La différence entre Henry Morgentaler et les autres, c'est que dès le début il s'avance démasqué, en plein jour, en blouse blanche de médecin" (Halpern 1992:69).
- 15 McCorvey, Norma, with Andy Meisler. 1994. *I Am Roe: My Life, Roe v. Wade, and Freedom of Choice*. New York: HarperCollins Publishers. p. 15.
- 16 Her first child was taken away from her by her own mother who then had discovered that her daughter was a lesbian.
- 17 McCorvey 1994:117.
- 18 Ibid., 115.
- 19 Ibid., 199.
- 20 McCorvey, Norma, with Gary Thomas. 1997. *Won by Love*. Nashville: Thomas Nelson Publishers. p. 162.
- 21 *L'Actualité*. 1990. "Morgentaler et la loi C-43." 15 juin, 31.
- 22 The *Canadian Medical Association* was created in 1867. About the nineteenth century abortion debate in the United States, see Mohr, James C. 1978. *Abortion in America. The Origins and Evolution of National Policy: 1800-1900*. Oxford: Oxford University Press; and Olasky, Marvin N. 1988. *The Press and Abortion: 1838-1988*. Hillsdale, N.J.: Lawrence Erlbaum Associates. About the Canadian situation, see McLaren, Angus and Arlene Tigar McLaren. 1986. *The Bedroom and the State. The Changing Practices and Politics of Contraception and Abortion in Canada, 1880-1980*. Toronto: McClelland and Stewart.
- 23 Some of those limitations were at stake in two crucial Supreme Court decisions, *Webster v. Reproductive Health Services* (1989) and *Planned Parenthood v. Casey* (1992).
- 24 Notably its first article, which reads: "The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." On the decision, see Manfredi, Christopher p. 1993. *Canada and the Paradox of Liberal Constitutionalism: Judicial Power*

- and the Charter. Toronto: McClelland and Stewart. p. 19.
- 25 Baines, Beverly. 1993. "Law, Gender, Equality." In *Changing Patterns: Women in Canada*, 2nd edition. Edited by Sandra Burt, et al. Toronto: McClelland and Stewart. p. 270.
- 26 Morton, Mildred. 1988. *Le Jugement Morgentaler: en quoi les décisions différent-elles?* Ottawa: Bibliothèque du Parlement. p. 1.
- 27 Dunsmuir, Mollie et Monique Hébert. 1990. *Avortement: aspects juridiques*. Ottawa: Bibliothèque du Parlement. p. 14.
- 28 It said that a woman who wanted to have an abortion had to ask for the opinion of two doctors and only if her life was threatened. The most liberal bill only got 28 votes for and 198 against.
- 29 The rejection of Bill C-43 by both pro-choicers and pro-lifers was ironically symbolized by its defeat by 43 to 43 votes in the Senate on 31 January 1991 after its adoption at the House of Commons on 29 May 1990 by 140 votes to 131.
- 30 He condemned Bill C-43 as follows: "Ce droit de décider est transféré au médecin, c'est-à-dire à un étranger. Et, en plus, on parle de criminaliser une nouvelle fois l'avortement, et pour la femme et pour le médecin." Quoted in Dongois, Michel. 1990. "Morgentaler et la loi C-43." *L'Actualité*, 15 juin.
- 31 Halpern 1992:177-8.
- 32 Ibid., 183-4.
- 33 Adamson, Briskin and McPhail 1988:155.
- 34 Halpern 1992:172.
- 35 Ibid., 178.
- 36 McCorvey 1994:138. She also added: "As for me, Jane Roe, I had no idea that the verdict was coming; I learned about it just like everyone else." McCorvey 1994:140.
- 37 McCorvey, Norma, with Gary Thomas. 1997. *Won by Love*. Nashville: Thomas Nelson Publishers. p. 27. She also mentions jealousy on the part of other women who would have liked to be chosen as Jane Roe: "After I had come out as Jane Roe, feminists regularly came up to me and said, 'I don't know why they chose you. They could have chosen me'" McCorvey 1997:45.
- 38 Wilson, James Q. 1995. *Political Organizations*. Princeton, NJ: Princeton University Press. p. 321.
- 39 Schafer, Byron E. 1988. *Bifurcated Politics: Evolution and Reform in the National Party Convention*. Cambridge, MA: Harvard University Press. p. 80.
- 40 That was also the case for the Reform Party, where abortion was a divisive issue despite a general pro-life stance.
- 41 McIvor, Heather. 1996. *Women and Politics in Canada*. Peterborough: Broadview. p. 370.
- 42 Pross, Paul A. 1992. *Groups Politics and Public Policy*, 2nd ed. Oxford: Oxford University Press. p. 247.
- 43 Bouchard, Gérard. 2001. *Genèse des nations et cultures du Nouveau Monde. Essai d'histoire comparée*. Montréal: éditions du Boréal.
- 44 Lipset, Seymour Martin. 1990. *Continental Divide: The Values and Institutions of the United States and Canada*. New York: Routledge.

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# *The Restructuring of Child Care*

Laurel Whitney

To what extent has gender equality, a key value of social citizenship, been taken into account by neo-liberal governments in North America as they restructure and redesign child care policies? Women's equality appears to have dropped to the bottom of the agenda in the United States and Canada since neo-liberal restructuring took priority in the 1980s and 1990s. The emphasis in public policy has shifted to the private provision of services and to the values of self-reliance, efficiency, and competition (Brodie 1994; Tyyksa 2001; Wiegiers 2002). By examining how child care policies have evolved in the context of this new era of restructuring in several provinces in Canada, we can see how the relationship between social policy reform and women's social citizenship rights is being remade.

## **Child Care and Women's Claims to Social Citizenship**

In his famous 1950 essay "Citizenship and Social Class," T.H. Marshall developed the notion of social citizenship to describe the post-war welfare state. According to Marshall, the purpose of the modern welfare state is to compensate for the inequalities of the market by providing the resources to guarantee full social participation. Marshall argued that participation in the labour market is essential if citizens are to avail themselves of their full political and civil rights; thus, by definition, citizens who have restricted access to economic participation have been denied a portion of these rights (Marshall 1950:4). Marshall likely did not have women in mind when he advocated for the rights of the economically disenfranchised citizen; however, several decades later, feminists took up his concept of social citizenship and demanded the state help eliminate the barriers preventing women from achieving their full

citizenship rights. Many feminists contend that women's disadvantaged position in liberal democracies lies in their assignment to the role of mother, which affects their integration into the labour market; therefore, they argue, the role of the state should be to intervene and create an environment where women's dual roles as worker and mother are not in opposition to each other (Pateman 1983:17-31). Child care policy is a key component in this project for female social enfranchisement.

In North American societies, the presence of mothers in the workforce is still viewed as problematic, and the interests of mothers and of children are often portrayed by governments as if they are in contradiction with one another. Yet, in spite of the ever-pervasive ideology of the male breadwinner, many mothers regard financial support of their children as an essential part of their role as parents. Taking this point of view, feminists argue that children's rights and mother's rights are synonymous and that universal child care is essential to both. In many Western European countries, the welfare state incorporated women's demands for universal child care services in the post-war period; however, that was not the case in North America. Because citizenship is a social construction that changes through time and varies across space (Jenson 2003:136), it is important to analyze changing representations of social citizenship in order to understand why welfare states evolve the way they do (Jenson and Sineau 2001). Since World War Two, the debate about child care policy has reflected the changes occurring in the evolving relationship between the citizen and the state and in the changing allocation of responsibility between the state, the market, and the community. Currently, many OECD states are rethinking their commitment to citizens and what the 'mix' between public and private responsibility for services should be. Child care policy is one indicator

of a government's commitment to women's social citizenship.

In the 1960s and 1970s, rising commitments to gender equality and the feminist critique that governments were leaving the issue of women's dual role in the family and the workforce out of public policy debate contributed to the emergence of child care as an issue relevant to women's equality goals. Feminists in many countries claimed the right to publicly-financed child care as an essential condition for the goal of women's achieving economic independence. For the last two decades, however, social policy in Europe and in North America has been threatened by cutbacks, downsizing, and retrenchment. As the politics of neo-liberalism has taken hold, reduced spending on social programs has become one of the main strategies for deficit reduction.

Comparative studies of child care policies (Jenson and Sineau 2001:37-41) show that a process of policy convergence is taking place amongst the members of the European Union. Even though countries such as Denmark, France, Sweden, Belgium, and the Netherlands have quite different histories with regard to state support for child care, a similar trend is developing in these and other E.U. countries that began with the neo-liberal reforms that started in the 1980s. These recent changes include state preference for less costly services, decentralization and downloading of the responsibility for services from national to local governments, increased diversity in types of programs available and in accessibility, and state financing made available for 'for-profit' provision. Furthermore, the ideology of 'greater flexibility' and individual 'choice' is taking precedence over collective solutions (Jenson and Sineau 2001:241). In North America, a similar trend is underway: social policies are being redesigned, rights are being redefined, services and benefit levels are being cut, eligibility rules have been tightened and income inequality between families has increased sharply since the 1980s (Prentice 2001:128; Tyyksa 2001:6).

The recent erosion of post-war social entitlements such as child care has sparked a debate about the future of the welfare state. Some argue that it is a foregone conclusion that globalization will lead to the dismantling of the welfare state (Teepie 2000). Others point out that even though there have been spending reductions, the welfare state is resilient and remains intact (Held 1987). One thing we do know is that in both Europe and North America, the expansion of social entitlements is no longer on the political agenda. Consequently, groups pressing for social reforms are on the defensive, and many have shifted their politics to defending existing entitlements. How, then, do we in-

terpret Prime Minister Paul Martin's recent announcement that child care is a priority for the new federal government of Canada? If the government follows through on its recent election promises, millions of dollars will be invested over the next five years to expand already existing services to create a nationally-funded and regulated child care program. That seems to be at loggerheads with current thinking in these neo-liberal times, especially with the pervasive preoccupation with reducing the size of government.

The context that forms the background to the current debate about child care is simultaneously demographic, social, and economic. All OECD countries are felling the impact of important trends, such as the increase in women's labour force participation. Assumptions about the role of women, about relations between men and women, and about the social function of the family embedded in these countries' policy frameworks have generated a set of representations of working mothers that have given rise to particular models of gender relations and variations in the welfare state. By scrutinizing the details of social service provisions, the changing of eligibility rules, forms of delivery, and the consequences for people's lives, i.e., whether the changes foster equality or inequality, we can evaluate the impact of current social policy reforms on female citizenship rights.

### Child care Policy in the United States

According to the typology developed by Esping-Anderson (1990), The United States, Canada, Great Britain, and Australia are variations on the 'liberal' welfare state, with the United States being the society that best exemplifies this model of social provision. In Western Europe, it is now widely recognized that social citizenship for women requires state guarantees and subsidies for universal child care provisions; for without these, neither women's right to employment nor children's rights to a secure and developmentally sound environment are guaranteed. Comparative analysis reveals that the United States lags behind these other societies in the creation of social programs that enhance women's socio-economic status, and the provision of child care is no exception to this (Michel 1990:9). In its child care policy, the United States conforms to the 'residual' model of welfare provision, with its assumption that citizens will provide for their own needs through employment and that the government's role is limited to cases where there is family breakdown or loss of employment. According to Esping-Anderson, in such liberal welfare regimes, "the state encourages the market, either passively—by guaranteeing only a minimum—or actively,

by subsidizing private welfare schemes” (Esping-Anderson 1990:26–27). That is indeed the case with child care provision in the United States, where governments have encouraged a model of private sector growth, with access to services dependant mainly on one’s employment status (Michel 1990:180).

In addition, the political divisions between public and private child care users in the United States have made it difficult for child care advocates to form a unified social movement. Parents are separated not only by their preferences for one type of child care over another, but also by discriminatory patterns of utilization and entitlement, as well as by racial and class cleavages which run deep, with public child care stigmatized as a service for the poor (Michel 1990:189). Such divisions only widened in the 1980s when the Reagan administration reduced funding for public child care and encouraged the growth of the private child care sector by giving substantial tax breaks to employers, commercial providers and individual taxpayers. During this period, the federal legislation that funds public child care increased federal support for child care, but also reinforced the image of public services being linked with poverty. Most critics feel this emphasis on “targeted” programs for the poor has contributed to the door’s being closed on the possibility of a universal child care program developing in the United States (Michel 1990:10).

The orientation in the United States towards private provision of services goes back to the early days of the post-war welfare state. Unlike Canada, where tax deductions for child care are a more recent development, the United States Congress first introduced a child tax deduction in 1954. That was converted to a tax credit in the 1970s. Subsequent governments extended this form of funding child care costs, thus further eschewing the possibility of developing a publicly funded, national child care program. Presented as a measure in favour of public “choice,” tax measures mainly benefited upper and middle income families and encouraged the growth of child care services in the voluntary and private sectors. Since the 1960s, federal funds for child care have been increasingly tied to targeted efforts to reduce dependency on welfare by requiring mothers to find full employment. Because eligibility is limited to poor and low-income families, the association between public child care and poverty reform has further stigmatized the issue of government support for child care services. The policy discourse linking child care and poverty has become even more entrenched since the 1980s when a political consensus formed in the United States requiring poor mothers to enter the paid labour

force as part of a national strategy to solve the crisis of the growing federal welfare budget (Michel 1990:7).

### **The Canadian Welfare State: Continuity or Discontinuity?**

Because of Canada’s federalist system of government and its evolution as a liberal welfare state, Canadian child care policy reflects a patchwork approach to social policy (Prentice 2001:111). The extent of the impact of neo-liberalism on Canadian social programs is still under debate. Since a national child care program does not yet exist in Canada, we have to evaluate the impact of neo-liberalism on the potential for one to emerge. One view of the Canadian welfare state suggests that change has been incremental and has consisted of erosion rather than demolition of social programs (Mishra 1990). Banting, on the other hand, argues that Canadian federalism actually acts as a brake on those who wish to shrink Canada’s welfare state (Banting 1987:10). Others argue that ideological and political divisions within the federal Progressive Conservative Party in the 1980s regarding public apprehension about restructuring slowed the implementation of a neo-liberal agenda in Canada (Lachapelle 1988:40). Traditionally, the federal government’s role in protecting social policy is one of its sources of legitimation, and that, too, has slowed the restructuring process.

Child care came onto the federal policy agenda in the 1980s as the result of a lengthy lobbying campaign linking women’s employment equity with access to child care services. During the 1994 federal elections, all federal parties, with the exception of the Reform Party, promised to expand child care services. However, once the Progressive Conservative Party was elected, changes to the federal/provincial agreement for transfer payments enabled provinces to ‘opt out’ of funding child care (Pulkingham 1997:31). The priority of deficit reduction emerged, and that involved cost-cutting measures to social programs. Brodie’s and Pulkingham’s analysis of the impact of these cuts strongly suggests that many of the programs that support women’s social citizenship were severely undermined by federal changes to transfer payments (Brodie 1994:48; Pulkingham 1997:31). That did not bode well for the Progressive Conservative Party’s promise to establish a national child care policy.

Critics agree that the principle of universality has been gradually eroded in Canada and that the overall rate of federal social expenditures has been reduced (Pulkingham 1997; Johnson 1994; Gollner 1988). Whereas the principle of universality did not characterize the welfare

state in the United States, it was an integral part of the welfare state in Canada. With the implementation of Family Allowance after World War Two and universal medicare, Canadians came to expect universality in social programs from the federal government. Following in this vein, the concept of universality has been central to the lobbying from the child care movement. The movement, which includes feminists, labour unions, child care advocates and others, calls for the implementation of a universal, non-profit system accessible to all Canadian families (Prentice 2001:97). If these recommendations were implemented, the current provision of child care, which is under the jurisdiction of the provinces, would change from a residual welfare approach mainly targeted to poor families, to one resembling the programs in some of the Western European countries, where publicly funded and regulated child care is a social entitlement for all families, regardless of income level (Michel 1999:285-289).

Mullaly's method for measuring the impact of neo-liberalism may yield useful insights into the area of child care provision. He makes an argument that studies using aggregate data hide the real attack on the welfare state (Mullaly 1994:47). Instead, he advocates for a conception of the welfare state that analyzes its occupational and gender components, arguing that this will demonstrate that restructuring has gone further than many aggregate studies show. His approach is especially useful for charting recent changes in child care policies at the provincial level. In several provinces, most notably British Columbia and Ontario, governments sympathetic to neo-liberal reforms have implemented changes to child care that have drastically altered the services created by their predecessors, both social democratic governments (the British Columbia New Democratic Party and the Ontario New Democratic Party). The impact of these reforms was especially felt by women, many of whom were female heads of households and mothers receiving social assistance. Many of these families lost their access to publicly funded child care because of these reforms, and their ability to stay in the labour force or in retraining programs was threatened (Teghtsoonian 1995:415).

What is evident in Canada is that programs that serve a broad majority of the population have not been restructured as quickly as those that are "targeted" to a specific sector of the population. In the case of child care, that has meant that the most radical reforms were in programs linking the provision of child care with retraining programs for parents to re-enter the workforce, and that has chiefly affected mothers on welfare. In many cases, child care is used to coerce mothers into leaving social assist-

ance (Tyyska 2001:18). One thing is sure: we cannot rely on public pressure for the protection of child care services the same way Canadians mobilized around protecting the Canada Pension Plan when it was threatened by the Mulroney government in the 1980s. The reason for that is that not enough members of the public have benefited from government-supported and regulated child care to defend it from attack. Since the 1970s, most middle-income families in Canada have been able to take advantage of a tax break that offsets their child care costs. This approach favours individual "choice" over collective solutions, thus encouraging growth in the private, "for profit" child care sector and discouraging the development of a comprehensive nationally-funded program. That is a point of convergence between Canada and the United States, although the use of tax measures to offset child care costs was introduced later in Canada.

At times, interest groups and coalitions in Canada have allied with municipal or provincial authorities to prevent governments from downsizing social programs, as was the case with the Metro Child Care Coalition in Toronto in the 1990s and the child care movement in Edmonton in the 1970s (Prentice 2001:12). However, given that a national child care program does not yet exist in Canada, provincial governments are not constrained by federal regulations from reducing the existing child care services that are under their jurisdiction. Provincial attacks on child care services started in the 1990s, when changes to the formula for federal transfer payments to the provinces opened the door to the provincial restructuring of social services. As Prime Minister Paul Martin proceeds with his plan to expand the provision of publicly funded and regulated child care services in Canada, we must ask whether child care can succeed as the counter-example to the current shrinking of the federal and provincial welfare state?

The case of Ontario since 1995, when the Ontario Progressive Conservative Party replaced a provincial NDP government, illustrates the impact that neo-liberal ideology and policy reform has had on child care services. Recent studies demonstrate how the neo-liberal climate posed a particular threat to the social citizenship rights of women, especially women in lower socio-economic groups (Tyyska 2001:2; Wiegiers 2002:10). As in the United States, the theme of reducing welfare dependency was at the top of the agenda of the Harris government when it took office in 1995. Mothers on welfare who were caring for young children were stigmatized when the state legitimized cuts in services by distinguished between "deserving" and "undeserving" recipients of social programs (Tyyska 2001:6). Janine Brodie aptly captures this climate

when she points out that under neo-liberal regimes, social citizenship shifted away from the ideal of universal services toward the market-oriented values of self-reliance, efficiency, and competition (Brodie 1994:47).

It is important to point out that changes to federal funding arrangements made such neo-liberal provincial reforms possible. In 1994, the federal Liberal government announced that transfers to the provinces for social services, health, and post-secondary education would be rolled into a block fund under the Canada Health and Social Transfer (CHST) (Prentice 2001:188). That move precipitated a decline in billions of dollars in cash transfers to the provinces achieved through a combination of withdrawal of funds and the partial de-indexation of the cost-sharing formula (Doherty, et al. 1998:22). Under the previous cost-sharing arrangement, the Canada Assistance Plan (CAP), the cost-sharing formula had important conditions attached to it, including the stipulation that no one could be refused means-tested assistance. That prohibited federal funds from being used for 'workfare' programs (Tyyska 2001:10). However, under the new CHST, which replaced CAP, there was no mechanism to guarantee that some of the funds would continue to be spent on child care, and there was no requirement that the provinces match the federal money. This move was met with alarm in the child care movement because child care now had to compete with health care and post-secondary education for funds from the same 'pot.' It is fair to say, then, that the introduction of the CHST signified a reduced commitment to child care from the federal government and also set the stage for neo-liberal reforms at the provincial level. It was a back-handed way for the federal government to embark on social policy restructuring, with the provinces actually being the ones to carry out the cuts in services.

This diminished commitment to child care from the federal government has had serious consequences for Canadian families. In Ontario, under the Progressive Conservative Party, funding spent on childcare decreased by more than 20 percent over a three-year period, from \$520 in 1996 to \$432 per family in 1998 (Childcare Resource and Research Unit 2000). That contrasted with the Ontario NDP government, which between 1989 and 1994 increased child care provision by adding subsidized spaces to the system, and by converting private sector child care spaces into non-profit spaces. The NDP government also included child care workers under the *Pay Equity Act* and topped up the wages of child care workers in non-profit centers (Metro Toronto Coalition 1992). The NDP government expanded subsidized child care spaces for participants in post-secondary education and job train-

ing programs and embarked on a comprehensive plan to partner early childhood education with kindergarten in a "seamless day" approach which would benefit most four and five year olds in the province (Ontario Coalition for Better Child Care 1997). Over a five year period, the NDP government brought per capita expenditures on child care to the third highest level in Canada, and child care staff salaries rose to the second highest in the country (Child-care Resource and Research Unit 1995).

These initiatives by the Ontario NDP were premised on an inclusive notion of social citizenship that benefited women and lower income groups. However, there was still more to do; the intended reduction in the number of commercial child care spaces during this period had not been matched by sufficient growth in non-profit spaces to meet the high demand. Municipalities, such as Toronto, began talks with the provincial NDP government to map out an ambitious plan for a system that would include all children whose families wanted a spot in a publicly funded child care center. This plan was similar to the comprehensive child care system that was later to be established in the neighbouring province of Québec. When the Parti Québécois was returned to power in 1994, after several years of being in the provincial opposition, it embarked on a major project to put in place a comprehensive family policy that is unparalleled anywhere else in North America.

The Ontario Progressive Conservative government of Mike Harris, however, was on a mission to implement neo-liberal reforms with its "Common Sense Revolution;" upon election, it made an immediate reduction of 47 percent in municipal transfer payments, placing a staggering burden for funding child care and other social services on municipal governments (Tyyska 2001:13). The Progressive Conservatives reversed NDP child care initiatives, canceled the conversion of private-sector child care spaces into non-profit spaces, and signaled its intent to remove child care workers from inclusion in the *Pay Equity Act*. It introduced a workfare program (Bill 142) modeled after an American prototype and completely cancelled child care bursaries to single parents attending post-secondary institutions (Tyyska 2001:14). Because 40 percent of child care was delivered in facilities under the auspices of school boards, these programs were threatened when the government cancelled capital funds for school-based programs. Provincial funding to junior kindergarten programs was cut (Bills 26 and 104) which resulted in the cancellation of junior kindergarten by 22 Ontario school boards, affecting 60,000 preschool children, many of whom were now competing for spaces with children already on child care waiting lists. It is estimated that between 1995 and

1998, the Ontario Progressive Conservatives cut regulated child care funding by approximately 40 percent (OCBCC 1999).

In addition to this attack on children's programs and women's social citizenship rights, the Progressive Conservative government began including the association of private day care operators in its policy deliberations, and it shut out the coalition for non-profit child care from talks. Research on privatization shows that "for-profit" child care provision goes against the interests of women and children because it reduces access to government regulated child care, keeps wages low in a 99 percent female occupation, and reduces over all standards of care in the child care sector (Prentice 2001:65). In its Child Care Review, released in 1996, the Ontario Progressive Conservative government indicated its plan to change provincial legislation regulating child care and to loosen rules specifying strict staff-child ratios. As well, the monies saved by reducing the wages of child care workers by 25 percent were redirected to low-income families in the form of child care fee subsidies. This move was met with cynicism by child care advocates, who accused the government of robbing the poor to pay the poor. In summary, the Ontario government reforms put additional pressure on parents, especially on low-income families and mothers who need to be guaranteed high quality, accessible child care in order to participate in the labour force.

In August, 2004, Prime Minister Paul Martin announced that his government intends to fashion a national child care program after the model established in Québec in 1997. The Québec child care model uses funds recouped from tax benefits to pay for child care for children aged 0–12 and delivered through a network of community-based child care centers throughout the province. On average, parents pay \$5 a day. Child care is the center-piece in a comprehensive family policy that provides extended maternity and paternity leave, as well as protections and other workplace benefits for parents (Prentice 2001:44). The Québec system is modeled after France's family policy and early childhood education system; however, initially, the P.Q. came under a great deal of criticism for mounting such a bold initiative at a time when deficit reduction was the driving motive for governments in most jurisdictions in North America.

Critics of the Québec child care system say lower to middle-income families are being penalized by having their child tax credits redirected to support the costs of funding the child care centers. Many families do not use the system, either because they prefer to make private arrangements for the care of their children, or because their

children are still on waiting lists for child care spaces. The government plans to expand the system, but it is a victim of its own success, and it is having difficulty keeping up with the growing demand for regulated child care (Tougas 2002:67). When the Parti Québécois lost power in 1993 and was replaced by the Liberal government of Premier Jean Charest, plans were announced to introduce cost-cutting reforms to the system. This initiative to undermine the child care system by the newly-elected government was met with organized protests from the trade union movement, women's groups, parents, and child care workers. For the moment, the Charest government has backed away from its intention to go through with this restructuring (Cernetig 2004). Given the resistance to the new system from within parts of Québec society, it is difficult to imagine the federal government forging ahead to create a similar system in the rest of Canada without the assurance of the kind of support from trade unions and other social movements that the Parti Québécois enjoys.

Child care is not going to go away as an issue. However, in the public eye, and in the policy arena, it has been divorced from women's claims for full social citizenship. In most jurisdictions in North America, in a bid to reduce government deficits, the neo-liberal discourse of restructuring has succeeded in linking the public provision of child care with 'workfare' and other welfare reforms designed to coerce parents off the welfare rolls. In order for child care to become a social entitlement for more families in North America, there would have to be a shift away from measures such as tax credits, because they only encourage the growth of unregulated child care through the private sector, and a shift in favour of embracing more collective solutions for caring for children, as is the case with Québec. Women stand to gain a great deal from such a policy change because, as the primary care-givers for children, women's social citizenship rights would be greatly enhanced by the implementation of a universally accessible child care system. Québec has taken an important first step, although its child care system is currently threatened by the policy orientation of its new Liberal government. It remains to be seen whether the federal government in Canada can convince Canadians in other provinces to follow Québec's lead. That is especially so when it was the federal government's restructuring of federal-provincial cost-sharing arrangements that allowed provincial governments in jurisdictions such as British Columbia and Ontario to dismantle the child care services that had already been put in place there by the previous social democratic governments.

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# *Civic Education: The Key to Political Literacy and Re-engagement?*

Pauline Beange

## Introduction

Citizen participation is at the heart of democracy. Indeed, democracy is unthinkable without the ability of citizens to participate freely in the governing process.

Verba, Schlozman, and Brady 1995:1

Participation has been and continues to be the *sine qua non* of democratic governments: Nie, Junn, and Stehlik-Barry refer to political engagement as “the first dimension of democratic citizenship,” in that it has “signified the capability of citizens to engage in self-rule and encompassed behaviors and cognitions necessary for identifying political preferences, understanding politics and pursuing interests” (Nie, Junn, and Stehlik-Barry 1996:11).

However, in the past few decades, most western democracies have experienced declining trends in political interest and political participation, particularly among youth. Neither Canada nor the United States have escaped: in both countries, indicators of trust, efficacy, and attitudes of deference all show marked similarities and have been accompanied by declines in traditional forms of participation and greater visibility of alternative forms of engagement (Inglehart 1997).

While there are differing assessments of the data, researchers in both the United States and Canada have investigated the causes of youth disengagement and have attempted policy prescriptions. Among the most promis-

ing is the research that demonstrates a strong and positive correlation between political literacy—a basic understanding of political institutions and processes—and political engagement. Recent work by Delli Carpini and Keeter (1996) and Niemi and Junn (1998) in the U.S. finds that students with a background of formal civics education at the secondary school level demonstrate higher levels of political literacy. In Canada, Milner’s work, while using different indicators, also demonstrates the significance of civic literacy in citizen competence and engagement (Milner 2001).

It should be noted at the outset that the terms civic and citizenship education have frequently been used interchangeably, with citizenship considered as a more multi-dimensional term, including knowledge, character and volunteer or service learning and roles (Evans 2003:34). The recent literature evidences the use of *civic education* when referring to the acquisition of political literacy (Galston 2004) and this paper will follow that practice.

Educating for political literacy has thus become a topic of convergence, and civic education,<sup>1</sup> as a policy instrument, has regained attention in both countries as a means of re-engaging youth in political processes. Analysis of American data by Niemi and Junn and the Center for Information and Research on Civic Learning and Engagement (CIRCLE) demonstrates the specific contribution of civic education to political literacy. While there has been

little, if any, empirical research on a nationwide basis in Canada, there has been a “flurry of activity” in the area of citizenship research (i.e. citizenship roles in both the political and civil spheres) (National Center for Learning and Citizenship 2004:5), according to Levesque (Levesque 2000:1). Moreover, the specific content of civics courses is critical to student learning (Niemi and Junn 1998).

The focus of this paper, therefore, is a content analysis of the civics curriculum and two civics textbooks approved by the provincial government of Ontario for use in a secondary-school level civics course that is required for graduation. It is the only jurisdiction in Canada that has a requirement for explicit instruction in civics, and as such, the materials approved for this course represent a window of investigation as to what students are learning about government and participation. The paper first reviews the literature on youth disengagement, the links between political literacy and engagement, and then develops a set of criteria that are considered central to the task of educating for *both political literacy and citizen competence as a two-fold foundation for renewed engagement across the political spectrum*. The criteria are then used to assess the textual material from the perspective of reengaging youth politically.

Upon completion of the aforementioned analysis, it will be seen that current civics instruction in Ontario, while perhaps accomplishing general citizenship goals, is less than satisfactory from the perspective of initiating and sustaining youth *political literacy and political engagement objectives*. It is noteworthy that the Ontario curriculum, in its approach and in the textual material is illustrative both of the designated-level approach to citizenship advocated by Westheimer and Kahne (2002, 2004) and of the issues-approach or critical, reflective approach that is widely advocated in the literature of citizenship education (Osborne 1991). Myers further notes that the “Ontario initiatives in citizenship education are part of a larger global trend” (Myers 2000:1).

Although caution must be exercised because of the small sample size, there are several possible consequences for political engagement that flow from the content and pedagogical approach of civic education that resembles the Ontario model. It appears that students who complete the Ontario course, or ones similar to it, may view involvement in civil society as a substitute rather than as a complement to political activity; secondly, that engagement in interest groups and new social movements where political goals are influenced directly may be viewed as more effective and rewarding than involvement via traditional political vehicles, such as voting and political party membership,

where representation and voice are effected indirectly. It is, in fact, possible that civics course material such as Ontario’s may accomplish the reverse of what is intended: it may foster lack of deference, greater cynicism regarding political processes and discourage political involvement.

The paper will conclude with recommendations for the continued employment of civics education, in both the United States and Canada, as a policy tool to build political capacity in the youth cohort. However, it is argued that, based on the Ontario sample, substantial modifications are required if civics curriculum and textual materials are to build greater political capacity and engagement via traditional and non-traditional means among youth.

### Overview of Youth Political Engagement

Work by Nevitte (1996) on value change indicates striking similarities, in the aggregate, between Americans and Canadians: “Citizen attachments to traditional political parties have been weakening in nearly every advanced industrial state” (Nevitte 1996:50); differences in the level of confidence in governmental institutions between the two countries “all but evaporated” in the period of his study (1981-1990) (56); Canadian and American values shifted “more or less in tandem” (294); support for “changing the status quo” stood at 46.6 percent in the U.S. and 49.9 percent in Canada in 1990 (308). Support for the general principle of deference is the lowest among 18 to 24 year olds in both countries (Nevitte 1996:40).

The statistics present a snapshot of Canadian youth that is not dissimilar to their American counterparts. As Galston writes of the United States, “[o]ver more than three decades ... every significant indicator of political engagement has fallen by at least half” (Galston 2001:219). Canadian youth, too, are declining to engage politically. Voter turnout, measures of interest in politics, political party membership, levels of trust or confidence in government all indicate alienation, lack of interest and disengagement on the part of youth. That is seen as problematic, as it is estimated that turnout is 10–25 percent lower among youth than in the general populace (Public Policy Forum 2002:5; Elections Canada 2003; LeDuc and Pammett 2003; Centre for Research and Information on Canada 2003). These statistics look much like those in the United States, where declines in youth voter turnout, party membership, and other traditional means of political engagement have been widely documented by authors such as Putnam (2000), Galston (2001, 2004) and the Center for Information and Research on Civic Learning and Engagement (CIRCLE 2003).

To those who might argue that it is only traditional means of engagement and interest that have declined in their appeal to youth, Gidengil, et al. (2003:12) write that their research does not support the assumption that young people are “trading off” engagement in traditional political acts, such as voting, for involvement in grass roots or protest activism, even in such seemingly popular causes, such as the environment and anti-globalization. Conversely, they find that a small core of young people who do engage in these alternative forms of political activism are also the same core who vote and who belong to a political party or interest group.

There is also a surprising degree of convergence among political researchers in both the United States and Canada regarding the significance of these statistics. Even Norris, who argues that participation *per se* does not guarantee representative democracy, has written that “Widespread disengagement from civic life is problematic if political participation functions as a mechanism to hold elected officials to account, to articulate and express public demands and grievances, and to train and educate future political leaders” (Norris 2002:5).

### Political Literacy, Civic Education and Engagement

While a multitude of factors (Nevitte 2002:7–21) has been shown to be instrumental in the decision to engage—or to disengage—politically, an individual’s level of political knowledge appears to be particularly critical.

For the purposes of this paper, *political literacy* is: “a knowledge of basic political concepts;... [the ability] to construct analytical frameworks within which to judge political questions;... [the ability] to take a critical stance toward political information;... [the] capacity to try to see things from the point of view of other groups and persons;... the capacity to *participate in and change political situations*.”<sup>2</sup> Specifically *excluded* for the purposes of this paper are personal character attributes and more general “civic” skill sets, which are nevertheless fields of study in their own right (Verba, Schlozman, and Brady 1995). The focus will therefore be on *political knowledge, attitudes, and skills*.

Research in the U.S., by Delli Carpini and Keeter, demonstrates that it “is not just years of education but the amount of political knowledge possessed that predict political participation. Those most knowledgeable politically are most likely to participate in politics” (Delli Carpini and Keeter 1996:226–227). Popkin and Dimock (2000) reach similar conclusions. In Canada, Howe finds that those

who are less knowledgeable about politics are less likely to vote and that “Young Canadians are the least politically knowledgeable group in the country, and by a wider margin today than ten years ago.... What’s more, this relative decline in levels of political knowledge also holds true of young Canadians who have received a post-secondary education.”<sup>3</sup> Milner’s work (2001:20) also demonstrates positive links between political knowledge and engagement in Canada. However, not just voting is at stake. Delli Carpini and Keeter and Niemi and Junn report significant differences in political knowledge between ethnic and socio-economic groups. Political knowledge or literacy is, thus, linked to issues of equality and inclusiveness.

Within the realm of public policy, the public education system, since its inception in both the United States and Canada, has been assigned the primary role of citizenship education (Macedo 2000; Manzer 1994), and that continues to be the case. More specifically, civic or citizenship curriculum represents the fulcrum of political literacy: the nature and institutions of democracy and society and the relationships and roles of citizens. Recent research confirms this. Niemi and Junn find that “[b]y itself, civic course work raises overall political knowledge by 4%; when combined with the study of a wide range of topics and regular discussion of current events in the classroom, this figure rises to 11%” (Niemi and Junn 1998:120–122). Furthermore, “*The impact of formal civic courses—persisting as it does in a context in which other structural and individual characteristics are accounted for—is uncommonly meaningful....* We argue that our analysis demonstrates that *the civics curriculum has an impact of a size and resilience that makes it a significant part of political learning*” (Niemi and Junn 1998:121, 145, italics added).

In Canada, while there has been little, if any, formal empirical testing of civic education as an explanatory variable, there has been renewed interest in civic education as a policy instrument. Canadian educational researchers, Hebert and Sears, however, find “considerable activity” in Canada evidenced by “significant curricular initiatives” in all ten provinces, some territories, and numerous departments and agencies of the federal government (Hebert and Sears n.d.:13–15).

Civic education courses, thus, constitute a policy lever in the quest for political literacy and for political re-engagement. As Delli Carpini and Keeter state: “*Political information is to democratic politics what money is to economics: it is the currency of citizenship*” (1996:8, italics added). That is no less true in Canada than it is in the United States.

### Civic Education: Criteria for Developing a Political Literacy of Re-Engagement

While the inclusion of civics in the curriculum potentially represents a path to re-engagement, it is argued on both sides of the border that the specific course content of civics is also critical. Writing from an American perspective, Galston (2002, 2004) and the Center for Information and Research on Civic Learning and Engagement (CIRCLE 2003:6) concur with the writings of the joint work of Canadian-based and American-based researchers Westheimer and Kahne (2002) on the significance of specific course content. Civic education is frequently analyzed from the citizenship perspective used by Westheimer and Kahne (2002) among others. Here the emphasis is whether the political literacy imparted will lead to re-engagement. Following, then, five criteria for educating for political literacy and engagement are formulated from the literature and against which the Ontario curriculum and textual material are assessed. What do students need to learn that will lead them to reengage politically?

Niemi and Junn suggest two sets of features determine what and how much students learn about government and politics: the first set is “exposure characteristics,” that is, the political information students are exposed to, whereas the second set “selection characteristics” regulates what information is retained (Niemi and Junn 1998:53). As Niemi and Junn succinctly state, “to be politically knowledgeable, students must both be exposed to political information and value it sufficiently to select it for retention” (Niemi and Junn 1998:54). These two components have also been denoted, respectively, as *political knowledge* and *political affect*, where political affect may be seen as the disposition towards political institutions and engagement. As Williams states so clearly, “Children . . . need to see democratic institutions as an *achievement* whose current form is not entirely accidental or arbitrary, and whose imperfection requires their effort at improving upon it. In other words, a part of children’s developing sense of political agency is to understand themselves as contributing to an ongoing story of democratic self-rule . . .” (Williams 2003:236, author’s italics). Williams, appropriately, takes great care to differentiate this form of political affect from what is often termed regime support, excessive patriotism, or maintenance of the status quo.

Also of significance is what Norris terms “a supportive political culture” with “widespread adherence to democratic values and norms” such as tolerance, respect for human rights, and willingness to compromise (Norris 1999:266). Tolerance, as American researchers Nie, Junn,

and Stehlik-Barry write “[the] willingness to permit the expression of ideas or interests one opposes,” is perhaps the capstone because it “signals a fundamental commitment to the rules of the democratic game” (Nie, Junn, and Stehlik-Barry 1996:15). In Canada, as well, the democratic values of tolerance and inclusion, or social cohesion, are highly valued by citizens and therefore should be portrayed as pivotal (Brooks 1994:62-63; Jensen 1998:4).

Thus, if civics is to stimulate political re-engagement, civics curriculum must be characterized by the following:

**Criterion 1:** *Teach for democratic norms, political knowledge, and political affect.*

However, because differing conceptions of democracy “embody significantly different beliefs regarding the capacities and commitments citizens need in order for democracy to flourish” (Westheimer and Kahne 2002:2), civic education needs to impart an understanding of these “differing conceptions” since each incorporates specific norms and modes of political engagement.

Theories of *classical liberal democracy* clash, on a number of perspectives, with theories that delineate a more *communitarian* vision of democracy. Understandings of freedom, the scope and size of government, individual versus collective identities, social, political and economic equality, competition in the political process, confidence in elections and in democratic institutions, differing priorities assigned to voice through political parties, interest groups, protest politics, and the “need” or systemic reform of democratic institutions all differentiate these models. A civics curriculum that either assumes one view, or fails to accommodate both conceptions, will, *a priori*, be shaping both political knowledge and political affect and thus engagement, but will be doing so in a covert manner.

Given these fundamental divides, it is imperative that civics clearly activate the following:

**Criterion 2:** *Delineate the differing views of democracy and balance the presentation; alternatively, identify clearly which view is endorsed and its implications.*

**Criterion 3:** *Present the alternative views of government as both “friend and foe”; government power as potentially salutary or detrimental; government as an agent, rather than a force.*

Also of critical importance is the view of *voice or representation*. In the classical liberal model, citizens participate via political parties and by electing representatives.

Not only in this model but in educational initiatives in emerging democracies, political parties are seen as holding a “central role” in democracies (National Democratic Institute for International Affairs 2004:1). Alternatively, communitarian democracy generally views voice as emerging via direct consultation with citizens and activism within non-governmental organizations (NGOs) or what Norris terms “ad hoc coalitions of new social movements (NSMs) ... concerned with issues such as human rights, gender equality, and environment protection” (Norris 2002:39).

While critiques of representation via traditional means are frequent in the literature, the limitations of participation via interest groups are less often evident. A few examples will suffice. Endorsement of protest politics as “voice” frequently omits an institutional context, is simplistic in its single-issue orientation, and lastly, may result in unintended consequences because policy options are evaluated in isolation (Bird 2004:7). Involvement in participatory democratic experiments may exacerbate citizen disengagement, a fact often ignored (Hibbing and Theiss-Moore 2001:245–247). While students need an appreciation of the accomplishments of NGOs and NSMs, they also require a political knowledge that encompasses the traditional means of voice as well as an understanding of the flexibility of existing democratic institutions in addressing issues, such as social justice, if civics education is to invite and propel students to future political engagement (Simeon 2004:31–32). Thus, civics curriculum must demonstrate the following:

**Criterion 4:** *Engender an understanding of and appreciation for the significance of representation, voice, and empowerment via voting and engagement with political parties and Canadian democratic institutions.*

**Criterion 5:** *Engender an understanding of the strengths and limitations of extra-parliamentary engagement.*

To summarize, these five criteria are foundational to developing the political literacy—comprised of both knowledge and affect—that is critical to re-engaging youth in democratic decision-making and policy processes. These criteria will be employed in the case study of civics curriculum in the Province of Ontario, Canada. Is current civics instruction of the type employed in Ontario sufficiently robust for the task of re-engaging youth politically?

## Research Methodology

In 1999, the Province of Ontario introduced an *explicit* civics course that is *required* for high school graduation. While some states have such a requirement, all other provinces and territories in Canada embed high school civics instruction in required courses such as “History” or teach civics explicitly, but as an elective. Thus, the Ontario Grade 10 Civics course presents a unique opportunity to investigate the material<sup>4</sup> expostulating democracy and political engagement that is taught to *all* students in the province. Furthermore, the Ontario civics curriculum models the three “levels” of citizenship approach advocated by Westheimer and Kahne (2002, 2004) and one of the texts specifically adopts an “issues approach” that is endorsed by authors such as Hess (2004). The study, in employing a content analysis of civics curriculum, constitutes an indirect method of observation. Although this methodology omits factors such as the input of teachers and classroom environment, content analysis is a frequently used methodology (Hahn 1999:587) because of the acknowledged difficulty in controlling for these variables, given the highly decentralized educational policy process that exists in both the United States and Canada.

The textual analysis was supplemented by reference to published “Course Profiles” or teachers’ manuals (Curriculum Services 2000:1);<sup>5</sup> a survey of themes in the literature of civic education, a frequent proxy for what is happening in the classroom (Joshee 2004:verbal communication); and interviews with civics educators at the Ontario Institute for Studies in Education and with teachers and professionals in York Region, a large, urban, multicultural school district.

### ***The Ontario Civics Course: Political Literacy for Re-engagement?***

How closely does the civics material of Ontario align with the criteria developed? The curriculum outline and two civics textbooks approved by the provincial government for use in the Ontario Grade 10 Civics course are analyzed and specific references are made to these texts.<sup>6</sup> The first text is entitled *Canadian by Conviction: Asserting our Citizenship* and is co-authored by Brune and Bulgutch (2000). The second, *Citizenship: Issues and Action*, is authored by Evans, Slodovnick, Zoric, and Evans (2003).<sup>7</sup> These texts will be referred to as Brune and Evans, respectively, throughout the remainder of the paper.

**Criterion 1:** *Teach for political knowledge, political affect, and democratic norms.*

The provincial-level course description reads as follows:

In civics, students explore what it means to be a “responsible citizen” in the local, national and global arenas. They examine the dimensions of democracy, notions of democratic citizenship, and political decision-making processes. They are encouraged to identify and clarify their own beliefs and values, and to develop an appreciation of others’ beliefs and values about questions of civic importance. The civics course is organized into the following three strands:

**Informed Citizenship.** An understanding of key civics questions, concepts, structures and processes is fundamental to informed citizenship. In a diverse and rapidly changing society that invites political participation, the informed citizen should be able to demonstrate an understanding of the reasons for and dimensions of democracy. In the Civics course, students will gain an understanding of contrasting views of citizenship within personal, community, national and global contexts....

**Purposeful Citizenship.** It is important that students understand the role of the citizen and the personal values and perspectives that guide citizen thinking and actions. Students need to reflect upon their personal sense of civic identity, moral purpose, and legal responsibility. They should ... consider the challenges of governing communities in which contrasting values, multiple perspectives, and differing purposes coexist.

**Active Citizenship.** Students need to learn basic civic literacy skills and have opportunities to apply those skills meaningfully by participating actively in the civic affairs of their community. Civic literacy skills include inquiry strategies, critical and creative thinking, decision making, resolving conflicts, and collaborating. Full participatory citizenship requires an understanding of practices used in civic affairs to influence public decision making. As well, students will learn about the work and contributions of agencies serving community interests and needs.<sup>8</sup>

It is significant that, although entitled *civics*, which traditionally denoted instruction in political institutions and processes, the course focuses primarily on citizenship roles in civil society rather than on political literacy and engagement. As *political knowledge*, topics such as “the dimensions of democracy” are relatively abstract, particularly for the average fourteen to sixteen year old adolescent who is studying this material, and there is no requirement for mastery or knowledge. It should also be

noted that in the above “three strands” that values and critical thinking skills rather than political knowledge are stressed. At the basic level of citizenship, the “informed” person must *understand* the reasons and dimensions of democracy; at the intermediate level, the “participatory” citizen must *consider* the challenges of governing; and even at the most “advanced” level, “active” citizenship requires only an “*understanding* of practices used in civic affairs to influence public decision making.”

With regard to *political affect* there is little that would stimulate a positive disposition toward political engagement in democratic processes, yet as Williams (2002) has argued, children—or youth—must see themselves as agents, as part of the story of democracy unfolding. No normative statements about political engagement are evident, although many are made with regard to civil society engagement.

Substantive attention is given in the provincial outline, appropriately, to the development of democratic norms, particularly the development of tolerance, phrased as appreciation or understanding of “others” beliefs and values about questions of civic importance,” “contrasting views of citizenship,” and the “contrasting values, multiple perspectives, and differing purposes” within communities. While “enlightened” political engagement demands both political knowledge and democratic attitudes, it is primarily, if not exclusively, the latter that is highlighted at the course level. That is a most unfortunate deficiency, given that Howe’s study declares young Canadians “the least politically knowledgeable group in the country, and by a wider margin today than ten years ago” (Howe 2001).

At the level of the texts, the approach adopted by the respective authors differs markedly and may impact political knowledge in the following ways: It is possible that the Brune text, using a mainly historical-institutional approach, may impart more political knowledge and affect than the Evans text, given the latter’s stated use of an “issue based” approach in order to enable readers “to explore controversies” (Evans 2000:vii). As mentioned earlier, an issues approach features prominently in much of the literature. However, the controversies chosen are of obvious significance because of inherent ideological implications: for example, the conservative/liberal debate regarding scope and size of government is omitted completely, while justice-based topics are covered over several pages (Evans 2000:58–59, 151–153). An issues approach, rather than an historical or comparative one, results in a focus on the challenges and possibly the deficiencies of democracy. Jennings and Niemi point to the potential significance of that when they state that “the impact of issues on shaping wider

political orientations should be stressed ... ” (Jennings and Niemi 1974:64).

Finally, the emphasis on critical thinking that features significantly in assignments in both texts, although important as a preventive to a subject, *status-quo* mentality, may, when coupled with the issues orientation of the Evans text, constitute a causal factor in the development of what Nevitte (2002) has termed the lack of deference that seems to typify Canadian youth. At the conceptual level, then, both the course outline and at least the Evans text may lead to equivocal views among youth regarding political engagement.

**Criterion 2:** *Delineate the differing views of democracy and balance the presentation; alternatively, identify clearly which view is endorsed and its implications.*

According to the Brune text: “Democracy is a government system in which the majority rule. The majority rule, but to be truly democratic, a government must also respect minority rights. In a democracy, individual rights and freedoms generally take precedence over state order and control. There is an orderly system of transferring power in a democracy, usually through the means of elections. Since the people, either directly or through their representatives, are the government, they enjoy rights as well as responsibilities” (Brune 2000:12). This definition is relatively objective and knowledge based, and includes a number of the elements of liberal democracy (that is, representation, orderly transition of authority, individualism, rights, and responsibilities) but does omit the ideas of accountability and competition. It also underscores the concept of equality by mentioning the rights of minorities. The Brune text’s statement that “the people ... are the government” may suggest a level of identification that would stimulate political engagement.

The Evans text defines democracy in the following way:

At one level, democracy is about personal freedom. At another level, democracy is about equality and social justice. Some of the beliefs central to democracy include:

- Citizens should have a voice in decision making.
- All citizens should be treated as equal.
- All citizens should have fundamental rights and freedoms.
- Citizens should have a sense of responsibility to other people in the community. Citizens should have a sense of what is socially just (Evans 2000:16).

This definition does include the fundamentals of liberal democracy such as freedom, equality, voice, and rights, but defines democracy primarily in communitarian terms. It is also strangely devoid of any institutional frame of reference and an understanding of the way democratic systems work. While democratic citizens are to have “a voice in decision making,” that is not the same as holding elected representatives rigorously accountable for their votes and policies. Neither definition accounts for what Williams calls the “self-protection” component of democracy, or the ability of citizens to defend themselves against the potentially coercive power of government (Williams 2003:227). Secondly, there is no mention in the Evans work regarding to whom the “voice” is to be directed—the bureaucracy? Elected officials? Where is it to be voiced—at political party functions, elections, meetings or protests? In the given context, democracy seems to be little more than a collection of civic values; its goals, as Evans lists them, could perhaps be achieved by civil societal negotiations rather than the political debate and compromise that characterize both majoritarian and consensus democracies.

It is also evident that the Evans definition is more normative and twice incorporates the concept of social justice as integral to democracy, although it is a relatively new extension within democratic theory. As Simeon writes, “Social justice is a concept that has multiple meanings, is hopelessly general, and highly contested” (Simeon 2004:1). The Evans text allocates an entire chapter to social justice, and yet “social justice” is never defined. The treatment in the Evans text, rather than stimulating critical thinking and leading to an understanding of the complexity of the underlying debates about equality and justice, could instead unwittingly lead to an unduly idealized (and perhaps naïve) conception of Canadian democracy, disillusionment and greater distrust in its institutions, and thus ultimately act as a disincentive of political engagement when students-turned-voters are confronted with the reality that healthy and flourishing democracy, by its very nature, does indeed involve conflict.

With regard to educating for some degree of political affect, the texts are similarly lacking. In the literature, many authors point to an excessive patriotism and over-celebration of political achievements to the detriment of acknowledging the imperfections—often severe—of Canadian democracy, but that cannot be said of either the Brune or Evans texts. The epilogue in the Brune text states that “each of us is especially fortunate to live where we do [*sic*]” (Brune 2000:261), presenting one of very few statements of affect that are made either about Canada or its democratic form of government. The Evans text is

somewhat more equivocal. It asks, “Is Canada the best country in the world in which to live?” and answers, “The United Nations thinks so” (Evans 2000:36).

What seems to be lacking is a sense of Canadian democracy in comparative perspective. For example, both texts devote attention to the development in Canada of universal suffrage, but neither uses international comparisons that would yield an understanding of the relatively early achievement in Canada of that measure of political equality. While the Brune text, as does the Evans text, refers to the U.N. ranking (Brune 2000:1; Evans 2000:36), no mention is made of other similar evaluations by independent international organizations, such as Freedom House (2003), that might further convey to students some understanding of the not-inconsiderable achievements of Canadian democracy. Knowledge of these might constitute some of the “selection” characteristics that Nie, Junn, and Stehlik-Barry (1996) refer to as critical in determining what information students’ value and retain. It is possible that the understated tone of the texts, if representative of most civic material regarding Canadian democracy and its institutions, could be a source of the lack of interest and disengagement of Canadian youth. If there is little that is special or valuable about Canadian democracy, why get involved?

**Criterion 3:** *Present the alternative views of government as both “friend and foe”; government power and actions as potentially salutary or detrimental; government as an agent, rather than a force*

Despite numerous references in both texts to the *Canadian Charter of Rights and Freedoms*, neither text includes the actual charter, although the Evans text does include a photo (Evans 2000:41) and an excerpt of four of its articles (Evans 2000:42). Freedom, a concept integral to democratic theory, is dealt with rather summarily in both texts: in neither does it warrant specific reference in the index. The Evans text states that “our fundamental rights are sometimes described in terms of ‘freedom from’ and ‘freedom to’” (Evans 2000, 20), and in several references (18–21, 42, 149, 187–188) discusses primarily the same freedoms as the Brune text. Neither text makes any reference to freedom as freedom from the coercive power of government itself and the possible need to restrain (as opposed to hold accountable) the exercise of its power.

With regard to the role of government, the Brune text states that “the government ... provides essential services.... As for power, the government guides, directs, and enforces it.... It institutes changes. It decides the rules and

regulations” (Brune 2000:4). This definition is presented in an authoritative, unquestioning manner: the government’s activities are “essential” and government is seen in almost a *deus ex machine* perspective; it is not “Parliament” but the “government” that is the actor and the “government” that exercises power. What is termed an “active citizen” is described as one who knows “how to influence government” and who “demands and receives the very best kind of government possible” (Brune 2000:5). While Brune does refer to “us—all of us” as citizens (2000:5), there is nevertheless a subtle yet distinct perspective on the role of citizens embedded here that must shape the students’ perception of participation. Is government an *agency* for self-rule (Williams 2003:27) or a *force*, benign or not, with which to be reckoned?

Briefly, the Evans text states that “Canadians require a way to make decisions to achieve common goals. Therefore, Canada, like all other nations, has established a system of government to deal with important issues that affect its citizens” (Evans 2000:38). The authors further write that “[g]overnments must take these values, beliefs, and ideologies *into account*” (Evans 2000:39, italics added). The portrayal here, like that of the Brune text, is of government as a force rather than an agent.

To summarize, the Brune text is slightly more balanced but neither text invites critical thinking on the scope of government and its potential threat to freedom—or freedoms. Perhaps this portrayal of government is a factor contributing to the prevalent attitude among youth that government is distant and irrelevant.

**Criterion 4:** *Engender an appreciation for and understanding of the robustness of Canadian democratic institutions and for the significance of representation, voice and empowerment via voting and engagement with political parties and Canadian democratic institutions*

To the extent that political literacy connotes a basic understanding of Canadian *parliamentary processes*, then both the Brune and Evans texts cover these thoroughly in the descriptive portion of the texts (Brune 2000:chapters 5, 6; Evans 2000:chapters 4, 5). The texts are less satisfactory in their treatment of how *change* is effected via institutional channels, with Brune more positive than Evans in its portrayal of the role of the legislative process (Evans 2000:33, 89, 93). The Evans text likely yields the understanding that Canadian democratic processes are largely resistant to change and that the policy process is usually initiated by non-governmental agents (“Infosource” materials Evans 2000:5, 62).

The *electoral process* is well covered in both texts, albeit with some ambiguities. While both texts make affirmative statements about the right to vote (Brune 2000:85; Evans 2000:61), the Brune text merely encourages students to vote (Brune 2000, 249) rather than casting participation in a normative light. The Evans text is slightly more equivocal: “[V]oting is only one of several ways that citizens participate” (Evans 2000:61), but encourages students to vote “[b]ecause our representatives are powerful” (Evans 2000:120)—surely a somewhat perverse incentive. Curiously, however, no assignment in either text in any of the three categories of citizenship challenges the student to learn how to enrol as a voter or attempts to coach students through the “mechanics” of voting on an election day! Equally baffling is the lack of encouragement to conduct a student “mock election” featuring the parties and policy issues from a recent election, yet it is the finding by Niemi and Junn (1998) and other researchers (CIRCLE 2003) that mock elections are a significant learning experience.

The role of political parties is not mentioned in the course outline, which states that students will “examine the dimensions of political participation.” Upon closer analysis, however, “political” participation is mentioned only in the most basic level of citizenship—that of the “informed” citizen—although “civic” identity, knowledge, and skills characterize citizens who are “informed” or “active.” “Politics” is described in condescending fashion. Brune baldly states, “Remember that politics is all about pursuing and exercising power” (Brune 2000:74). Evans writes, “Political parties are always working to increase their public support and prepare for the next election campaign” (Evans 2000:130). Yet the Brune text ascribes a significant role to political parties: “political parties are vital to ensuring an informed and knowledgeable citizenry. They are the very backbone of Canada’s political system” (Brune 2000:72). Yet in practical terms, while the Brune text lists political party Web sites, it does not provide information supplied by the parties themselves. By contrast, the Brune text not only lists NGO websites but also presents profiles of eight civil society groups *submitted by the groups themselves* (Brune 2000:185).<sup>9</sup> Students are thus receiving filtered information on parties but direct information on NGOs. The Evans text ascribes a relatively bland role to political parties (Evans 2000:127) and again lists numerous website addresses for civil society group but no website information for political parties. Finally, researching political parties is included as an assignment at the most basic level of citizenship by Brune (2000:83), whereas researching an interest group is classed as the most “advanced” level of citizenship (Brune 2000:5, 159). Similarly, only five to

ten activities or assignments of the dozens throughout the Evans text deal specifically with political parties, their beliefs, and roles (Evans 2000:68-69, 129, 145).

Elected officials, with the exception of the Brune text’s listing of accomplishments of Canadian prime ministers,<sup>10</sup> do not appear as significant figures. None of the featured subjects in Brune’s chapter on “People Who Made a Difference” are elected, and in the chapter on “Model Citizens,” the authors specifically exclude political actors (Brune 2000:205). Of the eleven profiles of “Citizenship in Action” in Evans none are partisan or holds elected office.

Whether intentional or not, the authors of both texts seem to relegate traditional means of voice, participation, and representation parties to an inferior status. Norris points to possible consequences when she writes that “in established democracies any partisan decline may have significant consequences for how far citizens can influence governments” (Norris 2002:17).

**Criterion 5: Engender an understanding of the strengths and limitations of extra-parliamentary engagement**

As suggested above, NGOs and NSMs receive significant profile and political engagement via interest groups and new social movements are presented positively. The Brune text states that “interest groups are a very important component of the political system. They provide key information to policy-makers. They allow people at the grass roots, like you, to get involved in the political process.... [Y]ou can be sure that the government is far more likely to be receptive and attentive than if you were simply out on your own” (Brune 2000:79). The Brune text also lists strategies of interest groups, such as publicity campaigns, development of relationships with key government players, and appearance before parliamentary committees (Brune 2000:78). In its chapter “Investigating the Issues,” the Evans states,

... if you believe a major injustice is taking place—and traditional methods of voicing your views do not work—how can you let your disapproval of government policies or practices be known?... Some activists who are concerned with social justice believe that it is sometimes necessary to use more forceful action to achieve their goals ... [and] become a protest group ... [who] use direct action such as rallies, parades, marches, sit-ins, public demonstrations and even road blockades. Their action may include distributing pamphlets, giving public speeches, singing songs and chants of protest, and carrying placards.... Teachers

or nurses may become protestors and join a march on Parliament if they are concerned about legislation that will affect their lives, their work, and their sense of justice (Evans 2000:173).

The text does qualify the information on civil disobedience with the caveats that “not all people agree” with its use and that “if everyone in society disobeyed laws with which they personally disagreed, the result would be total chaos” (Evans 2000:175). Yet the text provides an “Info-source” on the principles of civil disobedience, the third point of which reads: “One must take responsibility for one’s actions. *Willingness to face punishment shows the strength of one’s beliefs*” (Evans 2000:175, italics added). This strongly normative statement seems to imply that if the student *doesn’t* engage in civil disobedience, he or she does not have “strong beliefs” and, conversely, that “strong beliefs” are inconsistent with lawful means of expression, voice, and participation.

Youth highlighted in the texts are engaged in interest groups (Brune 2000:126, 182; Evans 2000:164, 211); and they are often in situations of protest (Evans 2000:67, 68). Seven of Evans’s eleven profiles of “Citizenship in Action” feature interest group representatives, three, appointed officials, one, an elected official, and one organization, the United Nations.<sup>11</sup>

As early as 1974, Jennings and Niemi wrote that “recent years have witnessed—perhaps for the first time—considerable politicization of [American] high school youth, especially in the arena of nontraditional and confrontation politics” (Jennings and Niemi 1974:132). Their finding seems to apply in Ontario, based on readings from these two civics texts. Given the accomplishments of special interest groups and the incorporation of significant role models, it seems likely that students, from their reading of both texts, *ceterus paribas*, would be likely to view engagement in interest groups and protest politics as more effective and rewarding than involvement via traditional means.

Most troubling from a political literacy viewpoint is that critiques of partisan politics are prevalent, but neither text seriously critiques the limitations of engagement via NGOs and NSMs. Endorsement of various “causes” is portrayed as non-ideological and, in a certain sense, as representing higher “moral ground” than adherence to partisan politics, even though issues such as children’s right to be free of exploitive labor has been championed not only by interest groups but by partisan politicians as well. Second, the fact that many interest groups focus on one (or a narrow) range of issues implies that, whereas

substantive political literacy is being gained on those issues, students are unlikely to see either the complexity or the full range of policy options, with the texts’ typical focus on one interest group’s representation of an issue. Third, neither of the texts attempts to aid students in an evaluation of the tradeoffs between time commitment and effectiveness. Fourth, both texts clearly portray engagement in interest groups and “activist” politics as fulfilling and rewarding rather than as possible sources of conflict and further alienation, as Hibbing and Theiss-Moore (2001) have found.

### Summary

Civics education in Ontario, viewed through the lens of the Grade 10 Civics course and assessed against the five criteria developed, seems unlikely to achieve either the goal of political literacy in its totality or enhanced political re-engagement. Students, after completing the course, should have an enhanced understanding of Canadian democratic institutions and political processes. However, the Evans text’s advocacy of a communitarian, social-justice-based view of democracy without communicating to students that this is only one view of democracy is a serious bias. Democratic norms such as tolerance and compromise, are covered thoroughly in the textual material and are reinforced frequently in assignments in all three strands of citizenship.

There is little in the textual material that would lead to the political affect that is part of the calculus of knowledge retention, and, thus, renewed political engagement, across the spectrum of traditional and non-traditional, is unlikely to characterize graduates of this course. Lacking in the civics curriculum is a recognition that Canadian democratic institutions are widely regarded internationally and that their contribution to “peace, order, and good government” continues annually to attract thousands of immigrants from countries that have unstable democratic or authoritarian regimes. Far from promoting a patriotic model of civic education and regime support, this information is not only relevant but essential for students to make a rational decision regarding engagement with democratic institutions. That is of particular consequence for minority and immigrant students since, as Ajzenstat argues, “Though *not* distinctive, [Canadian] national institutions and rights nevertheless support a sense of nationhood.... They promote ‘identity’” (Ajzenstat 2003:8, author’s italics). Recalling Williams, youth need “to see democratic institutions as an *achievement* ... [and] to understand themselves as

contributing to an ongoing story of democratic self-rule” (Williams 2003:236, author’s italics).

A significant assumption of the curriculum and the texts seems to be that engagement in civil society and “alternative” politics are substitutes for, rather than complements to, acts of “traditional” engagement, such as voting and political party membership, and are more efficacious and rewarding than involvement in political parties and electoral processes. The critical thinking that is to characterize informed, purposeful, and active citizens is seemingly to be directed toward political, but not civil, societal institutions and processes, with the possible result that students may view critical thinking as incompatible with engagement in Canadian politics. Enhanced civil societal participation is a necessary, but not sufficient, component for ongoing “peace, order, and good government.” While critics may argue that the emphasis of the curriculum and the texts on strengthening civil society engagement will indirectly build political capacity and engagement, it can also be argued, as Galston does, that the causal arrow runs in the opposite direction: political engagement may help to develop the social capital and democratic norms that characterize “successful” democratic communities (Galston 2004:1). Neither text presents this possibility.

Seen in isolation and coupled with the issues orientation of the Evans text, the current civics program may serve to limit the propensity to engage and may also result in further withdrawal. Political re-engagement that encompasses *both* “traditional” and “alternative” acts on the part of youth is critical to sustaining the legitimacy and effectiveness of Canadian democracy and to further diffusing rights and freedoms to all members of Canadian society.

### Conclusions and Areas for Future Research

This paper has argued that convergent trends between the United States and Canada are evident in the data on youth attitudes and engagement in political activities and in the data linking political literacy to more engagement—both traditional and non-traditional—in the political sphere. Convergence can also be seen in the literature regarding civic education as a significant policy instrument to address the democratic deficit among youth.

Criteria for evaluating civics program content, from the perspective of re-engaging youth politically, were developed from a review of the literature, and the criteria were applied in a case study of the formal high school civics curriculum in Ontario, Canada. Emerging from the case study is the conclusion that the current civics pro-

gram is unlikely to re-engage youth politically because of the pre-eminence and efficacy attributed to civil society over political engagement. While Niemi and Junn (1998) find a relative absence in American civics of the study both of political parties and interest groups, it is principally the study of the former that is lacking in Canada. Ontario civics material is, however, strongly and appropriately characterized by acculturation to democratic norms such as tolerance and compromise. However, the evident hesitation of the curriculum and the textbook authors to engage in discussions of *political affect* for Canadian democratic institutions and processes is a marked deficiency, given the evident endorsement and education of *affect for civil society* engagement. While it is recognized that there are potentially negative implications that could be explored and debated at length concerning educating for “affect,” it must still be argued that, without a disposition toward traditional forms of political engagement, students are unlikely to re-engage politically.

As a political instrument for re-engaging youth, the Ontario civics curriculum and others of its type would be enhanced by the incorporation of a more comparative perspective, the redefinition of an “active” citizen as one who engages in both civil and political spheres and an acculturation to the strengths of traditional democratic institutions and processes. That, accompanied by a more balanced presentation of the range of democratic “visions” and modes of participation, would form a platform of political literacy in youth that would strike a balance between advocating for enhanced equality and freedom while still undergirding the institutions and processes that are critical to the implementation of such changes. Niemi and Junn also call for greater coverage of theoretical and comparative perspectives (Niemi and Junn 1998:151). As the Center for Information and Research on Civic Engagement report states, “A citizen in the twenty-first century should be comfortable acting in several different ways—upholding laws or protesting, voting or forming new organizations—as the situation demands” (CIRCLE n.d.:1).

The curriculum would be further enriched by incorporation of what has been found, empirically, to stimulate youth political literacy. Drawing on recent United States research, such as Niemi and Junn’s *Civic Education: What Makes Students Learn* and the study by CIRCLE, requirements for more effective civic instruction include the use of mock elections, “formal instruction, using interactive methods, about the core documents, institutions, and processes of government” (CIRCLE 2003:30), and the study of a wide variety of topics and current events (Niemi and Junn 1998:148–149). It should be noted that Niemi and

Junn's recommendation for active discussion of current events differs from an issues-approach incorporated at the textbook level where the authors control both issues discussed and their presentation. Current events discussions, particularly where students are responsible for choosing the issues, are likely to incorporate a much wider range of topics and may represent, as well, a broader lens for understanding and interpreting democratic processes. Additionally, Niemi and Junn suggest that the "capstone" high school civics course be offered during the last year of high school, the age at which students are approaching the exercise of voting (Niemi and Junn 1998:156).

Future avenues of research in the field of political literacy are more than plentiful. Delli Carpini and Keeter's (1996) *What Americans Know About Politics and Why it Matters* has contributed substantially to the understanding of political knowledge; this subject in Canada has been the subject of far less investigation. The issues-based approach of the Evans text and the three-level approach to citizenship are widely advocated in the literature, yet no testing of these principles has occurred.

While Niemi refers to the absence of long-term studies in the United States as the "biggest deficiency in civic education work" (Niemi 2004:8), the situation is even more critical in Canada where there is no historical or national database, such as the National Assessment Program of Educational Progress (NAEP), and little that would resemble the research output of CIRCLE or the national survey of young people by the National Association of Secretaries of State. Future research, therefore, will depend, in part, on a willingness of all levels of provincial governments, regional school boards, and teachers to participate in broadly based assessments of levels of political literacy prior to and following civics course completion. What is measured is presumed to be important by both students and parents: if literacy in mathematics and reading is tested, why not assess for the civic and political knowledge that is known to be instrumental in citizen engagement?

In Canada, as in the United States, more rigorous (including longitudinal) research about effective civic approaches, using agreed upon indicators that are stable over time, is required for discerning civic education policy planning. A methodology similar to the World Values Survey would work well in this field. Also, little has been written on either what youth *need* to know objectively or subjectively in order to engender a greater sense of efficacy and, thus, more substantive levels and types of political engagement. Lastly, Niemi points to the nemesis of civic education: how can civic education impart political lit-

eracy and critical thinking without engendering further cynicism or indifference? (Niemi 2004:9).

Although political literacy is no guarantee of engagement, engagement suffers both qualitatively and quantitatively from its paucity or its absence. Civics curricula and materials must reflect, portray, and educate for broad-based political literacy and engagement.

## Notes

- 1 It should be noted that the terms civic and citizenship education have often been used interchangeably. Recently, the literature evidences a return to the term civic education when referring to the acquisition of political literacy (Galston 2004).
- 2 Torney-Purta, Judith, and John Schwille. 1999. "Civic Values Learned in School: Policy and Practice in Industrialized Nations." In *Comparative Perspectives on the Role of Education in Democratization. Part II: Socialization, Identity and the Politics of Control*, Vol. 2, eds. McGinn, Noel and Erwin Epstein. Frankfurt: Peter Lang. P.104, italics added.
- 3 Howe, quoted in Centre for Research and Information on Canada. October 2001. *Voter Participation in Canada: Is Canadian Democracy in Crisis?* P. 26
- 4 Educators distinguish between the intended, implemented, and achieved curriculum. Large-sample teacher surveys are usually required to assess differences between the first two, and standardized testing of students is used to evaluate differences in intended/implemented and achieved (Beattie 2004, verbal communication).
- 5 Ontario residents may designate the educational portion of their property taxes to either the public or Catholic school boards in their area of residence.
- 6 Ministry of Education. Province of Ontario. *Trillium List of Approved Materials for School Boards*.
- 7 Mark Evans led the team that developed the civics course requirements for the Ontario Ministry of Education and Training.
- 8 Ministry of Education. Province of Ontario. *Civics Grade 10 Open. Overview and Strands*. P. 46.
- 9 i.e. Doctors Without Borders (MSF); Save the Children Canada; Frontier College; Canadian Red Cross; Oxfam Canada; World Wildlife Fund Canada; World Vision; YMCA Canada.

- 10 Pierre Trudeau “did more than any other Prime Minister to make Canada a bilingual country ... Trudeau was also responsible for patriating the Constitution. ... Brian Mulroney was responsible for a fundamental change in Canadian economic life. He negotiated a controversial free-trade agreement” (Brune 2000:44–45).
- 11 Evans 2000: interest groups, p. 10, 22, 56, 78, 164, 174, 184; appointed, p. 49, 117, 202; elected, p. 87; United Nations, p. 189.

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# *The Union Difference: Hotel Industry Employees and Unionization in Vancouver, British Columbia, Canada and Seattle, Washington, U.S.A.*

Dan Zuberi

## **Introduction**

Labor policy differences between Canada and the United States both directly and indirectly caused greater job security, benefits, and working conditions for non-salaried employees in the hotel industry in Vancouver as compared to Seattle. Union membership confers advantages to hotel workers, though that surfaces more in stability and benefits than in wages. The big differences between the two cities have to do with the much higher proportion of people in this industry in Vancouver who have union cards and therefore reap the benefits of collective bargaining.

In this paper, I first review the literature pointing to labor policy differences, particularly the rules governing the organizing process itself, as the explanation for significantly higher rates of unionization of Canada's labor force as compared to that of the United States. In Canada, it is relatively easy for workers to organize, whereas in the U.S. it is much harder. Second, I compare the very high level of union coverage in the hotel industry in Vancouver to the much lower and declining levels in Seattle. Third, I describe the cross-national comparative fieldwork methodology employed to examine the impact of policy differences on the working poor in Canada and the U.S. Fourth, I argue that membership in a union improves hotel

employees' quality of life primarily through increased job security. Job security and collective agreements interact to improve the benefits and working conditions for union employees in both Vancouver and Seattle. Fifth, I describe some of the perceived costs and concerns mentioned by employees and managers. Finally, I argue that substantially higher levels of unionization in Vancouver as compared to Seattle also indirectly improve the conditions of work for employees in the entire service sector through the union wage effect and unions' political institutional power to advocate successfully on behalf of the interests of lower income employees at the local, provincial or state, and national level.

## **Canada and U.S. Labor Policy Differences: Driving the Divergence**

Canada and the United States part company when it comes to employees' right to organize, as well as rights given to management to obstruct organizing drives. I argue that these legal differences explain the current differences in union labor force coverage. My position differs from that of those scholars who point, instead, to cultural differ-

ences between Canadians and Americans or other factors, such as differences in the structure of the labor force, as explaining patterns of union labor force coverage (Lipset 1990; Lipset and Meltz 2004).

In Canada, workers who desire collective representation or to unionize have a much easier time organizing and joining a union than those in the U.S. because Canadian labor laws do not grant nearly as much power to management to challenge unionizing efforts (Rose and Chaison 2001). The trend data support the argument that labor policy barriers to union organizing in the U.S. compared to Canada are largely responsible for the current differences in union coverage of the labor force.

In both Canada and the United States approximately 30 percent of the non-agricultural labor force were members of a union during the period 1950 to 1970. After 1970, union coverage rates in the United States began to fall steadily every year, particularly after 1975. By 1985, union coverage had declined to 20 percent of the labor force (Banting, et al. 1997) and continued to fall to just under 14 percent by 1999 (Rose and Chaison 2001). In sharp contrast, Canada's rate of union coverage of its workforce increased steadily after 1970 to a high of 40 percent in 1970 in 1985 before dipping slightly down to 35 percent in 1990 and then increasing again slightly through 1994 (Banting, et al. 1997).

Efforts to explain differences in union density rates have also considered other factors, such as structural shifts in employment and public support for unions. Neither of these factors offers a satisfactory explanation for the divergence in Canada-U.S. union density rates.

After thirty years of divergence, Canada's union coverage currently is at least double that of the United States across all economic sectors. Indeed the divergence between Canadian and U.S. levels of union coverage is largest and growing fastest among traditionally low-union workers—including females and part-time workers—and the service sector (Riddell 1993:112, 113). The divergent trends in unionization occurred while both Canada and the U.S. experienced practically identical economic sector shifts over time from manufacturing and agriculture to the now predominance of the service sector.

Public opinion differences about unions have been shown to be both very inconsistent and fail to provide an explanation for the Canada-U.S. union density divergence (Rose and Chaison 2001). Indeed a higher proportion of Americans generally say they would like to join a union than workers in Canada (Lipset 2004).

The previous research suggests that workers' right to organize and management's ability to block union organ-

izing played a critical role in explaining differences in rates of union coverage between the two countries in the late 1980s. Economist W. Craig Riddell has explored possible explanations for lower levels of union coverage in the United States as compared to Canada, including differences in workers' desire to unionize, changes in the economy and labor force, tenacity of management opposition, and the legal regime (Riddell 1993:15). Riddell's analysis casts serious doubt on Lipset's (1990) hypothesis that the unionization gap between Canada and the U.S. could be explained by underlying social value differences between Canadians and Americans. Based on "comparative demand side analysis," Riddell also finds that only a small part of the unionization gap can be explained by the higher percentage of Canadian workers in the public sector.

Riddell concludes that differences in government policies and enforcement with regard to union organizing and collective bargaining, as well as somewhat lower levels of management opposition in Canada, help explain the Canada-U.S. unionization gap (Riddell 1993:143). Riddell also utilized comparative demand side analysis on unionization trends to demonstrate that only 15 percent of the unionization gap can be explained by economic and labor force structural differences, including the higher percentage of Canadian workers in the public sector (Riddell 1993).<sup>1</sup> They point out that these findings are consistent with other cross-national studies of decline in union density among OECD nations (Rose and Chaison 2001).

### Union Coverage of Hotel Industry Employees

The current cross-national differences between Canada and the U.S. in rates of union coverage of the labor force are mirrored in the difference found between the province of British Columbia and Washington State and magnified between the hotel industries of Vancouver and Seattle. Thirty point four percent of the labor force in British Columbia is in a union, as compared to 18.2 percent of the labor force in Washington State (Vogel 2001:19), despite the fact that Washington State is considered a "labor friendly" U.S. state. Yet the difference in union coverage of the labor force between British Columbia and Washington state hotel industry employees is much larger and is also in line with the national rates of union coverage for *service sector employees*.

The vast majority of hotel industry employees who are unionized in British Columbia and Washington State are members of the "Service Industry International Union" (SIIU).<sup>2</sup> The major difference in rates of union coverage

of the hotel industry labor force can be seen from the list of unionized properties in British Columbia compared to those in Washington State (SIIU website). The Local 5 Vancouver of the SIIU has unionized 32 hotels in downtown Vancouver, 29 more in the Greater Vancouver Regional District, and 84 other hotel properties in the British Columbia province. The Seattle Local 99 SIIU union reports that it has 10 hotels unionized in Seattle, one more in the region, and four others in the rest of the state (SIIU website).

**Table 1. Comparison of hotel properties unionized by British Columbia and Washington State chapters of the Service Industry International Union (SIIU)**

Hotels Unionized by SIIU	British Columbia Local 5	Washington State Local 99
City (Vancouver / Seattle)	32	10
Region excluding City	29	1
Provincial / State-wide, excluding City and Region	84	4
Total:	145	15

Source: Service Industry International Union Website

As shown in table 1, the British Columbia Local 5 has nearly ten times the number of hotel properties unionized compared to the Washington State Local 99. Whereas three times the number of hotel properties are unionized by SIIU in the city of Vancouver compared to Seattle, the unionization of 32 hotel sites in Vancouver represents a significant majority of the major hotels in downtown Vancouver. In contrast, the ten hotels in Seattle include branches of only three major chains. They are only a small proportion of hotel properties in downtown Seattle. In downtown Vancouver, the situation is reversed—only a handful of major hotels remain non-unionized.<sup>3</sup>

Recent trends in unionization of the hotel industry in Vancouver and Seattle mirrored the national Canadian and U.S. divergence. The Local 5 of the SIIU represents approximately 10,000 workers throughout British Columbia. While most of the hotels in Vancouver have been and remain unionized since the 1970s, Seattle has experienced a significant drop in the percentage of rooms covered by unions over the past thirty years. According to Michael Findley, the President of Local 99, the SIIU in Washington State had 8,500-9,000 members as of the late 1980s. Membership has declined to approximately 4,600 paying members and 600-700 event workers and casual workers. A wave of de-certifications by members in the late 1980s

caused SIIU to lose several major downtown chains and other historic properties. The Local 99 SIIU *has not even attempted* to organize a hotel site in many years. The union density in Seattle hotels is currently only 16 percent of full-service rooms and is slipping as a result of construction of additional non-union hotels.

Labor policy differences between Canada and the United States clearly help explain the significant differences in union representation of hotel industry employees between Vancouver and Seattle. Employees with a desire to unionize in Vancouver are much more likely to be able to unionize their workplace because of the rules of union organizing as compared to those in Seattle. The federal labor laws in the U.S. and state laws in Washington State erect barriers to unionizing, including generous opportunities for management lobbying against unionization and the extended time period required for the process.

Unions in the U.S. now rarely use the traditional organizing process because of the barriers created by the current National Labor Relations Board (NLRB) procedures and rules for organizing. The process, based on the current U.S. and Washington State labor policy, includes waiting periods and several opportunities for management legal appeals, which can extend the process up to two years. According to Michael Findley, the national SIIU allows the process of organizing a work site through the NLRB procedure only after 70 percent of the employees sign authorization cards. Even with that precaution, the barriers contribute to an organizing “win” record of only 35-40 percent. As a result, the SIIU in the U.S. has moved away from traditional organizing and focusing on the special cases where a “Card Check” organizing rules apply.

Under the “Card Check” system of organizing, the union follows organizing rules similar to British Columbia’s organizing procedure for all work sites. However, in the U.S., very few work sites qualify for a “Card Check.” For example, the next “Card Check” organizing drive by the Local 99 SIIU will be one Hotel Deluxe branch in Bellevue, WA. This hotel branch has union pension funds invested in it, so it has become a special case requiring a “Card Check.” Local 99 SIIU will spend two years focused on trying to organize this one property because the “Card Check” is much more likely to succeed. According to Michael Findley, the SIIU has experienced a 95 percent success rate of unionizing hotels in the U.S. once they can get a “card check agreement.”

In sharp contrast, workers in British Columbia can be certified in 10 days and the union can become their legal bargaining agent. According to Robert Graves, the President of the Local 5 SIIU, it also helps that workers,

rather than lawyers (as is the case in the U.S.), present their cases themselves to the British Columbia Labour Relations Board, allowing a more human element to be represented. The labor policy of British Columbia is probably the most progressive in North America. British Columbia Anti-Scabbing legislation, which prevents the hiring of strikebreakers, is particularly powerful and is the key to levelling the playing field between management and workers during disputes. While Robert Graves has characterized the Hospitality Industry as the “Hostility” industry when it comes to labor organizing, the Local 5 of SIIU has managed successfully to organize a majority of hotels in Vancouver.

### Methodology

The *Comparative Hotel Employee Study* focused on two multinational hotel chains with branches in both Vancouver and Seattle. The first chain, the Hotel Deluxe,<sup>4</sup> would be considered a high-end hotel, with four-star branches located in most major cities internationally. The second chain, the Globe Hotel, is a bit more modestly priced, and tends to service more business travelers. There are Globe Hotels in most major cities internationally as well, although most would be classified as three-star accommodation.

From January 2001 to October 2002, I collected interview and participant observation data from these four hotel sites. I met with over one hundred hotel employees and several hospitality union representatives. I completed in-depth two-hour tape-recorded interviews with 77 non-salary (hourly) employees.<sup>5</sup> Table 2 visually presents the comparative design of the hotel study.

**Table 2. Methodology table with number of in-depth employee interviews completed per hotel**

Vancouver Hotels	Seattle Hotels
Globe Hotel Vancouver 21 interviews	Globe Hotel Seattle 24 interviews
Hotel Deluxe Vancouver 17 interviews	Hotel Deluxe Seattle 15 interviews

My fieldwork focused on three of the most important departments within each hotel: Housekeeping, Engineering, and Guest Services. These three departments are the foundation for the operation of any major hotel.<sup>6</sup> Table 3

shows the number of in-depth interviews conducted with hotel employees from each of these divisions.

The proportion of employees interviewed in each division roughly reflects the relative size of that group of employees within a hotel’s hourly workforce (with Housekeeping being the largest and Maintenance Engineering the smallest).

Table 4 shows the ethnic backgrounds of the employees interviewed. Similar to city level population differences, my sample includes more Asians in Vancouver and Blacks in Seattle.

The largest group interviewed in both cities were Asian / Pacific Islanders, which included employees with Chinese, Filipino, and Indian origins. The next largest ethnic group interviewed was white respondents, some of who emigrated from Europe.

In-depth employee interviews were supplemented with data collected from un-structured interviews with General Managers, Hospitality Union Leaders, Middle Management in Housekeeping and Engineering departments, and Human Resources directors, as well as participant observation research within all three departments at the four hotel sites. As these supplemental interviews were not tape-recorded so that quotations from these sources are reconstructed from detailed notes. I also collected data through participant observation at all four hotel sites, observing workers in the hotels. I ate in all four hotels’ employee cafeterias and spent time with employees as they worked.

### Union Membership: Improving Wages, Benefits, Job Security, and Work Conditions

Comparisons based on in-depth employee interviews reveal patterns about the direct and indirect benefits of union membership for hourly employees in the hotel industry. Membership in a union generally accords hotel workers better pay (including higher base pay and regular wage increases), greater job security (through clear grievance procedures and by providing representation), and better working conditions for employees in hourly hotel industry jobs. Greater job security provided the most important benefit for union employees.

#### *Better Pay and Benefits?*

Strictly comparing union and non-union hotels in each city does not demonstrate clearly that union membership is associated with higher hourly wage rates. Indeed in hourly jobs, the non-union Hotel Deluxe Vancouver

**Table 3. Number of in-depth employee interviews conducted with employees from each general division, by city**

	Housekeeping Department	Maintenance Engineering	Guest Services	Total Employees Interviewed
Vancouver Total	23	5	10	38
Seattle Total	18	5	16	39

**Table 4. Ethnicity of respondents, in total number and percent**

	Vancouver Respondents	Seattle Respondents
White	11 (29.0)	15 (38.0)
Asian / Pacific Islander	23 (60.5)	17 (44.0)
Hispanic	4 (10.5)	2 (5.0)
Black	0 (0)	5 (13.0)
Total	38 (100)	39 (100)

**Table 5. Hourly wages by job position, housekeeping, in dollars**

HOUSE KEEPING	Globe Hotel Vancouver (union)	Hotel Deluxe Vancouver (non-union)	Hotel Deluxe Seattle (union)	Globe Hotel Seattle (non-union)
Room Attendants	14.84	15	10.40	8.75
House Attendant (Houseman)	14.84	15	9.70	9.50
Laundry Attendant	14.84	15	9.90	9.75

**Table 6. Hourly wages by job position, engineering, in dollars**

ENGINEERING	Globe Hotel Vancouver (union)	Hotel Deluxe Vancouver (non-union)	Hotel Deluxe Seattle (union)	Globe Hotel Seattle (non-union)
Maintenance Engineers	17.11	17.50	20	16.50

**Table 7. Approximate hourly wages by job position, guest services, in dollars**

GUEST SERVICES	Globe Hotel Vancouver (union)	Hotel Deluxe Vancouver (non-union)	Hotel Deluxe Seattle (union)	Globe Hotel Seattle (non-union)
Bellman	10.25+ tips	11.87 + tips	7.65 + tips	8.50 + tips
Doorman	10.25 + tips	11.87 + tips	7.65 + tips	8.50 + tips
Server	10.34 + tips (8/hr) <sup>9</sup>	11.65 + tips (5/hr)	6.90 + tips	7.00 + tips

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often paid the same hourly wage as or even more per hour for many job positions than the Globe Hotel Vancouver. In Seattle, on the other hand, union representation does result in somewhat higher wage rates for hourly employees in many departments in the hotel industry.

In order to compare wage rates cross-nationally, it is vitally important to consider the difference between the currency exchange value of the Canadian dollar versus the American dollar and the Purchasing Power Parity (PPP) value between the two currencies. Although the currency exchange rate between the U.S. and Canada means that each Canadian dollar currently is worth about US\$0.74,<sup>7</sup> the cost of living is lower in Canada.<sup>8</sup> So the actual value (purchasing power) of a Canadian dollar to a resident of Vancouver is approximately the same as that of an American dollar for a resident of Seattle.

Tables 5, 6, and 7 (previous page) present the hourly wages rates reported for the hotel workers, in the currency of the country of employment.

Table 5 reveals that hourly wages were higher for Housekeeping department employees in Vancouver as compared to those in Seattle.

Table 6 shows that the Engineering department employees received similar or higher hourly wages in Vancouver as compared to those in Seattle. The highest hourly wages were paid to the unionized engineers (who belonged to a "Skill Specific Union") at the Hotel Deluxe Seattle.

Table 7 shows that employees in the Guest Services divisions earned higher hourly wages in Vancouver as compared to those in Seattle.

Few respondents in Vancouver and Seattle actually discussed the benefits of union membership in terms of higher hourly wage rates compared to other hotels during the open-ended section of the employee interviews. In the interviews with unionized Globe Hotel Vancouver employees, though, several hotel workers commented on how well paid these positions are compared to previous jobs held.

The collective agreements negotiated annually by the British Columbia SIIU Local 5 set standard hourly wages, overtime rates, and raises for all employees in a department within a hotel, regardless of the employee's experience (after a standard three month probationary period at lower wages). All nine Room Attendants, Laundry Attendants and Housemen interviewed at the Globe Hotel Vancouver earned Can\$14.84 per hour after a three percent raise in March, whether they had worked there for five years or 20 years. These hourly wages should be considered against what is considered a "high" British Columbia

provincial minimum wage of approximately Can\$7.50 per hour (Lee and Long 2001).

Relative to Washington State's US\$8.00 an hour minimum wage, many Seattle hotel employees were earning less than their Vancouver counterparts. At the Globe Hotel in Seattle, many of the non-union respondents in the Housekeeping department were earning only US\$7.50 an hour as a probation period wage and US\$8.75 an hour as a full-time employee. According to the Chief Housekeeper at the Globe Hotel Seattle, after two years, the wage would increase to \$9.50 per hour. In Laundry, employees start at \$7.75 per hour with an increase to \$9.75 per hour after two years. The Housekeeping Inspectors (hourly supervisors) earn \$8.50 per hour to start and after two years earn \$10.50 per hour (interview with Chief Housekeeper, Globe Hotel Seattle).

Only unionized Maintenance Engineers, with significant technical skills, get paid more in Seattle as compared to Vancouver. Hotel Deluxe Seattle Maintenance Engineer Joey Harrison and member of the Local 15 "Specific Skilled Job Union," said the union helps us get, "higher wages, we have the highest wages in Seattle as Engineers."

Union membership also guarantees yearly wage increases for most job categories. At the union Hotel Deluxe Seattle, wage rates and raises are agreed upon for three or four years at a time during the contract agreement. The new Collective Bargaining Agreement between SIU Local 99 and the Hotel Deluxe Seattle, which includes wages, benefits, grievance procedures, and conditions of work, also specifies yearly wage rate increases for nearly all non-gratuity job positions from June 1, 2002 to May 31, 2006. Management at the non-union Globe Hotel Seattle decided to freeze wages after the hotel industry downturn caused by September 11<sup>th</sup>. For some employees, like Room Attendant Kay Chiang, their last raise was almost two years before we met.

The hourly wage rates at the non-union Hotel Deluxe Vancouver were generally similar to or even higher than at the union Globe Hotel Vancouver. Why? The evidence suggests that the extensive union coverage of the hotel industry workforce in downtown Vancouver creates what economists call a "union wage effect" for many of the hotel industry employees in the entire city. With 32 hotel properties unionized by SIIU, and several others unionized by the "Technical Industry Union" (TIU), non-union hotels in Vancouver must offer competitive pay comparable to that at union hotels to attract and retain high quality employees and prevent the unionization of their hotel.

Union membership does appear associated with more comprehensive and generous job benefits for hourly hotel

**Table 8. Average yearly weeks of vacation for employee respondents, by hotel**

	Globe Hotel Vancouver (union)	Hotel Deluxe Vancouver (non-union)	Hotel Deluxe Seattle (union)	Globe Hotel Seattle (non-union)
Average Weeks Vacation	3.62 Weeks	1.38 Weeks	2.26 Weeks	1.53 Weeks

industry employees in both Vancouver and Seattle. The increased job security of union jobs improved the quality of benefits for hotel industry employees in the sample of employees interviewed. Many detailed benefits of union membership are written into the collective bargaining agreements which specify rules that improve the work environment for employees, such as mandatory extra pay per room for Room Attendants who have to make up guest cots in the unionized Hotel Deluxe Seattle hotel.

In terms of specific “benefit advantages,” Seattle’s Local 99 lowers the bar for employees to easier access to better quality health insurance coverage for themselves and their families (although access to benefits was problematic for new employees at both hotels in Seattle). Other benefits from the union include course reimbursement and other detailed perks. For example, the Technical Skills Specific Union, which represents some workers at the Hotel Deluxe Seattle, also provided the additional benefit of helping to pay for courses to improve their members’ skill set. Joey Harrison, a Maintenance Engineer at the unionized Hotel Deluxe Seattle, has taken advantage of these benefits, including taking Boiler Certification courses. Additionally, the collective agreement at the Hotel Deluxe Seattle requires that employees get a “pseudo weekend”—two consecutive days off per week.

As can be seen in table 8 (above), employee interview respondents in the union hotels had a longer average paid vacation time than the non-union hotels.

While this perhaps is partially attributable to longer vacation time accorded in union negotiated contracts, it also results directly from the longer job tenure of the respondents in the union hotels compared to those in the non-union hotels. Longer vacation time can be seen as extra salary because it can be paid out if not used by the employee. Paid vacation time also acted as a cushion for employees in cases of temporary season lay-offs and illness.

Vancouver’s Local 5 provides more comprehensive member services than Seattle’s Local 99 because they have a greater resource base from more members. These include a quarterly newsletter and website. The Fall 2000 issue of the newsletter included detailed information about how to apply for Employment Insurance Benefits and articles about members, as well as labor issues. Mark

Heung, a Vietnamese immigrant, works as a Houseman at the Globe Hotel Vancouver. He described these services of Local 5’s “Employees Assistance Program,” “Well, they do provide a host of gambling addiction, substance abuse addiction, stress counseling, marriage breakdown, all that services.”

The union also supplements sick pay, as Globe Hotel Vancouver server and union shop steward Sven Johansen found out when he was diagnosed with cancer. “I got about \$448/week [in sick leave from a joint union, company policy].... I was off 13 weeks.” Seattle’s Local 99 has no work referral hall, job training, or member newsletter. According to Hotel Deluxe Seattle Doorman and union shop steward, Mark Corbain, “We have a union food bank down at the Labor Temple. And when families are laid off or their hours are cut, we make sure they know where the food bank is.”

Overall, the differences that exist in terms of wages and benefits of union and non-union hotel employees emerge from the interaction of somewhat higher wages and benefits with long job tenure and regular wage increases. The longer job tenure is associated with job security, better working conditions, and other positive benefits of union membership for hourly hotel employees.

**Job Security**

The most important benefits of union membership for hourly hotel employees is the in the job security afforded by union membership (union employees cannot be arbitrarily fired) and a standard grievance procedure for workers unhappy with management action or sanction. The hotel workers in union hotels in Vancouver and Seattle had greater job security and longer job tenure compared to the employees of non-union hotels.

Long job tenure in union hotels reduces overall employee turnover as compared to that in non-union hotels. Table 9 describes the average job tenure of the employees interviewed at the four hotel sites.

At the unionized Globe Hotel in Vancouver, job turnover rates are quite low, especially for entry-level service employees. Many workers interviewed at the unionized Globe Hotel in Vancouver and unionized Hotel Deluxe

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**Table 9. Average of length of time worked by respondents at hotel**

	Globe Hotel Vancouver (union)	Hotel Deluxe Vancouver10 (non-union)	Hotel Deluxe Seattle (union)	Globe Hotel (non- union)
Avg. Job Tenure	9 years, 3 months	1 year, 6 months	9 years, 3 months	3 years, 6 months

Seattle are “lifers” and plan to stay in the same company and job until retirement. Some have worked at the hotel site longer than the current company has owned the hotel. The benefits of the union-based seniority confer such large advantages in terms of benefits and hours for staying on the job that only a few mentioned planning to change careers or companies. Local 5 President Robert Graves said: “Being a room attendant is hard work, almost like being a miner, and some of our older members actually want to work less and they can use their seniority benefits to do so and still keep their jobs.” Over 50 percent of the employees at the union Hotel Deluxe Seattle have worked at the hotel for more than five years. Many of the employees are 10 year, 15 year, or 20 year “veterans.” At the extreme, one employee just celebrated 50 years working at the hotel, and a second was honored for 40 years of employment.

Margaret Fielding, the General Manager of the union Hotel Deluxe Seattle, estimated the turnover rate for all staff as 30 percent per year (including job changes and promotions within the hotel).<sup>11</sup> The variation in turnover does not depend as much on department as it does on seniority, with higher turnover among lower seniority employees. Some employees quit because they cannot secure enough hours. The non-union Globe Hotel in Seattle had almost twice the rate of employee turnover, as calculated by its Human Resources Director Seth Michaels: “Turnover this month is 6 percent, with the Year To Date at 53 percent, and 57 percent of the hourly staff.”

In Vancouver, the unionized hotel employees at the Globe Hotel ardently defended the job security afforded by union representation. Michael Anthony McDonald, Doorman and union shop steward at the Globe Hotel Vancouver, has worked at the hotel for nine years: “[The union] is very good. It’s, I mean, it is a safety belt for us, it’s like the protection man, like the Mafia man, you go and see the Godfather and he helps you, you know. It’s our way of protecting ourselves. Without the union, we’d be lost. We really would.” George Chan, a recent Chinese immigrant in his 50s, who works at the Globe Hotel Vancouver as a Houseman described it thus, “In the union, the union protects; the boss not able to fire you. Here you never make mistake, the boss cannot fire you.”

Sven Johannsen, a Server and the second union shop steward at the Globe Hotel Vancouver, has worked at the hotel for 25 years. He describes the security as especially important for older workers: “I’ve always done union jobs, nothing but union jobs. I truly believe in the union ... because of the new managers we get. They really bug me, because they come in and they think they know the world and they somehow, they don’t like older people in the service industry and the first thing they try is to fire them.”

In the non-union hotels, particularly the Hotel Deluxe Vancouver, some employees viewed the job as more temporary than at the union hotels. For example, two Hotel Deluxe Vancouver respondents planned to leave their current jobs and temporarily move to Peru and Australia at the end of the summer. Some had well researched plans for their next career moves. One planned to get certified in ESL teaching and another talked about qualifying for a firearms permit to become a driving courier. Non-union hotels in both cities also relied more on recently arrived immigrants and refugees for “behind the scenes” job positions.

In Seattle, several of the respondents working in the non-unionized Globe Hotel cited greater job security as a reason that they would like to see their workplace unionized. Kin Wa Lee, a Vietnamese immigrant in her late 50s who began working as a Room Attendant eight years ago and has moved up to Housekeeping Inspector explained: “You know sometimes union take care of people, sometimes if you have mistake, little mistake, you need the protection. Sometimes, employees have little mistakes but no have union, no protections. Get in trouble. But I think if I have company, I have the union. It’s fair. It’s fair. Sometimes employees they need protection, but no have union.” The greater job security for unionized hourly hotel employee results from the collective agreement contracts that specify a standard grievance procedure management must follow to discipline an employee. Mark Klein, the Local 5 Business Representative for the Globe Hotel Vancouver, reported that many times companies make errant dismissals based on only the feeling that something is “going on” with a worker rather than work performance problems. The union has successfully reversed errant dismissals for hotel employees. Without union representa-

tion, fired workers have to wait until after dismissal to file a complaint with the British Columbia Labour Relations Board, which can move slowly.

The Collective Agreement also allows the union to represent the employee in disciplinary and appeal proceedings in the case of dismissal. Local 99's Michael Findley said that if a union employee has a grievance over dismissal, he or she can go straight to the worker advocate. Whether or not the firing was unfair depends on the union contract. The union meets with the supervisor, department head, Human Resources director, and then the General Manager if necessary, and may even take the case to arbitration. This process happens frequently, and often the union succeeds in getting employees their jobs back. They are more successful if the employee was fired for "work performance" reasons than in "behavioral or attendance" issues.

The views of hotel management in union hotels vary in terms of the costs and benefits of the grievance procedure for the hotel operation. While long-term "lifers" are more expensive to employ in terms of benefits and salaries, they provide advantages to the hotel, including lower training expenses, professionalism, and reduced expenses in terms of job inspection and theft reduction. Ted Jensen, Human Resources Director at the union Hotel Deluxe Seattle, said: "A union hotel has a much more professional workforce. The people who work in a unionized environment are very good at their jobs because it is their life blood.

In non-union hotels, much of the workforce is there as a transitional stop to somewhere else. In a union hotel, this is where the employee wants to be." On the other hand, Johanna Larson, the Chief Housekeeper at the Globe Hotel Vancouver feels that the process of termination is so difficult that her "hands are tied" in a lot of cases, and that is the downside of having a union workforce. Although there are few terminations, the main causes for termination are poor attendance and consistently not living up to standards. She said that the union contracts require a "lot of documentation" for disciplining an employee.

An employee is entitled to a verbal warning, written warning, one day suspension, three day suspension, and five day suspension before he or she is terminated. And any improvement by the employee during any part of this process can reset the discipline process. There are some exceptions. For example, theft is grounds for immediate termination. Johanna admits that while she "finds that this process is burdensome sometimes" the process results in infrequent employee dismissals.

Although most hourly hotel industry employees do not get promoted into supervisory or management roles, the longer job tenure created by greater job security appears

to increase the odds of employee advancement. The wages, benefits, and hours offered by high seniority union positions means that many union hourly employees choose not to accept promotions, even to lower-level salaried managerial roles. At the same time most of the Assistant Managers and Supervisors at the hotel worked their way up into their current jobs.

### ***Better Working Conditions***

There is a qualitatively different feel to working in a union hotel compared to working in a non-union hotel. The relationship between management and employees is certainly different. Employees in union hotels were more confident and less afraid of management. The employees have more opportunities to voice freely their opinions and participate in the process of improving the quality of their work environment. The rules provide them procedures to "tame" bad managers, address their concerns, and request changes to improve qualitatively their conditions of work. Kendra Smith, who works in the Laundry Department of the union Hotel Deluxe Seattle, explained: "I think it is good to have them in order to prevent having to do all kinds of wild, crazy things that you would normally not have to do.... We don't have mandatory overtime because of the union which is good. Some of the women in my department are like sixty-eight years old, and they don't really need to do overtime." In Seattle, for example, unionized hotels provide strict limits on the number of rooms that can be cleaned by Room Attendants per shift.

Florence McDaniels, who was recently demoted during lay-offs from Housekeeping supervisor to Coffee Service Attendant, thought that union representation would improve the employee's position relative to the management at the non-union Globe Hotel Seattle: "Yea, I think the employees do need some representative too, who can speak fluently and communicate with the employer. It can be a healthy thing, doesn't mean always fighting. Sometimes it's just a wish of employees and can make environment better that they would like to stay.... You know hotels have high turnover." The union also allows workers to provide feedback on their working conditions and other complaints through meetings and the employee shop stewards. The greater degree of employee rights and protection from dismissal as a result of "speaking out" gives rights to employees in the workplace that, for example, help protect them against abusive departmental managers. Julia Rodgers, the Hotel Deluxe Seattle Chief Housekeeper mused: "Personally I have to say that I think working in a union house keeps the managers good. Managers can't do really

outrageous things or they will be called to account for it real quick. I wonder about Managers who complain a lot about the union, I wonder what is wrong with their leadership style.” One of the union shop stewards at Vancouver’s unionized Globe Hotel, Michael Anthony McDonald, described how a union sponsored employee satisfaction survey resulted in the removal of a particularly reviled and poor manager from the hotel.

Unions provide employees with representatives that can advocate or represent their claims to management and negotiate a solution, especially when management is breaking its part of the collective agreement. Joyce Lee, a mid 40s Chinese immigrant Room Attendant at the Globe Hotel Vancouver, talked briefly about one incident where management stopped respecting seniority in scheduling: “The supervisor no fair for us. For example, the schedule. They don’t go by seniority and you have to talk to the union. And the union to talk to the supervisor. And then they, yea. It worked.” Joyce Lee is among several employees who mentioned this specific instance of successful union intervention. Gee Yong Chow, an ethnic Chinese who emigrated to Canada from India and works as a Maintenance Engineer for the union Globe Hotel Vancouver, concurred: “[The benefits of] the union? Well, settling grievances, no? If you have any problem with the management and you can’t solve, then you call the union and they come and they try to solve for you.” Although union membership clearly confers benefits to hourly hotel employees through greater job security, clear grievance procedures, and opportunities to improve their own work environment, many employees and managers express serious concerns about unions in the hotel industry in Vancouver and Seattle.

### **The Benefits Outweigh the Costs**

Although there are several clear patterns of complaints or negative comments about unions that emerged in some interviews, ultimately these arguments reveal trade-offs to union coverage. The negative concerns and costs raised by employees and management in Vancouver and Seattle largely include complaints about dues, job security for lazy or bad workers, lack of union action, and an ideological perspective that deems unionization as fundamentally incompatible with the hospitality industry. In terms of the quality of life provided by union hotel employment, in both Vancouver and Seattle, the evidence is clear. Despite the patterns of concerns raised, the balance of the evidence demonstrates that union hotel employees are better off than non-union employees.

### **Concerns About Dues**

Several union employees complained about the cost of monthly union dues. Membership in the SIIU or any union for that matter is not free. A small amount of dues, which largely support the union, is required from members each month and are deducted from each employee’s pay cheque. For the Vancouver Local 5 SIIU, the union dues are now \$47 per month for all employees, regardless of seniority or hours, and these dues are tax deductible (SIIU website). At Seattle Local 99 SIIU, the dues are paid based on classification and geographic area. Seattle Room Attendants, for example, pay \$29.80 per month.

In Vancouver, ethnic minority immigrant employees often complained the most about the union dues, especially the lower seniority Room Attendants who do not receive many shifts during the winter, but must continue paying a flat fee monthly to the union. Tse Leung, a Chinese immigrant Room Attendant at the union Globe Hotel Vancouver generally expressed positive views of the union, except, “I think is not good, because if I work four hours, two weeks ... they charge me \$25 right.... Because not charge a percent.” After nine years working as a Room Attendant at the Globe Hotel Vancouver, Kerry Wong, a Chinese immigrant Room Attendant in her late 40s explains: “We don’t like the union. Oh we don’t like, because not worth it. Every month they pay, I just pay every month too much.... Like for example, if the winter time, three months no job, like January, February, no work, March, going to the work.” Kathleen Leun, a fifty year old Chinese immigrant Room Attendant explained that “every year we pay about \$500 but I use nothing for me. But we must to pay it. So nothing for me, so I don’t like the union.”

In Seattle, a few of the union hotel employees at the union Hotel Deluxe Seattle also complained about the monthly dues. For example, Ben Bishof, who works as a bellman at the union Hotel Deluxe Seattle, complained, “Well the final straw was that they’re taking \$35 a month out of your pay cheque and giving nothing back.” It should be noted that the majority of union respondents in Vancouver and Seattle did not complain about the expense of dues.

### **Unions and the Hospitality Industry are Incompatible**

Many managers and employee respondents framed their opposition against the union as an ideological argument about the incompatibility of unionization and the hospitality industry. James Caldwell, General Manager of the

non-union Hotel Deluxe Vancouver, most vociferously argued this claim. He stated that there are optimal terms of employment in a hotel that vary by department, from two years at Guest Services to five to eight years for House-keeping. His view of limited tenure for most employees would be impossible to square with union job security, job role rigidity, and seniority benefit system. He also feels that unionization “dampens the spirit of the workforce” and “complicates communication between the management and employees” and that it “prevents management from rewarding stars.”

Some employee respondents also expressed similar ideological opposition to unions in the Hospitality industry. More often than not, it was older white men who have benefited from the job security provided by the union but have conservative political values. Nathan Roberts, a thirty-nine year old white male, who works as an Engineering Coordinator for the Hotel Deluxe Seattle, a non-union position (has been in various union and non-union positions with-in the hotel for the past twenty years) complains: “Unions were meant back when there were sweatshops and stuff like that, not now.... I think the union hides too many slackers. People who shouldn’t be working those jobs sometimes have those jobs, when there are good people out there who should have those jobs who deserve those jobs, can’t get the jobs because of people who are slackers or when you had to hire minorities and stuff.” Peter Keyes, a single white male in his early thirties with a BA from a Midwest college in business, works as a doorman at the non-union Globe Hotel Seattle. He expressed this ideological disdain for unions based on his bad experience with a union selling women’s shoes at a major downtown department store:

[Unions] interrupts the idea of free enterprise ... and so you get some people who are there for the pay and not for the work ... you have people that either are incompetent, or don’t want to work to be competent, then they can survive on the job and the other people pick up the slack ... they also fight for, for the incompetent people too.... I’m a hard worker and I don’t like some of my co-workers, I don’t like working with them, because they don’t work hard, they are not ethical.... I guess it’s one of those sink or swim attitudes, and I guess I think if you can’t swim, you shouldn’t be there.

These concerns were often passionately argued. Yet the evidence of direct benefit to workers of union membership was clear. Furthermore, indirect benefits or positive externalities of higher levels of union coverage of the labor force emerged for lower level service sector workers in Vancouver.

### The Indirect Impact of Higher Levels of Unionization

The higher rate of unionization in Vancouver as compared to that in Seattle also indirectly benefits all lower wage service industry employees in the city in several ways. Higher rates of pay and generous benefit packages negotiated by the Local 5 SIIU for its employees in Vancouver appear to have a “union wage effect,” improving wages and benefits for union and non-union hotel workers in the city. Organizationally, unions represent a countervailing political institutional force to combat the rising influence of corporations, who often act through Chambers of Commerce and other lobbyists as well as through wealthy individuals, to influence politics and policy in both Vancouver and Seattle.

In Canada, unions have more power to negotiate more generous wage and benefit packages for their members than in the United States (Rose and Chaison 2001). Michael Findley, Local 99 SIIU union head in Seattle, described his envy at the power of unions in the hotel industry in Vancouver. In Seattle, contracts are now negotiated individually with each hotel after the “collective contract” got ripped up in 1991, which reduces the power of the union to increase employees’ wages. In Vancouver, on the other hand, there are two big groups of hotels that negotiate joint collective agreements with the union (with the origins of the split into two groups going back to the early 1980s).

The local, national, and international offices of unions allow them to lobby for progressive worker-friendly legislation at the city, state or province, and national levels, and even internationally on vital issues such as international trade agreements. Timothy Downing, General Manager of the Union Globe Hotel Vancouver, discussed the influence of unions on provincial politics during his interview. Until recently, the British Columbia legislature was dominated by the union backed left-of-center NDP party, which Timothy Downing claimed, helped enact strong anti-scabbing legislation that forced management to run the hotels during the recent strike. Progressive labor policy in Canada, British Columbia, and Vancouver mandate employment benefits, such as paid vacation, regardless of their union status, and set clear guidelines for employee grievance procedures. Furthermore, the labor code legislates many of the union job protections for all employees in British Columbia. According to SIIU Local 5 President, Robert Graves: “Canada holds much higher esteem [than the U.S.] for labor leaders. In the media, they are given coverage and interviews about disputes. The media allow them to

get their voice and positions out more than in the U.S.” In Seattle, the Local 99 SIIU played an important role in mobilizing workers and putting pressure on the Washington State government successfully to defeat new “tip credit” legislation that would have allowed corporations and restaurants to pay a sub-minimum wage to employees receiving gratuities.

Indirectly higher rates of union coverage in Vancouver’s hotel industry benefits all “low-skilled” service sector employees in the city through a union wage effect, stronger labor laws for all workers, and political advocacy, organizing, and representation for the interests of these workers at all levels of government. The difference in union organizing rules and the divergence in union coverage of the labor force between Canada and the U.S. have had a profound impact on each society, impacting social policy, well-being, equality and shape of democratic society.

### Conclusion

Labor policy differences between Canada and the United States dictating the process by which workers can organize for union representation are largely responsible for the divergent trends in unionization between the two countries over the past thirty years. Canada’s significantly higher national rates of unionization, particularly in the service sector, as compared to those in the U.S., are replicated in the substantially different levels of unionization in the hotel industry in Vancouver and Seattle. A hotel industry hourly employee is much more likely to be covered by a union contract in Vancouver than in Seattle. The Seattle hotels that are non-unionized have opted for a “low road” of high turnover, while the ones that have unions are “high road” shops that value employee stability and are willing to pay for it in better benefits and wages.

Analysis of employee, management, and union leader interview data from the *Comparative Hotel Employee Study* demonstrates that union membership provides hotel workers better benefits, improved job security, and better working conditions. In Vancouver, the rates of unionization in the hotel industry are high enough that they appear to create a “union wage effect” that increases the wages and benefits offered even to employees in non-union hotels. Although some discussed negative aspects of unionization in terms of dues, job rigidity, low levels of strike pay, and other complaints, the evidence makes clear that unionization improves the work experience and lives of hourly employees in the hotel industry in both Vancouver and Seattle. The divergence in union coverage also provides a critical explanatory factor for understanding why ho-

tel workers were materially better off in Vancouver than Seattle.

Differences in union organizing rules and the divergence in union coverage between Canada and the U.S. have had a profoundly important impact on the socio-economic stratification of each nation over the past four decades. As macro economic changes have shifted both nations to a predominately service sector economy, Canada’s higher rates of union coverage have acted as a countervailing force against growing inequality and poverty among workers at the bottom of the economic ladder.

### Notes

- 1 The public sector difference hypothesis is argued by Troy (2000).
- 2 In order to protect the respondents’ anonymity, the name of the union is also a pseudonym.
- 3 There are also a few other unions who represent small numbers of hotel industry employees in Vancouver and Seattle, including the “Technical Industry Union” (TIU) and other technical trade unions. Note: TIU is also a pseudonym.
- 4 All names of hotel chains and other corporations have been changed to protect the respondents’ identities.
- 5 All names have also been changed to protect the respondents’ identities.
- 6 Each hotel site divided the formal departments somewhat differently.
- 7 At the time of the interviews, the Canadian dollar was weaker against the U.S. dollar, valued at approximately US\$0.65. Currently it is valued at US\$0.73.
- 8 Hence the PPP exchange value of a Canadian dollar would approximately range in the \$0.80 to \$1 (U.S.). Calculating this PPP value of currency cross-nationally is tricky because the PPP seems to vary significantly across items, especially with consumer electronics, plane tickets, and certain imported items reflecting the currency exchange PPP value. Yet “bread and butter” essentials basically cost the same in dollar amounts in both cities, and rents may even be lower in Vancouver than Seattle for the same quality accommodation. For this article, wage rates are compared across hotels between the two cities assuming a PPP of 1. Unless otherwise specified, Canadian dollar amounts and American dollar amounts will be presented at par and without conversion.
- 9 Average tips per hour reported by respondents who provided actual tip information. The fluctuations in

- gratuity and issues around tax reporting of these figures made many respondents hesitant to discuss specifics in terms of earnings from tips.
- 10 At the time of my interviews, the Hotel Deluxe Vancouver was only approximately two years and six months old as a new hotel.
- 11 Front Desk workers also turn over at a higher rate because these jobs are often filled by college students who decide to switch hotels, move into more senior positions or into new fields.
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# *Social Movement Unionism in Canada and the United States: Comparing Strategies for Union Renewal*

Stephanie Ross

Since the late 1980s, both the Canadian and U.S. labour movements have been experimenting with methods to remain organizationally viable in the midst of now-conventional wisdom that unions no longer have an important role in defining political-economic relations or social values. In both countries, neo-liberal globalization has had negative effects on unions' organizational, economic, and political effectiveness, preventing the labour movement from playing its historically important role in fostering economic and social equity and democratizing both the workplace and the political sphere.<sup>1</sup> Both labour movements have faced declines in membership, bargaining power and political influence and have responded by engaging in a re-examination of established trade union purposes, structures, and strategies. This wave of union renewal has been closely monitored by labour studies and industrial relations scholars on both sides of the border.

The extent to which a common motivating philosophy underlies union renewal practices in North America remains an open question. To begin with, many union revitalization projects are purely instrumental, focussing on organizational survival via membership expansion without any deeper inquiry into union goals and methods.<sup>2</sup> Those strategies which have attracted the most scholarly and journalistic attention, however, are said to be connected to a model referred to as social unionism. Social unionism is generally understood to entail 1) a change in the *content* of union activity, usually an expansion beyond collective bargaining and the direct and sometimes narrow economic interests of a particular membership, and 2) a

change in the *method* of union activity, with typically a greater importance placed on active membership participation. Social unionism is generally counterposed to the traditional, bureaucratic and top-down "service model" of unionism, in which "expert", full-time, elected or appointed leaders act on behalf of and in the place of members. Innovative social unionist practices which organize new members, mobilize the community, experiment with new union structures, and better reflect the diversity of the contemporary workforce have been documented in community-based and national-level studies in both countries.

Absent in this literature are explicitly comparative studies of social unionist practices. While recent publications have brought together case studies from different countries, few have actually compared the convergences and divergence in the meaning and practices associated with social unionism in the North American context. This paper proposes to compare the ways in which social unionism is evolving in the United States and Canada, to explain commonalities and differences, and to explore whether these approaches vary in their effectiveness. First, I will argue that the two movements diverge in their strategic emphasis because of different political traditions as well as the varying impact that neo-liberal globalization has had on each country. This divergence is interesting, given the two movements' early development and the way in which Canadian labour organizations were highly intertwined with their U.S. counterparts. The U.S. labour movement's extensive, more systematic and focused commitment to new membership organizing reflects the

country's dramatically lower union density rates in the post-war period, the movement's resulting minoritarian status and limited political influence and deep traditions of an instrumental approach to union activity. The Canadian labour movement's less systematic approach to new membership organizing is rooted in the relative durability of union membership levels but is also accompanied by greater attention to coalition building with the broader social justice community and more politicized interventions in national debates over issues like free trade and other neo-liberal public policies. This commitment to expanding union activity beyond its traditional realm of collective bargaining is rooted in the survival of pockets of left-wing activists in the relatively more open political environment of post-war Canada, the dynamism of Canadian public sector unionism, and the existence of a third political party which provided an organizational space for labour and social movements to cooperate.

However, despite having adopted different strategies, the two labour movements remain limited in similar ways. I will argue that both Canadian social unionism and the U.S. organizing model are insufficient bases for renewed labour movements capable of engaging existing memberships and expanding their appeal to non-union workers and the broader public. In this sense, the two movements converge in that their respective union renewal methods ignore both the need for democratization of the labour movement and the articulation of a broader vision or purpose that can mobilize workers around alternatives to neo-liberal globalization. While both methods may prioritize greater membership participation, that is still taking place in the context of top-down relationships between leaders and members. Moreover, both strategies fail to articulate clearly what it is that membership is being organized or mobilized for. Ultimately, both labour movements remain engaged either in a defensive struggle to reconstruct the post-war compromise between labour and employers, or in an attempt to secure the best deal for North American workers in a globalized world, even though the political-economic context for such goals no longer exists. In that sense, neither social unionism nor the organizing model has put forward an alternative vision to neo-liberal globalization, and thus both lack the capacity to mobilize working people around a project that will satisfy their economic, political and social needs.

### **Union Renewal Strategies: Some Definitional Problems**

Despite its increased importance, the precise meaning of different union renewal strategies remains vague for both unionists and academics, complicated by the proliferation of all sorts of terms in the union renewal literature. "Social unionism," "social movement unionism," "community unionism," and the "organizing model" all tend to be used interchangeably to refer to union revitalization strategies recently taken up by North American unions.<sup>3</sup> Moreover, "there is no widely accepted definition of ... the criteria that should be used to evaluate revival efforts."<sup>4</sup> Therefore, it is important to sort out precisely what is meant by different approaches to union renewal. Social unionism, the approach taken up by the Canadian movement, has a particular meaning rooted in a long history in the North American context, and is defined in contrast to another important approach to union activity, that of business unionism. It is worth reviewing that history briefly to sort out what social unionism is and is not.

Business unionism emerged in the late 1880s as a craft union response to changes in the structure of capitalist enterprise and work organization.<sup>5</sup> Craft unionists in both the U.S. and Canada evolved a narrow approach to unionism designed to maximize labour organizations' capacity to make material gains for their members through the mechanism of collective bargaining. These practices are often directly attributed to the influence of Samuel Gompers over the character and philosophy of the North American labour movement. For Gompers, president of the American Federation of Labor for nearly 40 years, and his close associate Adolph Strasser, the priority in trade union action was to bring immediate material improvements to the working class, not to imagine "a new society constructed from rainbow materials."<sup>6</sup> As Strasser put it in his testimony before the Senate Committee on Education and Labor, the labour movement has "no ultimate ends.... We are fighting only for immediate objects—objects that can be realized in a few years."<sup>7</sup> These goals could most effectively be won through efficient, bureaucratic, and top-down structures, in which "expert," full-time, elected or appointed leaders acted on behalf of, and in the place of, members, and limited their engagement to legalistic processes and narrowly-defined material interests of the membership.<sup>8</sup> Additionally, this "membership" was also strictly delimited, as the scope of unionism was restricted to those workers with craft skills, a group of workers whose proportion in the labour force was steadily and irrevocably declining in that period.

Social unionism emerged as a response to this narrow and instrumental vision of the labour movement and was associated with those groups who aimed to expand unionization beyond the narrow confines of craftwork and to encompass the entire working class. Though ideologically quite different, the Knights of Labour, the Industrial Workers of the World, the One Big Union, and the Congress of Industrial Organizations all practised elements of social unionism insofar as they held that all workers shared interests rooted in, but extending beyond, the workplace and sought to construct organizational forms which could express and fight effectively for this broader vision.

Therefore, from its origins, social unionism has involved a broad definition of the appropriate *content* of union activity. As such, it is an orientation which defines the goals of the labour movement in terms of broader working-class interests rather than the immediate and sometimes narrow economic interests of union members. Instead, social unionism concerns itself with the interests of workers beyond the workplace and a particular group of workers. In Ian Robinson's words, both "the scope of its ambitions and sense of obligation" go beyond that of the narrow, instrumental sectionalism and economism of "business unionism." The goal of social unionism is "to change the entire society and to advance the interests of many who are not union members" on the basis of a "moral critique of the existing order."<sup>9</sup> In this vision, unionism was the base from which broader social change could be made in the interests of the working-class majority.<sup>10</sup>

Social unionism also expanded the *methods* of union activity beyond the collective bargaining process. Unions with this orientation have employed strategies ranging from electoral political activity and labour reform to coalition building and "community unionism," often (but not always) with a greater importance placed on active membership participation.<sup>11</sup> Community unionism, for instance, was long practised in Canada before the consolidation of post-war unionism. Important struggles, such as the Knights of Labor's "people's strikes," the Winnipeg General Strike of 1919, and the 1946 Stelco strike in Hamilton all involved significant participation of community allies and not only in the service of organized labour's "narrow" aims.<sup>12</sup> These social unionist traditions did continue into the immediate post-war period and were associated in particular with Walter Reuther's leadership of the United Auto Workers (UAW).<sup>13</sup> As Sam Gindin explains, "[t]he UAW (and then the CAW) always rejected business unionism—a unionism that limited itself to the price its members got for their labour. In contrast, the union espoused social unionism—a unionism that considered

workers as more than just sellers of labour, that was sensitive to broader concerns, and that contributed to those in need in the community and internationally."<sup>14</sup>

### The Roots of Divergence in the Canadian and U.S. Labour Movements

Initially, the border did not necessarily demarcate the geographic distribution of these two major orientations to labour movement activity. Instead, both business unionism and social unionism had their proponents in each country. That reflected the fact that the Canadian labour movement had been penetrated by U.S.-based organizations from its earliest days, and various tendencies developed in the U.S. made their way north with little difficulty.<sup>15</sup> However, during the period leading up to and following the Second World War, and despite a common process of institutionalization of labour rights, the two movements experienced important divergences.

Both movements underwent significant processes of bureaucratization that accompanied the institutionalization of collective bargaining and labour rights. Although the right to mandatory union recognition and collective bargaining was won through a mass mobilization of workers in both countries, the requirements of participating in and administering the new workplace regime placed a primacy on expert leadership, even within those organizations committed to social unionism.<sup>16</sup> As George Ross and Jane Jenson have argued, these practices, which secured those aims long struggled for by the labour movements, transformed the relationship between union leaders and members and reinforced the bureaucratic and economic tendencies in both movements.<sup>17</sup> However, it is generally accepted that the U.S. unions' more thorough adoption of what has come to be called the "service model" of unionism led to a hollowing out of the movement's social vision, the demobilization of union members and marginalization of grass-roots activism and an incapacity to respond strategically to the beginnings of neo-liberal globalization when it began to transform the American political economy in the late 1970s.<sup>18</sup>

The U.S. movement has been in steady decline over the past 50 years. Brute empirical measures tell part of the story: in 1999, the union density rate was half what it was in 1956, standing at a mere 13.9 percent.<sup>19</sup> More important than these numbers were the choices the U.S. movement's narrow social base "forced" upon them. A very aggressive employers' project to withdraw from those institutions that sustained working class wages and living standards took the form of downsizing, concession bargaining, and

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stratification of the workforce, all taking a major toll on union membership levels. As Ross and Jenson put it, the U.S. movement's post-war business unionist strategies "made response to this new situation quite difficult" as any tools which might have been used to resist employer actions were long atrophied.<sup>20</sup> That experience has focused renewal efforts on new membership organizing in order to reconstruct the institutional and political bases of unions' workplace bargaining power and political influence.

In contrast, the Canadian labour movement was comparatively successful at sustaining a broader vision of unionism, even though unions did adopt the bureaucratic practices associated with collective bargaining. Robinson attributes the sustenance of social unionism in part to Canadian workers' more active and lengthy struggle for institutionalized labour rights during the Second World War, but also to the more important and dynamic role played by public sector unionism in Canada.<sup>21</sup> Indeed, from the 1960s on, social unionism has become particularly associated with public sector unions because their "economistic" collective bargaining interests are inherently tied to public policy debates and therefore require political mobilization and coalition-building around visions of what the state should do for the public, in ways that those of private sector unions do not.<sup>22</sup> The massive growth of Canadian public sector unions since the 1960s and 70s led to a "shift [in] the balance of power from international to national unions," from private-sector to public-sector unions, and can thus explain why social unionism is now considered to be a core value of the Canadian labour movement.<sup>23</sup> However, the Autoworkers in Canada also preserved the social unionist approach, not least because their internal structures fostered internal political and ideological debate and preserved a space for left-wing activism and pressure on the Canadian leadership in ways their American counterparts did not.<sup>24</sup>

Social unionism in Canada was also sustained by the labour movement's official engagement in a particular kind of political action, namely electoral politics in support of social democracy. The Canadian Labour Congress (CLC) and many of its largest affiliates have been organizationally and politically linked to the New Democratic Party (NDP) since the latter's formation in 1961. Christopher Schenk and Elaine Bernard have argued that it is this political coalition between the organized labour and social democracy which has been both the expression of Canadian unions' social unionist impulses—by winning political reforms which foster greater economic and social equality in general—and have encouraged their broader perspective even further. For them, the NDP is itself "a

political coalition that provides a structure for labor and other progressive groups—the women's movement, social justice groups, environmentalists, students, the peace movement, and others—to work together... [W]hile Canadian unions are leery of and occasionally even hostile to the new social movements, through the NDP, movement activists and trade unionists work together, building the trust and experience necessary to work in coalition."<sup>25</sup>

Another strategic operationalization of the social unionist orientation in Canada is "community unionism." Steven Tufts defines community unionism as "the formation of coalitions between unions and non-labor groups in order to achieve common goals."<sup>26</sup> Like the social unionism that underpins it, ideally, such coalitions go beyond mere community support for organized labour; they also entail "significant power [for community groups] in determining the direction and organizational efforts of the coalition."<sup>27</sup> According to these criteria, opposition to the U.S.-Canada Free Trade Agreement via the Action Canada Network, Operation Solidarity in British Columbia, the Ontario Days of Action, and mobilization around the Québec City Summit of the Americas are all versions of the community unionist strategy and are motivated by the social unionist orientation.

For a variety of reasons, social unionism has experienced a revival since the late 1980s. Public sector workers have become increasingly politicized in the face of employer attacks on their wages and collective bargaining rights and have reached out to the public they serve to form an opposition to neo-liberal restraint policies. The flourishing of feminist and then equity activism in the unions also promoted social unionism as these groups had to seek allies outside an initially hostile labour movement and to fight for legislative solutions to inequality that went beyond collective bargaining and spoke to non-union constituencies as well.<sup>28</sup> Not only is social unionism widely held to be more effective than the traditional "service model" of unionism, but also the only kind of unionism capable of countering the effects of neo-liberal globalization on workers and their communities.<sup>29</sup> Finally, the Canadian labour movement's greater capacity to keep social unionism alive alongside more bureaucratic forms of action has been credited with preventing the kind of precipitous decline in membership and union density experienced by U.S. unions.<sup>30</sup> In all of these ways, social unionism has been an important reason why the Canadian labour movement has been able to maintain its relevance and avert a catastrophic crisis similar to the one experienced by the U.S. labour movement since the early 1980s.

### Contemporary Social Unionism in Canada: Contours and Limitations

Some indication of both the nature and limits of social unionism are to be found in the Canadian labour movement's own research on the issue. In August 2003, the Canadian Labour Congress polled Canadians about their perceptions of unions' effectiveness and relevance and issued the findings in a document entitled *Canadians Talk About Unions*.<sup>31</sup> The CLC's poll was designed in part to assess how successful Canadian unions have been at resuscitating social unionism, using it to transform themselves and demonstrate their continuing relevance to both union members and Canadian workers more generally. The definition of social unionism used by the CLC focuses on "non-bargaining activities" like "promoting equality for women, campaigning to ban imports made by child labour or in sweatshops, fighting to stop racism and lobbying to increase social spending on health and education," a typical list of issues associated with this orientation.<sup>32</sup>

The findings are both encouraging and disturbing. On the positive side, the Canadian public is much less supportive of increasing global competition, free trade agreements, and the reduction and privatization of public services than it was three years ago. As well, unions are seen to help segments of the population beyond their immediate membership. Moreover, 75 percent of Canadians want unions to be even more involved in broader struggles for social justice. As such, the perception of the labour movement as the servant of "narrow" or "special interests" is waning, and the public accepts that unions have the capacity to be advocated for broader social justice.<sup>33</sup> The public's changing assessment of the labour movement parallels a documented shift in Canadian labour leaders' stated priorities and strategies. A majority of leaders now agree that political action and community coalitions to bring about "social and economic change" are an important part of union activity.<sup>34</sup>

However, other responses reveal a level of cynicism about the labour movement, in terms of its motivations and internal functioning. A majority believe that the labour movement's commitment to social unionism is instrumental, designed only to serve union members or to foster positive publicity.<sup>35</sup> Furthermore, a significant number (45 percent) of existing union members feel they have "no say in how their union operates." A significant proportion (43 percent) of the two-thirds of unorganized workers who said they were "unlikely" to vote for a union also give the lack of internal democracy as a major or minor reason for their reluctance.<sup>36</sup>

These results are provocative in and of themselves, but more so is the CLC's interpretation of the findings and the implications they have drawn in terms of action. The cynicism about labour's motives is something to be "overcome" rather than probed or understood. The perception that unions are insufficiently democratic "shows the need for major internal education on the democratic basis of local union structures and leadership," and for "building more membership support for their union and its leadership,"<sup>37</sup> not for examining the ways that union democracy could be ensured, not to mention enriched. In other words, for the CLC, the problem is neither the motivations behind the labour movement's social justice work, nor the quality of union democracy, but ignorance amongst the membership and the general public about how genuinely democratic unions actually are.

An alternative interpretation of the CLC poll would suggest that something important is being said about the limits of social unionist strategies. These limits are twofold. First, a commitment to progressive politics has not guaranteed more participatory processes to carry them out. Second, social unionist commitments have remained separate from the "real" substance of union activity, namely collective bargaining and day-to-day servicing, and are often sacrificed when they conflict with more narrow or economic interests, and have failed to transform the heavy reliance on "experts" acting in the place of the membership.

While many Canadian unions may have broadened their activities and added other substantive commitments to their focus on collective bargaining, they have not necessarily examined and rethought methods for carrying out union activity. Social unionism is a substantive commitment to a particular vision of workers' interests and the labour movement's consequent agenda. It is silent about the means by which such a vision should be implemented, in terms of both strategy and process. As we have seen, social unionist commitments have taken very different strategic forms in practice, ranging from polite lobbying for pro-worker legislation to more confrontational forms of mass direct action. As such, even where labour organizations have adopted social unionism, they have not always done so in ways that guarantee the democratization of union structures and widen the scope of who participates and makes decisions about union goals and activities. Instead, in both contemporary and historical versions of social unionism, progressive policies on a broader set of social justice issues have been substituted for a democratic process of struggling around these issues. Therefore, social unionist commitments have not been translated into strategies that transform the hierarchical

relationship between elected and appointed leaders and the membership typical of business unionism.

On the one hand, social unionism's strategic ambiguity is positive, leaving room for strategic innovation and variation in how struggles are conducted. It is important not to prescribe a particular method of action abstracted from concrete conditions. On the other hand, a commitment to broader social justice issues, no matter how progressive, does not guarantee that such work will be carried out democratically. As the most prominent post-war advocate of social unionism, Reuther combined the material gains of collective bargaining with a "broader progressive New Deal agenda" by purging the communist left from the United Auto Workers and consolidating the power of the Administration caucus, such that the rank-and-file challenges "could only be marginally effective and certainly couldn't be sustained without a coordinated opposition or alternative mechanisms to give them weight."<sup>38</sup> Similarly, social democrats in the Cooperative Commonwealth Federation (CCF) fought communists by any means necessary in the 1950s to ensure they gained control over the Canadian Congress of Labour and later the CLC, entrenching a suspicion of dissent and grass-roots activism which would later inform the response to the Waffle in the early 1970s.<sup>39</sup> In both of these cases, the prevailing attitude was that the leadership not only knew what was good for the membership but also had decided which methods (top-down electoralism or bureaucratic collective bargaining) were the most appropriate. Finally, community unionist endeavours like the Ontario Days of Action are often affairs which link together the leaders of different movements, rather than creating and fostering organic connections amongst different sections of the working class. Social unionism on its own is an insufficient model for union revitalization, for it does not guarantee that the means by which progressive goals are sought are themselves democratic.

Social unionist priorities and practices are also not necessarily penetrating into what remains the core of union activity: collective bargaining and servicing. The CLC's definition of social unionism as "non-bargaining activity" is thus very telling: social unionism is what goes on away from the bargaining table where the real power lies, where much of the agenda remains the same, and where the experts remain in control. Most CLC affiliates continue to rely on significant elements of the service model, particularly in those areas deemed "most important." Indeed, Kumar and Murray have shown that, despite the adoption of social unionism as a key orientation, the vast majority of Canadian unions have not significantly changed either

the way collective bargaining and servicing is done or who is engaged in it. Nor have most unions displaced their traditional economic goals of protecting wages, benefits, and job security for existing members in favour of more "social unionist" issues or participatory methods.<sup>40</sup> Even in unions committed to social unionism, there is evidence of a serious disjuncture between the rhetorical commitments to broader issues, like employment equity and child care, and the level of priority placed on these issues in the very sphere where unions have the most power to make direct gains, that is, in collective bargaining. While many unions have added "pro-active organizational priorities" to their "core defensive function," Kumar and Murray indicate that most continue to select the latter over the former when faced with a choice.<sup>41</sup> Although this is understandable, unions' overriding commitment to sectional priorities above more general social justice issues indicates that social unionism is an adjunct to traditional approaches and has not necessarily penetrated into the areas that "really matter". Social unionism remains an add-on to bargaining, not a vision that permeates the way unions see themselves and orients all their activity. As Ian Robinson has argued, the public cynicism documented in *Canadians Talk About Unions* is not surprising. He points out that most organizations will attempt to place their particularistic concerns in moral terms and connect them up to broader interests, "whatever their real motives. Knowing this, most people are quite reasonably sceptical of such claims. Only when unions and their leaders prove that they stand behind their principles, even when they work to their disadvantage, are people inclined to take such appeals seriously."<sup>42</sup>

### **The Organizing Model in the U.S.: Contours and Limitations**

An easy answer to the critique of social unionism in Canada could be to point to strategic innovations being developed south of the border. If social unionism, whether in its electoralist or coalition-building guise, is not enough because it does not guarantee that (democratic) membership participation is a part of the process of social struggle, what of the much-discussed "organizing model" which has swept the U.S. labour movement in the last fifteen years? The AFL-CIO's earliest statement on the issue put membership participation at the centre: the organizing model "involv[ed] members in solutions" rather than "trying to help people by solving problems for them."<sup>43</sup> In that respect, U.S. unions have been self-consciously attempting to move away from the more bureaucratic elements of post-war business unionism.

From this very general statement, two faces of the organizing model have evolved; one focussed on external organizing to increase membership, typically through the use of aggressive rank-and-file-oriented campaigns (organizing the unorganized), and the other aimed at internal organizing to regenerate membership participation in already-existing unions (organizing the organized).<sup>44</sup> Both aspects of the organizing model are much more clearly focussed on innovation in union tactics than is social unionism, with a view to figuring out the most effective way to (re)build the union membership base, to strengthen union bargaining power, and to conduct union affairs in more cost-effective ways.

Both the external and internal variants of the organizing model involve what Kim Voss and Rachel Sherman call a “social movement repertoire” of tactics.<sup>45</sup> For external organizing, these tactics are centred on a “rank-and-file intensive strategy ... focussed on person-to-person contact, house calls, and small-group meetings,” as well as on membership “participation in and responsibility for the organizing campaign.”<sup>46</sup> Also important is the attention to organizing historically under-represented groups such as “women, minorities and immigrants.”<sup>47</sup> Internal organizing tactics include confrontational actions against the employer on the shop floor and in the community (through corporate campaigns, direct action, and use of media), coalition-work<sup>48</sup> and lobbying and transformation of unions’ traditional representational functions through cultivation of greater rank-and-file participation, responsibility, and leadership.<sup>49</sup> It is important to note that there is no stark dividing line between internal and external organizing tactics: indeed, most are used in the service of both goals, and sometimes simultaneously (for example, the use of member-organizers in a unionization drive). Most research has been oriented toward determining which of these tactics are most effective in carrying out the goal of union renewal, variously defined.<sup>50</sup>

Though it places greater importance on membership participation, the organizing model also suffers from some serious deficits. First, it often lacks a broader vision of the nature of workers’ interests and the kind of society in which they can be satisfied. Paul Johnson has argued that whereas it has finally “sunk in” that the U.S. labour movement must “organize or die,” the adoption of the organizing model has not answered the question “organize for what?” Clearly, the intention is to increase membership numbers and stave off institutional collapse, but what are those numbers and those institutions supposed to achieve? On its own, the organizing model is a series of tactics which do not provide “an orienting, motivating and unify-

ing idea; a story we tell about ourselves that identifies who we are, what we are doing, the challenges we face, and the ways in which we respond to those challenges.”<sup>51</sup> As such, there is no particular guarantee that the organizing model is attached to a social unionist (or any other) vision or is anything more than an instrumental attempt to block further declines in union density and gather more workers to participate in the service model of unionism. “Tactical revitalization” may be injecting new energy into the U.S. labour movement for the time being, but in most unions it remains limited to tactics. Kate Bronfenbrenner has felt it necessary, therefore, to caution unions against the assumption that they can “simply mobiliz[e] new workers to become dues payers for the status quo,” no doubt because many practitioners of the organizing model come to it through pragmatism rather than a commitment to a more progressive or participatory labour movement.<sup>52</sup> As Voss and Sherman point out, it is entirely possible to use “radical tactics to achieve conservative goals” and vice versa.<sup>53</sup> Mark Leier also echoes this insight, arguing that it is important to disentangle ideology from process, and not to assume that progressiveness in one ensures its presence in the other.<sup>54</sup>

Second, despite its emphasis on “participation,” the organizing model does not necessarily develop grassroots democratic functioning either. The indications of that are multiple and complicated. Even where locals are revitalizing themselves based both on social justice and rank-and-file activism, those which had transformed themselves most substantially had done so through a top-down process.<sup>55</sup> Furthermore, early indications are that, in many locals, the organizing model has resulted in increases in full-time servicing and specialist staff rather than a shift of responsibilities to local activists.<sup>56</sup> In other cases, membership participation is merely a tactic to be used selectively rather than part of an overall importance to a different way of doing union work. Bronfenbrenner’s extensive research on the relative effectiveness of strategies to organize non-union workers has shown that, in the 1990s, only six percent of unions used a “comprehensive union-building strategy” in their organizing campaigns, even though it clearly resulted in significantly higher win rates. Instead, unions were selectively ordering from a menu of organizing tactics, none of which on its own guaranteed success, even if the tactic involved some kind of rank-and-file involvement.<sup>57</sup> In other words, many unions are reluctant to provide new members with “the same activist and democratic organization it had during the organizing campaign through the first contract and beyond.”<sup>58</sup> As a result, much membership participation still takes place under condi-

tions set and controlled by leaders. As Bruce Nissen has pointed out, “[e]ven unions attempting the mobilizational approach often want ‘push-button’ activism bureaucratically controlled by leaders, thus stifling lasting change.”<sup>59</sup> Therefore, the organizing model as it is being practised in many places does not depart significantly from C. Wright Mills’ characterization of post-war unionism as the “management of discontent.”<sup>60</sup> In this phase, union leaders are eliciting rather than tamping down expressions of discontent, but they still want to ensure they are in a position to manage and direct them. All of this points to the crucial difference between membership participation and mobilization, on the one hand, and democratic control on the other. In both social unionism and the organizing model, membership participation often remains highly constrained by most unions’ very durable bureaucratic structures, relationships and cultural expectations.

### What is to be Done?

#### Building Democracy, Building Alternatives

I have argued here that both social unionism and the organizing model as they are now being practised by most Canadian and U.S. unions are necessary but insufficient bases for a revived labour movement capable of making lasting social change. The expanded vision of social unionism is key if unions are to ensure their relevance to both their members and the public at large; however, this vision will not be realized if it remains trapped within the inequalities of power and expertise that characterize the relationships within the labour movement. Social unionism is primarily about what unions do rather than how they do it. More attention to the process of struggling for a broader social justice vision is therefore required. However, we should not be falsely seduced by the U.S.-based organizing model either. While its dynamism and rank-and-file focus may seem to address the weaknesses of social unionism, the organizing model does not make clear the difference between ‘participation’ and democratic control, the latter of which will be necessary for a revived and sustainable labour movement that departs from the undemocratic methods bequeathed to it by liberal capitalism.

A more preferable direction for the Canadian labour movement would at least entail a synthesis of social unionist vision and organizing model tactics and methods. However, that synthesis would have to go beyond the present versions of each model and address two shared key deficits: the lack of attention to democratization of union structures and internal relationships, and the lack of an alternative vision that can be counterposed to neo-liberal

globalization. The orientation which has the potential to unify the substantive and procedural changes at work in the labour movement is “social movement unionism”. To say that is to invite the comment that the labour movement is already engaged in social movement unionism; however, that claim confuses it with social unionism or the organizing model respectively. For instance, several U.S. commentators, like Voss and Sherman, and Turner and Hurd, equate social movement unionism with “social movement tactics” or a “type of unionism based on member involvement and activism.”<sup>61</sup> That such confusions are present in the academic literature as well only make the political debate amongst unionists about what to do all that more muddled.

Others like Gindin, Moody, and Schenk insist that social movement unionism involves the combination of an alternative vision, mobilizing tactics and organizations in which workers do more than participate: *they come to lead and have democratic control over their own movement*. Advocates of social movement unionism make a very explicit distinction made between social unionism and social movement unionism.<sup>62</sup> For instance, Gindin argues that movement unionism goes beyond substantive positions, no matter how progressive, and beyond specific tactics, no matter how radical, and involves an explicit commitment to empowering workers in the struggle for these gains. It involves a unionism about “more than ... achieving certain reforms; it include[s] the hope of more profound change in the nature of society with the workers themselves playing the leading role.”<sup>63</sup> In other words, social movement unionism is the orientation which would allow the labour movement to become a “movement for itself,” more clearly conscious of its interests, its relationship to the broader socio-economic structure and to its goals.<sup>64</sup> Insofar as the labour movement is to be genuinely oppositional to status quo structures, one of those goals would have to be worker empowerment in their own organizations. Such empowerment, in the words of Hilary Wainwright, would involve both a *democracy of deciding*—about representatives and policies—and a *democracy of doing*, of implementing and evaluating decisions.<sup>65</sup>

What would a more substantive form of union democracy require of both union leaders and members? Who will fight for such changes within the labour movement? It is important to avoid simplistic formulae which claim that union leaders will always block progressive or democratizing changes for which members will always support and fight. In the Canadian context, union leadership has often been more socially progressive than the members they represent. However, we must face the fact that both leaders

and members are ensnared in bureaucratic relationships and are socialized to accept the rightness or naturalness of a situation in which elite experts take care of or service the members. As such, members can often be the most vocal advocates of a return to the service model in the face of radical policy changes or shifts to the organizing model.<sup>66</sup> Such reactions reflect both a lack of self-confidence experienced by many working-class people, as well as the very narrow experiences of democracy offered by our political and economic system. If unions are to challenge the poor state of liberal democracy, a coalition amongst like-minded leaders and members must be forced to fight not only for socially progressive policies but also for a richer experience of union democracy that will raise the expectations we have of other economic, political, and social institutions. Such a coalition requires leaders willing to create the conditions in which members become “engaged in everyday struggles,”<sup>67</sup> develop the organizational and democratic skills that are so atrophied in liberal capitalist society, and perhaps come to question and challenge those very leaders.

A struggle for social movement unionism also entails a thorough reexamination of how unions’ day-to-day functions are carried out. Social movement unionism, like social unionism, should not only be about mobilizing union members to support external political struggles, though this is important. A focus on external politics and organizing can lead to two negative outcomes: first, a transfer of activism to the community while bargaining and servicing continue to be conducted in top-down and bureaucratic ways, or second, a backlash from members who feel their needs and interests are not being met. To avoid both such problems, a social movement unionist analysis needs to be brought to bear on the least glamorous of union activities: grievances, dealing with management, and collective bargaining. These activities should be infused with participatory democratic processes, and the analysis which guides these activities should contain a broader social vision and the need to foster conditions for expanded participation. That would mean membership mobilization around grievances and defending the collective agreement in ways that draw on pre-war unions’ direct action tradition, shaping bargaining demands in ways that serve both immediate and broader interests and politicize union struggles, and fighting for provisions that would make greater membership participation possible.

This project of democratization needs to take place in the context of recasting the goals and vision of the labour movement, namely around the goal of democratizing social, political, and economic life in ways that are deeper,

more meaningful, and more effective than those offered by representative democracy constrained by a neo-liberal and global capitalism. Mobilizing existing union members and organizing new ones will not be sustainable if the project is merely to refound post-war institutions of collective bargaining and Keynesian public policy, which have been made structurally impossible. The workplace and political power to be gained in the absence of attempts to generate alternatives will be ephemeral at best, and will only work to reinforce disillusionment with the labour movement.

Finally, these comments call out for a new research focus on the impact of social unionist and social movement unionist practices and their outcomes, particularly in the Canadian context. Although some (but not enough) research has documented the adoption of these methods and their policy results, little has been written on whether or how new union strategies have changed internal relationships within unions. New research needs to examine the following key issues: In new union strategies, what importance is placed on members’ active role in determining and carrying out union priorities? Is independent and self-directed rank-and file activity encouraged, or are there still powerful attempts to manage activism from above? Are improved communication links unidirectional, or are members able and empowered to communicate their needs and priorities to union leaders? Is rank-and-file empowerment *per se* one of the goals of social unionist leaders, or a means to an end? In other words, the place of democratization of union structures and practices in social unionist strategies needs to be explored.

These are difficult and sensitive issues, particularly in a political and media context hostile to unions and keen to perpetuate the myth of the all-powerful and dictatorial union boss. However, challenging such stereotypes cannot lead to the promulgation of an equally problematic myth—that unions are paragons of democratic process and accountability. Even if we accept the need for democratization, that itself is a contradictory process, bringing with it the potential for both enhanced membership engagement in, ownership of, and commitment to the union’s activities<sup>68</sup> and increased debate, conflict, factionalism, and the challenge of managing and expressing the sometimes conflicting interests of diverse memberships.<sup>69</sup> In other words, the very strategies which unions need to pursue to expand, re-engage, and empower memberships may not always lead to direct enhancement of internal solidarity and cohesion and, hence, effective goal attainment. Even so, while democratization is no simple process and does not necessarily lead to greater instrumental success in the short-term, unions ignore internal democracy

at their peril. It is the responsibility of both unionists and sympathetic intellectuals to face the challenge of democratizing working-class organizations so that we confidently can claim a place at the head of the struggle for a more egalitarian society as well as prepare citizens for life in such a society.

## Notes

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- 38 Gindin, 1995:121-2.
- 39 Abella, Irving. 1973. *Nationalism, Communism, and Canadian Labour*. Toronto: University of Toronto Press; Panitch, Leo and Donald Swartz. 2003. *From Consent to Coercion: The Assault on Trade Union Freedoms*. Toronto: Garamond. P. 226. The Waffle was a group of left nationalist academics and activists which emerged within the Ontario wing of the New Democratic Party in the early 1970s. Critical of the extent of foreign ownership in Canada as well as the dominance of U.S.-based unions within the Canadian labour movement, the Waffle advocated greater national autonomy as part of a socialist programme. They were expelled from the party in 1972.
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- 41 Ibid., 13-14.
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- 43 Diamond, Virginia, quoted in Fletcher and Hurd 1998:38.
- 44 Fletcher and Hurd 1998:39.
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- 46 Bronfenbrenner, Kate. 2003. "The American Labour Movement and the Resurgence in Union Organizing." In *Trade Unions in Renewal: A Comparative Study*. Edited by Charlotte Yates and Peter Fairbrother. London: Continuum. P. 41-2.
- 47 Voss and Sherman 2000:311.
- 48 In this sense, coalition work is a tactic which is used in "community unionism," although the latter connotes a broader strategic orientation.
- 49 Voss and Sherman 2000:312; Fletcher and Hurd 1998:39.
- 50 See Bronfenbrenner; Voss and Sherman 2000; Yates, Charlotte. 2000. "Staying the Decline in Union Membership: Union Organizing in Ontario, 1985-1999." *Relations Industrielles / Industrial Relations* 55(4).
- 51 Johnson, Paul. 2001. "Organize for What? The Resurgence of Labor as a Citizenship Movement." In *Rekindling the Movement: Labor's Quest for Relevance in the 21st Century*. Edited by L. Turner, H.C. Katz and R. W. Hurd. Ithaca, NY: Cornell University Press. P. 27.
- 52 Bronfenbrenner 2003:48.
- 53 Voss and Sherman 2000:306.
- 54 Leier, Mark. 1995. *Red Flags and Red Tape: The Making of a Labour Bureaucracy*. Toronto: University of Toronto Press. P. 23.
- 55 Voss and Sherman 2003: 333-338; Hurd, Richard, Ruth Milkman, and Lowell Turner. 2003. "Reviving the American Labour Movement: Institutions and Mobilization." *European Journal of Industrial Relations* 9(1):111-12.
- 56 Fletcher and Hurd 1998:43, 52.
- 57 Bronfenbrenner 2003:45.
- 58 Bronfenbrenner 2003:48.
- 59 Nissen 2003:141.
- 60 Mills, C.W. 1948. *The New Men of Power: America's Labor Leaders*. New York: Harcourt Brace. P. 9.
- 61 Turner, Lowell and Richard Hurd. 2001. "Building Social Movement Unionism: The Transformation of the American Labour Movement." In *Rekindling the Movement: Labor's Quest for Relevance in the 21st Century*. Edited by L. Turner, H.C. Katz, and R.W. Hurd. Ithaca, NY: Cornell University Press. P. 11. Voss and Sherman

- characterize the practices they are examining as “social movement unionism”; however, their actual research design measures the extent to which particular *tactics* are used by unions. Most definitions of SMU place these tactics in the context of a broader, alternative vision of working class politics. Insofar as Voss and Sherman do not inquire into the kind of vision which underlies these tactics, they are really looking at the practice of the “organizing model” rather than SMU.
- 62 Gindin 1995:266.
- 63 Ibid., 268.
- 64 Johnson 2001:27.
- 65 Wainwright, Hilary. 1996. *Arguments for a New Left: Answering the Free Market Right*. Oxford: Blackwell. P. 128.
- 66 Fletcher, Bill and Richard Hurd. 2001. “Overcoming Obstacles to Transformation: Challenges on the Way to a New Unionism.” In *Rekindling the Movement: Labor’s Quest for Relevance in the 21st Century*. Edited by L. Turner, H.C. Katz, and R.W. Hurd. Ithaca, NY: Cornell University Press. P. 188-191, 194-5.
- 67 Gindin 1995:150.
- 68 Strauss, George. 1991. “Union Democracy.” In *The State of the Unions*. Edited by G. Strauss. Madison, WI: IRRA Press; Parker, Mike and Martha Gruelle. 1999. *Democracy is Power: Rebuilding Unions from the Bottom Up*. Detroit: Labor Notes; Schenk 2003.
- 69 Webb, Sidney and Beatrice. 1902. *Industrial Democracy*. London: Longmans, Green; Taft, Philip. 1962. *The Structure and Government of Labor Unions*. Cambridge, MA.: Harvard University Press; Hemingway, John. 1978. *Conflict and Democracy: Studies in Trade Union Government*. Oxford: Clarendon; Hurd, Richard. 2000. “Professional Employees and Union Democracy: From Control to Chaos.” *Labor Research Review* 21(1):103-115.
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# *Patterns of Convergence and Divergence in Canadian and U.S. Approaches to Local Economic Development*

Laura A. Reese

This paper examines local economic development policies in Canadian and U.S. cities over the past decade. Findings are based on surveys of cities over 10,000 population in the two countries conducted in 1994 and 2001; and of cities in Michigan and Ontario in 1990, 1994, and 2001. Such trend data allow for an assessment of change versus stability in economic development and whether cities in the two nations are converging or diverging in their approaches to development over time.

Research from the early 1990s comparing local development policy in the two nations concluded that cities in both Canada and the U.S. were tending to employ more economic development policies almost across the board and that the limited differences between policies used in the two nations were more of scale than substance (Reese and Fasenfest 1996). More recent analysis, however, has suggested that U.S. cities are slowing their tendency to increase policy use and are rather focusing on a more narrow and traditional package of incentives that emphasizes traditional financial and infrastructure support (Reese and Rosenfeld 2004). Canadian cities on the other hand appear to be continuing to increase their economic development arsenals while still placing greater emphasis

on a more active public sector role through partnerships that require an active professional staff and a more entrepreneurial policy approach. Will these subtle differences in approach to development continue? Or, will Canadian cities continue to become more and more like their U.S. counterparts via a process of cross-border policy transmission?

The trend data used here allow for an assessment of whether differences in policy are continuing and, indeed, whether “country” is really a critical variable in understanding economic development policy profiles among cities. Furthermore, other variables, such as form of government and fiscal trends, are examined to determine whether similarities and differences in policy approaches are the result primarily of difference in country, federal systems, and enabling legislation or whether global economic trends predominate to make development approaches converge over time. In short, the paper explores the following questions:

- What have been the trends in local economic development policy in cities in the U.S. and Canada over the past decade?

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- Have cities in the two nations become more similar or different in their approaches to economic development?
- Can distinctive economic development policy profiles be identified among cities; can cities be classified based on their economic development strategies?
- How central is country in relation to economic development policy profiles? In other words, does location in the U.S. or Canada really matter to the economic development strategy pursued?

### Literature Review

#### *Canadian/U.S. Local Economic Development*

Cross-national studies of local economic development policy comparing U.S. and Canadian cities are extensive, initially based on case studies of large central cities or single state and province comparisons (Feldman and Graham 1981; Sancton 1983; Reese 1993; Turner and Garber 1994; Garber and Imbroscio 1996), but more recently employing large cross-sectional surveys (Reese and Fasenfest 1996; Reese and Rosenfeld 2004).

Whereas early arguments suggested that the environmental and cultural context of cities in the two nations are so different as to obviate the possibility of comparison (Goldberg and Mercer 1986; Smart 1994), other work strongly suggests that the local governance context in the two nations is becoming increasingly similar, particularly in the forces shaping economic development policy. Similar global economic forces—the increased importance of the service economy, the pivotal nature of information production and consumption, decreased manufacturing employment, and increased employment in administrative and governmental positions—have affected the economies of Canadian and U.S. cities in a similar manner, albeit perhaps lagging in the former (Davies and Donoghue 1993; Davies and Murdie 1994; Randall 1994; Rothblatt 1994; Coffey 2000; Simmons and McCann 2000). Local impacts of globalization have included loss of tax base, increasing structural unemployment (Filion and Rutherford 2000), increasing disparities among cities in income levels and economic activity (Coffey 2000), loss of central city population and concomitant fiscal stress (Nathan and Adams 1989; Randall 1994), and increasing inter-city competition for, and conflicts over, development and resources (Woodside 1990; Rothblatt 1994; Filion, et. al. 2000; Simmons and McCann 2000).

To respond to international economic trends and resulting local fiscal stress, cities in Canada and the U.S.

employ similar economic development techniques (Whe-lan 1989; Leo and Fenton 1990; Reese and Fasenfest 1996). Research explicitly comparing economic development policy and process in Canadian and U.S. cities over time has indicated that, whereas there are some differences in local government structure, the organization of economic development is essentially the same, economic stress is viewed in a similar fashion, and local officials define economic development goals in similar ways. Moreover, the same strategies predominate—the differences between Canadian and U.S. local economic development policy tend to be of scale not substance (Reese and Fasenfest 1996).

#### *Cross-border Lesson-Drawing and Policy Transfer*

A final pertinent issue in the literature focuses on how and why policies might be similar across national borders, particularly among countries that are geographically proximate. If it is the case that local economic development policies are converging among U.S. and Canadian cities, why might this be so? A number of studies have focused on policy learning or “lesson-drawing” across the U.S. and Canadian border. In most cases it appears that Canadian cities learn from experience in the U.S. for policies ranging from mental health, information privacy laws, and environmental regulations (Bennett 1990; Hoberg 1991; Rochefort and Goering 1998). Although U.S. policy has not been adopted wholesale, i.e. there has been only “selective borrowing,” it appears that the tighter connections between research and policy-making, a stronger role for policy experts, and a less fragmented decision-making system in Canada fosters policy learning and hence the flow from south to north (Rochefort and Goering 1998).

Local economic development policy may be particularly ripe for lesson-drawing, resulting in policy transmission, because there is a general consensus on goals (Reese and Fasenfest 1996) and policy-making is often strongly influenced by bureaucrats or other experts based on detailed information, policy assessments, or evaluations (Bennett 1990; Reese and Rosenfeld 2002). And policy learning in economic development is not limited to cross-border sharing because cross-state policy convergence or “consolidation” within the U.S. has been characterized more as an exercise in political learning than of formal evaluation (Eisinger 1999). On the other hand, informal policy networks have been shown to be critical to the cross-border transfer of policy information, providing a “methodology” for such transfers and emphasizing empirical evaluations and expert assessments

(Rose 1991; Mossberger and Wolman 2003). If it is true that the policy borrowing or learning time lag is about five to ten years (Rochefort and Goering 1998), then the time period covered in this study should shed light on whether there is a foundation for root convergence from which to begin to assess the lesson-drawing process.

That last point is particularly important for the study at hand. Simply because policies are converging, it cannot be concluded that emulation or lesson-drawing is taking place. Global economic forces could be additional influential factors in any convergence—similar economic forces lead to similar policy solutions. Still, studies have long indicated that some level of international policy diffusion should be “assumed” (Anderson 1971), and Bennett cogently argues that just because post-industrial forces are at work, it cannot be presumed that there is an absence of independent state policy choice (1991). Before such issues can be explored, the patterns in policy use over time must first be examined.

## Methodology

### *The Database*

Most of this assessment of local economic development policies is based on a survey mailed in the spring of 2001 to all 2,904 municipalities in the U.S. with populations over 10,000 and all 450 communities of the same population size in Canada. A similar survey was conducted in 1994, the findings of which serve as the basis for a portion of the longitudinal comparison. Because the 1994 survey was sent only to cities in the 15 states bordering Canada, only data from the same set of “border” cities is employed in the analysis.<sup>1</sup> The International City/County Management Association (ICMA) provided the mailing list for U.S. cities, and the Federation of Canadian Municipalities provided the list of Canadian cities. In both cases surveys were sent to the chief executive officer in each community with a request that it be completed by the official most familiar with economic development. For the 2001 survey, 752 U.S. municipalities (a response rate of 26 percent) and 104 Canadian municipalities (a response rate of 23 percent) responded (after several follow-up calls and mailings).<sup>2</sup> In 1994, surveys were sent to 305 Canadian and 682 U.S. cities and the response rate was 35 percent for Canadian and 52 percent for U.S. cities, again well within normal response rates for mailed surveys.<sup>3</sup>

While the primary comparisons are from the 1994 and 2001 surveys, a survey conducted only in Ontario and Michigan in 1990 allows for a longer time analysis

at least for cities in that province or state. In this early wave, questionnaires were sent to economic development directors in all municipalities in the Province of Ontario with designations as “cities”; this classification includes most municipal units with populations over 15,000 (N = 49). Economic development officials were sent surveys in all cities in the State of Michigan with populations over 10,000 (N = 89). After two mailings, response rates for economic development officials were quite high for Ontario (86 percent), while considerably lower for Michigan (61 percent).

## Findings

### *Recent Trends in Economic Development Policies: 1994-2001*

Respondents were asked about their community’s utilization of 34 different economic development policies in the 2001 survey (26 in the 1994 survey). Table 1 summarizes those results. The individual policies are organized into five categories: governmental regulation, public infrastructure investments, business assistance activities, land and property management, and marketing activities. Responses indicate the intensity of use of each policy on a five-point scale.

*Most Common Development Activities 2001:* When the most common development strategies are considered, cities in the two countries are strikingly similar; both emphasize infrastructure, services, downtown streetscapes, site promotion, streamlined development processes, marketing and promotion, and special events. Overall, the most widely used economic development activities focus on investment in infrastructure, services, and appearance of the community and build upon the most traditional local government responsibilities. The only areas of difference between cities in the U.S. and Canada in these high use policies is the greater emphasis in the former on tax policies, site development, and development zones, and in the latter on visits to development prospects and investment in culture and arts. Some of these contrasts are related to different enabling legislation, with many provinces prohibiting tax incentives and, at least in the past, encouraging land development by localities. Others may well reflect different local policy preferences, such as greater investment in culture and arts by Canadian local officials.

*Significant Differences in Policy Use 2001:* Although the overall policy emphasis of cities in the two countries is similar, there are a number of significant differences in

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**Table 1. Economic development policies, 1994 and 2001**

	U.S.		Canada	
	1994	2001	1994	2001
<b>GOVERNMENT REGULATIONS</b>				
Streamlined permitting processes	3.08	3.18	2.82	3.16
Ombudsperson a b c	2.66	2.42	2.02	1.80
Impact fees a d	2.29	2.34	2.96	2.30
Employment requirements b	2.14	2.09	2.17	2.53
Performance guarantees d	2.41	2.22	2.41	1.96
Linkage programs a	2.10	2.00	2.47	2.15
Require training b		1.97		2.65
Growth management zoning		2.31		2.36
Special development zones (enterprise etc.) b		2.78		2.13
<b>INFRASTRUCTURE INVESTMENT</b>				
Improve/expand public services c	3.35	3.67	3.45	3.56
Improve/expand infrastructure c d	3.47	4.05	3.49	3.87
Invest in arts/cultural facilities b		2.58		3.03
Downtown streetscape		3.50		3.55
<b>BUSINESS ASSISTANCE ACTIVITIES</b>				
Tax policies a b c d	2.81	3.12	1.64	2.40
Special tax districts a b d	3.03	2.96	1.17	1.52
Loans a b d	2.59	2.50	1.26	1.95
Underwrite training d	1.74	1.83	1.65	2.03
Subsidize R&D b d	1.56	1.43	1.43	1.99
Incubators b c	2.13	1.85	2.05	2.23
Sale-lease back	1.62	1.60	1.54	1.75
Technical assistance b		2.06		2.77
Utility subsidy b		1.59		1.84
<b>LAND &amp; PROPERTY MANAGEMENT</b>				
Site development	2.89	2.88	2.63	2.92
Business relocation c	2.21	2.45	2.25	2.28
Property management	1.86	1.75	2.12	1.96
Rehabilitation of buildings a d	2.36	2.45	1.84	2.25
Industrial parks a b	2.31	2.07	3.11	3.37
Reuse of military bases		1.16		1.27
<b>MARKETING ACTIVITIES</b>				
Site inventory/promotion a	3.48	3.47	3.57	3.70
General promotional activities a b c d	3.70	3.21	4.10	3.63
Solicit foreign business a b c	2.14	1.83	3.20	2.91
Visits to prospects a b	2.77	2.49	3.34	3.07
Develop export markets a b	1.82	1.57	2.75	2.61
Special events a c	2.74	3.18	3.49	3.25

Significant at .05 level  
a = U.S.—Canada 1994  
b = U.S.—Canada 2001

c = U.S., 1994—2001  
d = Canada, 1994—2001  
(drawn from Reese and Rosenfeld 2004)

the use of individual economic development techniques and a distinctive pattern to the differences. First, U.S. cities are significantly more likely to use five policies that emphasize reducing the costs of doing business for individual firms or reducing the burden of government interference, and rely heavily on financial incentives or inducements. Cities in Canada place significantly greater emphasis on development strategies that require an active role for government in increasing expectations of, and in providing support for, business, whether through regulatory requirements, technical assistance, incubators, industrial parks, or promotional activities, balanced with an active agenda of support for local culture.

*Institutionalization of Policies:* Cities in the U.S. have been remarkably stable in the use of economic development policies over the past decade. Indeed, there have been no significant changes in 17 of the 26 policies that were included in both surveys. Overall then, it appears that rather than doing “more of the same,” as was the pattern from the 1980s to the 1990s (Reese and Fasenfest 1996), U.S. cities are stressing a stable set of economic development policies; a relatively traditional set of policies is becoming institutionalized and provides a common framework for the practice of economic development. A similar institutionalization of economic development policy appears to have occurred among Canadian cities, although not to as great an extent; there has been no significant change in the use of 16 of the 26 policies. Slightly more policies (seven) have seen increased use: infrastructure investment, tax policies, special tax districts, underwriting of training, loans, research and development subsidies, and rehabilitation of buildings. Thus, there is a somewhat greater tendency for Canadian cities to expand their repertoire of economic development activities, in several cases increasing the use of traditional location incentives commonly employed in the U.S.

*Policy Convergence:* For 18 of the specific economic development policy tools the utilization patterns have remained relatively stable over the period. For only five policies does there appear to be some convergence between cities in the U.S. and Canada; that is use of the policy was significantly different between the two nations in 1994 but not by 2001. Canadian cities moved toward those in the U.S. in their use of building rehabilitation, site promotion, and linkage fees, while U.S. cities have become more like their Canadian counterparts in special events to promote economic development. For the three policies where cities were similar in 1994 but diverged by 2001, the divergence took place on both sides of the border. Canadian cities increased their use of employ-

ment requirements and research and development, while U.S. cities decreased their use of business incubators sufficiently to create significant differences by 2001. Overall, however, it cannot be concluded that cities in either country were moving significantly toward or away from each other. Instead, they appear to be focusing on a consistent package of economic development strategies that are strikingly similar, albeit with some tendency for Canadian cities to increase the use of some widely employed “U.S.” financial policies such as tax abatements, special tax districts, and loans.

### **Long Term Trends: 1990–2001**

Table 2 contains data on development policy use in 1990, 1994, and 2001 for cities in Ontario and Michigan. Several caveats are in order at the outset of this discussion. First, the number of responding cities is quite small in some cases, particularly for Ontario cities in 2001. Because of this, these data are used to provide only a sense of trends in policy use; no statistical significance tests are employed. Second, the percentages in the table represent those cities using a particular policy at all over the preceding five year period. The data from the 1990 survey do not allow for the calculation of mean values; therefore, the 1994 and 2001 data were converted to this essentially nominal measure. Although this is less than ideal, the data still portray an accurate sense of change in relative policy use over time.

Another caveat is that the surveys represent a trend, not a panel analysis. In other words, the three waves of surveys were sent to the same population of cities (all those over 10,000 in Ontario and Michigan) but responses are coming from different individual cities in some cases. A final caveat is that not all of the policies were included in each wave of the survey; there was some updating of policies over time. Therefore, only the 24 policies included on all three surveys are examined here.

Overall, several trends are evident. First, more cities in Ontario are using more different economic development policies over time almost across the board. (In a couple of cases policy use increased between the first two periods and then remained stable.) When the 10 most commonly used policies are identified in each period, it is also clear that the development mechanisms most likely to be used have remained almost completely stable. The most favored policies include the following: promotion and visits to firms, infrastructure investment—streets, water, sewer, sanitation, and parking—enhanced services, special events, industrial parks, foreign business attraction,

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**Table 2. Policies in Ontario and Michigan cities**

	Ontario			Michigan		
POLICIES	1990	1994	2001	1990	1994	2001
Government Regulations						
Ombudsperson	21	51	69	30	70	65
Eased zoning process	36	96	94	35	93	78
<b>Infrastructure Investment</b>						
Parking	67	86	100	65	86	95
Streets	76	98	100	61	96	92
Sanitation	38	86	100	37	75	95
Services	88	98	100	61	93	89
Water/sewage	61	93	100	39	79	95
<b>Financial/Business Assistance</b>						
Tax abatement	00	07	44	83	75	86
Enterprise zones	00	12	53	07	14	92
Training	29	63	80	11	44	57
Direct loans	02	15	56	28	46	54
Incubators	26	52	50	19	47	41
Sale-lease back	10	24	56	11	33	38
<b>Land Development</b>						
Business relocation	19	60	73	19	68	70
Site development	17	60	81	54	67	78
Industrial property mgt	24	40	44	15	29	46
Rehabilitation	05	49	63	39	64	86
Industrial parks	86	64	88	39	43	42
Site inventory	93	95	94	83	89	89
<b>Marketing</b>						
Promotional literature	100	95	100	70	90	86
Foreign business	93	86	100	26	39	41
Visits	95	86	100	52	64	70
Export markets	57	74	92	15	25	38
Special events	60	96	100	24	12	81
N	42	45	16	54	28	37

and inventories of development sites. Thus, the overall pattern among cities in Ontario is to do more of the same over time, a trend identified in previous research (Reese and Fasenfest 1996; Reese and Rosenfeld 2004).

This pattern is not as clear in Michigan cities, however. An across the board increase in cities using individual policies is not evident, for example, occurring for only 11 of the 25 policies. For the rest of the policies, use has either remained stable or fluctuated over time. However, the 10 incentives most commonly used among Michigan cities remained the same, although there was some shifting in which ones were most commonly employed: tax abatements, promotion, infrastructure (including streets, parking, water and sewer), and enhanced services. Several policies moved in and out of the top ten: site development, visits to prospective firms, and industrial parks became less common over time whereas using special events to promote the community became more so.

Change in policy use by category from 1990 to 2001 is illustrated in figure 1. From this perspective it is clear that cities in both nations exhibit a tendency to use more policies within each category over time, despite the more mixed pattern in Michigan for individual policies. Furthermore, for most of the policy categories the relative positions of cities in the two countries has remained similar over time.

Figures 2-5 illustrate convergence and divergence in the use of individual policies over the decade. For the business assistance policies of sale or lease back agreements and enterprise zones, Canadian and U.S. cities are clearly diverging. However the patterns for the other business assistance policies tend toward stability or convergence, the latter most visible for the traditional financial incentives of direct loans and tax abatements where Canadian cities are becoming more like those in the U.S. For regulatory and marketing policies divergence tends to be the overall trend as Canadian cities increased the use of many policies; foreign business attraction, visits to firms, promotional literature, and eased zoning processes. Indeed for all of these, cities in Ontario and Michigan appeared to converge in 1994 but have since moved apart. The picture for infrastructure investment is more mixed with use of sanitation and water and sewage investment clearly converging over time. However, investments in parking, streets, and public services have diverged, again converging between 1990 and 1994. Finally, the overall pattern for land development policies is one of convergence with divergence only visible for rehabilitation of old buildings and the creation of industrial parks. Overall,

the figures clearly show convergence on 10 policies, divergence on 11, with stability on three.

### ***Development Policy Clusters***

Cluster analysis was employed to empirically group cities responding to the 2001 survey based on their economic development policy profile. Cluster analysis is used to identify whether cities can be “grouped” or clustered based on particular variables of interest. Hierarchical cluster analysis is a mathematical procedure that begins with the same number of clusters or groupings of cases (cities here) as there are observations. It then groups similar cases until the final cluster contains all the cases. Groups are constructed by minimizing the variance of squared Euclidean distances for each variable between cities. The two most similar cases are joined first and the algorithm continues one step at a time until all the cities are joined.

There are two significant issues to consider in cluster analysis, one before and the other after analysis. First, meaningful variables must be selected to serve as the basis for clusters. In this case, using 34 individual policies as the basis for the cluster analysis produced very unsatisfactory and complex results. In short, the multiple resulting clusters were difficult to interpret as far as policy profile. Instead, the 34 individual policies used in the 2001 survey were entered into a factor analysis, and seven general policy strategies were identified: progressive, land-based, infrastructure, tax, business assistance, marketing, and eased governmental regulations. The strategy factors and their constituent policies that provided the criteria variables for the cluster analysis are identified in the appendix (along with complete factor results).<sup>4</sup>

A second issue arises after analysis. Because there are many different cluster “solutions” from which to choose, selecting the most appropriate solution may be somewhat arbitrary. There are no neat guidelines or formal rules for picking the “best” cluster solution. Typically, the agglomeration schedule showing change in the agglomeration coefficient is used as a guide for identifying the optimal solution (Everitt 1993). For example, a relatively large “jump” in the coefficients suggests that two heterogeneous clusters are being combined and that the appropriate solution is the one just prior. However, while differences in coefficients are used as a guide, the resulting cluster solutions must also sufficiently differentiate among the cases. In other words, it is not desirable, for example, to have most of the cases in one cluster and only a handful in the rest. An additional challenge common to cluster

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Figure 1. Policy Use by Category

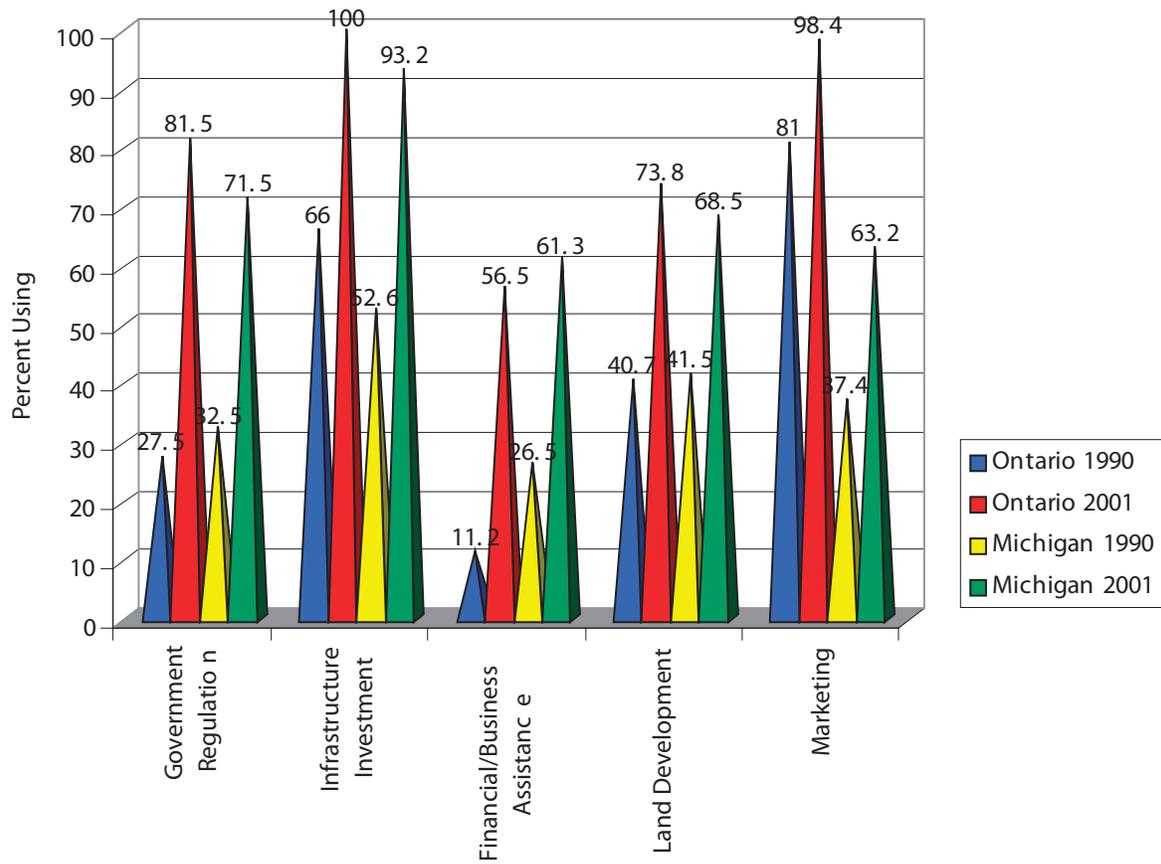


Figure 2. Differences in Utilization of Business Assistance Policies

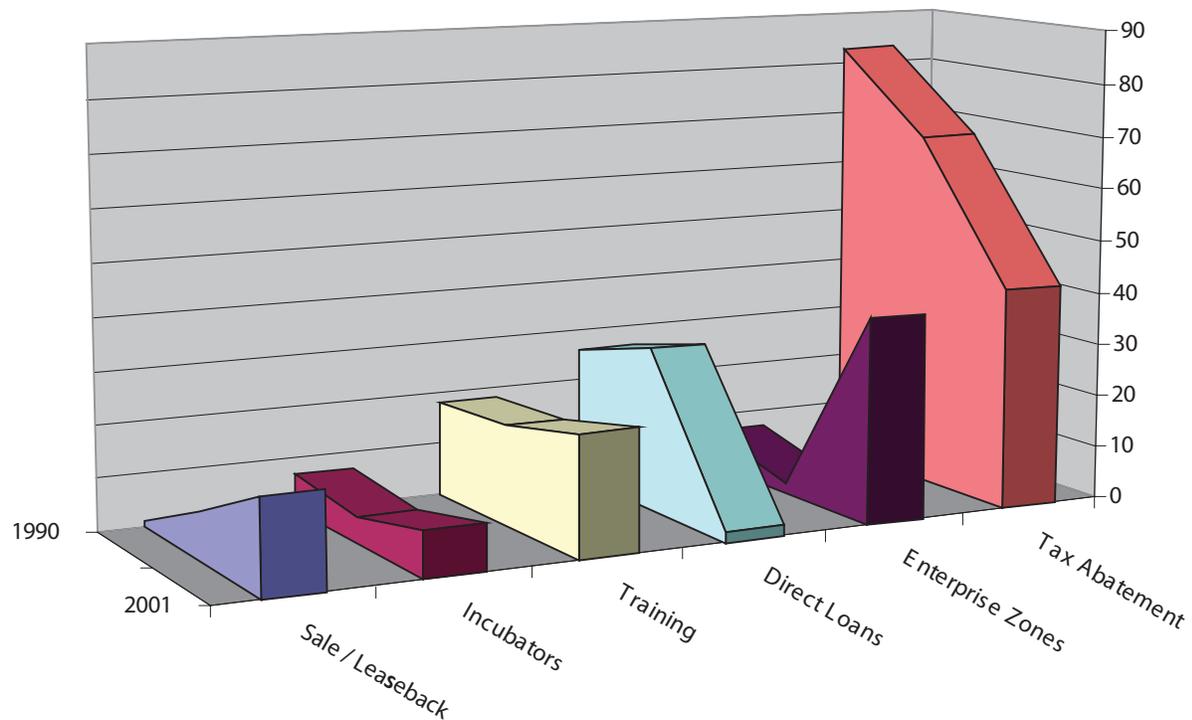


Figure 3. Differences in Utilization of Regulatory and Marketing Policies

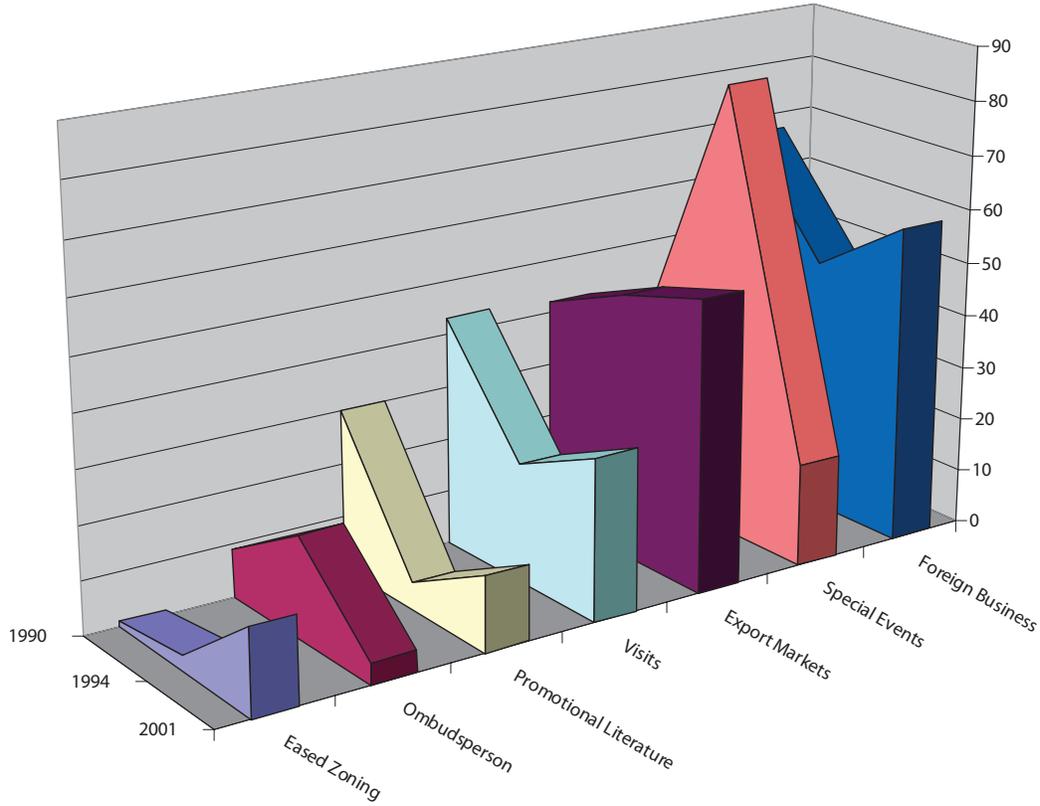
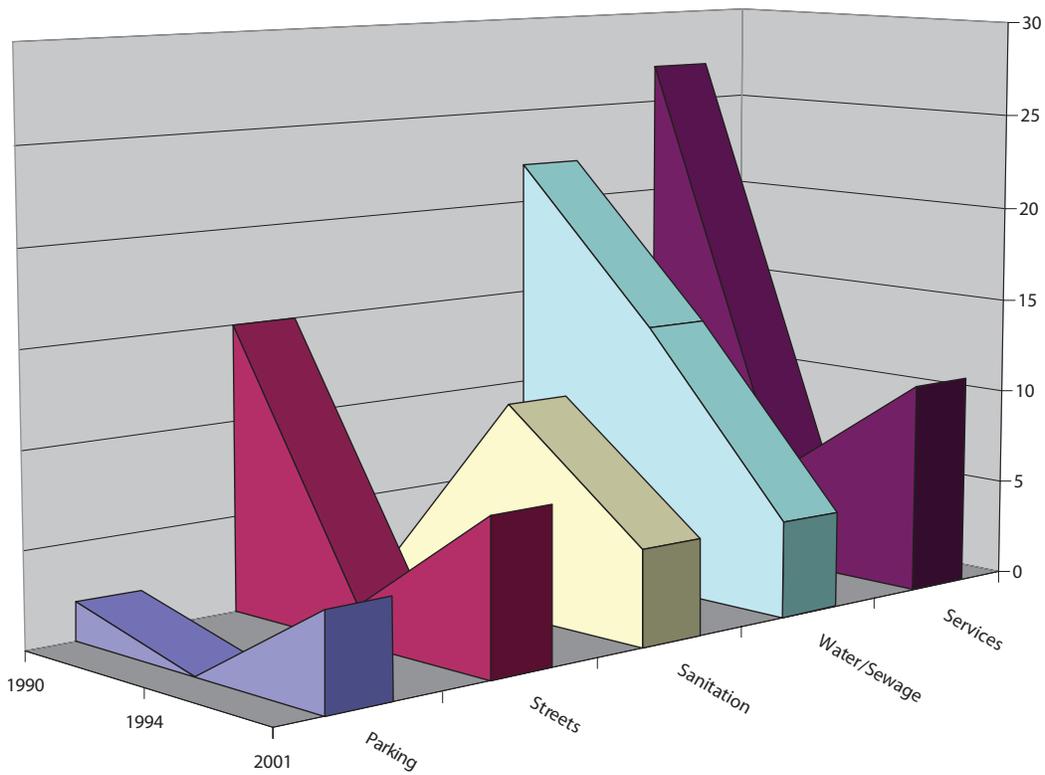
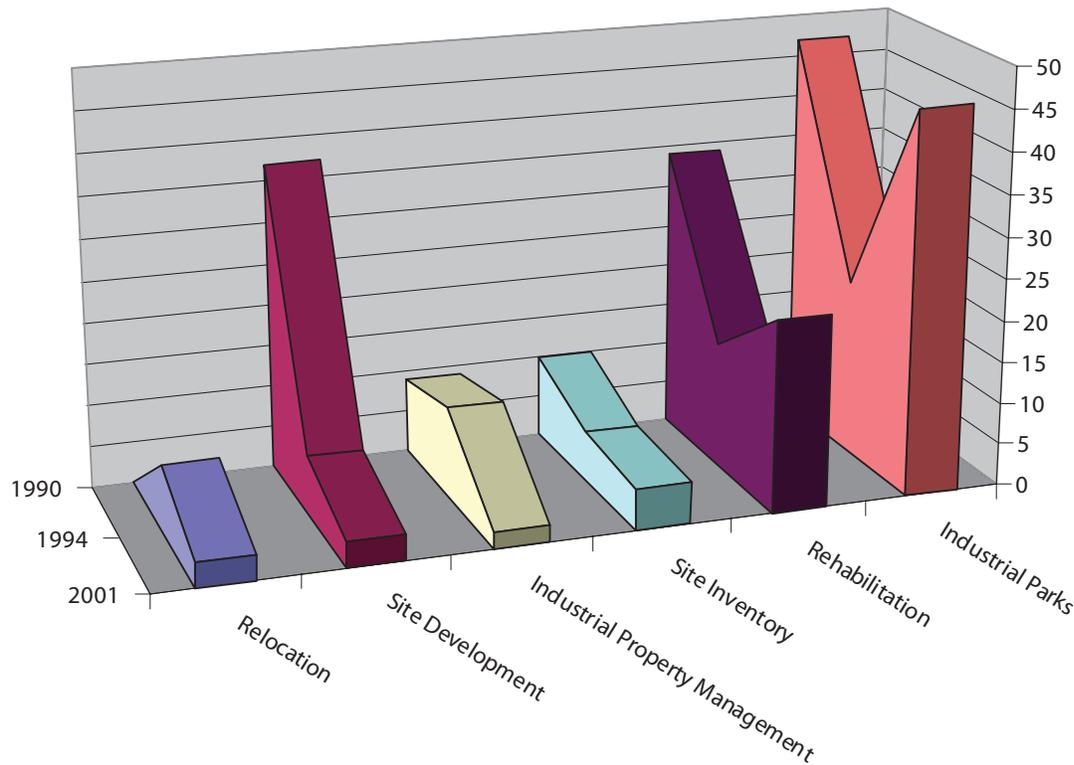


Figure 4. Differences in Utilization of Infrastructure Investment Policies



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Figure 5. Differences in Utilization of Land Development Policies



analysis is that it frequently results in “solutions” that leave a large number of cases grouped into a single cluster (Liske 1993). Indeed, that was the result of the first cluster analysis using all the cases and all the policy variables.<sup>5</sup>

Based on an examination of the magnitude of changes in the agglomeration coefficients, it was determined that the 13 cluster solution was most optimal. That means that there was a jump in the coefficients at this point (although this was the case at a number of other stages) and the resulting “solution” did a reasonably good job of differentiating among cases (see table 3).<sup>6</sup> Even that solution resulted in one cluster with 320 cities, however. The cities in this large cluster were then selected and an additional cluster analysis run to determine if they could be broken into sub-groups. The nine cluster solution was selected from this analysis as providing optimal distinctions among groups (see table 4).

Eleven clusters had at least a reasonable number of cases (the smallest with nine). These were then correlated with the indexes representing economic development strategies and each of the 34 development policies to explore the predominant traits of each cluster. Such a process allows each cluster to be associated or correlated with its most defining traits (Lieske 1993). Table 5

presents the correlation matrix between the clusters and their defining policy profiles, and the central characteristics of each policy cluster are discussed below.

*Balanced Strategies:* Albeit a small group (n=12), these cities exhibit the most balanced economic development strategy profile of all the clusters. They emphasize traditional strategies such as land development, infrastructure investment, marketing, and an eased regulatory environment. On the other hand they also make significant use of Type 2 policies which include linkage programs, local employment requirements, and worker training that ensure that firms receiving incentives contribute something to the community in return. The balance between policies that benefit firms and those that benefit the larger community is also seen in the individual policies that are correlated with membership in this cluster. These cities are high on industrial parks, infrastructure investment, promotion, and development site acquisition and promotion. Yet they are also high on investment in the arts and growth management and avoid special tax districts and incentives. In short, they are active in economic development but do not “give away the store,” thus balancing public and private benefit.

**Table 3. Partial agglomeration schedule policy clusters all cities**

Stage	Clusters in the Solution	Agglomeration Coefficient	Change in Coefficient
745	19	9.51	.20
746	18	9.73	.22
747	17	10.36	.63
748	16	10.46	.10
749	15	10.59	.13
750	14	10.70	.11
751	13	10.72	.02
752	12	10.98	.26
753	11	11.95	.97
754	10	12.14	.19
755	9	12.17	.03
756	8	12.78	.61
757	7	12.94	.16
758	6	14.87	1.93
759	5	15.39	.52
760	4	15.55	.16
761	3	17.00	1.45
762	2	19.31	2.31
763	1	50.09	30.78

**Table 4. Partial agglomeration schedule policy sub-clusters**

Stage	Clusters in the Solution	Agglomeration Coefficient	Change in Coefficient
171	19	202.14	2.64
172	18	203.93	1.79
173	17	207.14	3.21
174	16	207.85	.71
175	15	210.25	2.40
176	14	213.17	2.92
177	13	214.22	1.05
178	12	216.63	2.41
179	11	217.02	.39
180	10	222.46	5.44
181	9	225.62	3.16
182	8	226.92	1.3
183	7	233.07	6.15
184	6	236.81	3.47
185	5	241.70	4.89
186	4	242.78	1.08
187	3	250.04	7.26
188	2	256.01	5.97
189	1	262.57	6.56

Table 5. Correlation matrix – policy types

	Balanced	Traditional	Shooting	Entrepreneurial	Low cost	Local Investors	No policies	Tax reliant	Local Infrastructure	Marketing-based	Passive
Type II	.12**	.02	.54**	.09**	.07	.21**	-.20**	-.08	.11	-.08	-.07
Land-based	.24**	-.06	.56**	.14**	.00	.08	-.26**	.03	.20**	-.01	-.09
Infrastructure	.15**	.13**	.34**	-.06	-.11**	.46**	-.53**	-.04	.35**	-.24**	-.18**
Tax policy	-.05	.10**	.54**	-.01	-.02	-.22**	-.25**	.60**	-.04	.00	.18**
Buss assistance	.07	.01	.51**	.25**	-.03	.12*	-.21**	-.02	.15**	.02	-.09
Marketing	.18**	.06	.39**	.21**	.15**	.17**	-.45**	-.11*	.20**	.43**	-.03
Govt regs	.09*	.08*	.16**	-.11**	.13**	-.13*	-.35**	-.32**	.68**	-.13*	.31**
Arts	.12**	.10**	.23**	.03	-.08*	.21**	-.27**	-.09	.24**	-.07	-.05
Tax districts	-.07*	.09*	.37**	-.05	-.01	-.15**	-.12*	.42**	.00	-.10	.05
Export markets	.16**	-.02	.30**	.25**	.13**	-.01	-.11	-.02	.07	.20**	-.07
Special events	.13**	.11**	.16**	.01	-.07*	.21**	-.29**	.00	.21**	-.13*	-.09
Impact fees	.04	.03	.13**	-.08*	.09*	.02	-.11*	-.02	.23**	-.15**	-.07
Foreign busin	.18**	-.01	.28**	.22**	.14**	.07	-.17*	-.07	.00	.44**	-.07
Growth mgt	.09*	.07*	.11**	-.02	.05	.17**	-.11	-.13*	.07	-.13*	.01
Incubators	.07	.01	.30**	.19**	.01	.07	-.09	.01	.03	.08	-.08
Infrastructure	.11**	.11**	.26**	-.08*	-.07*	.28**	-.43**	-.01	.28**	-.14**	-.21**
Industrial pk	.14**	-.04	.31**	.19**	.05	.21**	-.16**	-.01	-.02	.04	-.05
Linkage prog	.09*	.01	.42**	.05	-.01	.17**	-.18**	-.03	.11*	-.10	-.04
Loans	.01	.08*	.40**	.12**	-.05	.08	-.19**	.08	.14*	-.03	-.10
Base reuse	.10**	-.02	.10**	.10**	-.02	-.05	.05	-.05	.05	-.04	.00
Ombudsperson	.07*	.05	.12**	-.10**	.11**	-.17**	-.34**	-.22**	.63**	-.13*	.32**
One-stop	.07*	.09*	.15**	-.08*	.11**	-.06	-.27**	-.33**	.56**	-.01	.23**
Prop mgt	.27**	-.08*	.40**	.11**	-.03	.08	-.16**	-.06	.17**	-.07	-.09
Promotion	.13**	.08*	.32**	.09**	.10**	.17**	-.44**	-.07	.23**	.30**	-.05
R&D	.03	-.01	.28**	.26**	-.02	.11	-.01	-.03	-.03	-.03	-.07
Rehab	.14**	-.02	.42**	.04	-.05	.06	-.17**	.05	.17**	-.04	-.09
Relocate	.18**	-.07	.50**	.08*	.03	.00	-.20**	.04	.16**	-.03	-.02
Services	.11**	.08*	.29**	-.09**	-.06	.32**	-.35**	-.01	.28**	-.24**	-.20**

Table 5. Correlation matrix – policy types (cont.)

	Balanced	Traditional	Shooting	Entrepreneurial	Low cost	Local Investors	No policies	Tax reliant	Local Infrastructure	Marketing-based	Passive
Site assembly	.14**	-.02	.40**	.10**	.01	-.01	-.14*	.03	.12**	.04	-.04
Site inventory	.12**	.11**	.31**	.10**	.10**	.13*	-.43**	-.11	.26**	.24**	.03
Sale-lease back	.07*	.01	.28**	.17**	-.04	.04	-.09	-.03	.12**	-.05	-.02
Develp. Zones	-.04	.08*	.47**	.00	.01	-.14	-.24**	.42**	.00	-.02	.16**
Perf. guaran.	.01	.03	.36**	.00	.06	.08	-.08	-.05	.06	-.09	-.02
Streetscape	.11**	.09*	.21**	-.02	-.11**	.37**	-.38**	-.03	.16**	-.19**	.03
Employ req	.13**	.00	.44**	.11**	.09**	.15**	-.18**	-.05	.10	-.04	-.04
Tax policies	-.01	.08*	.40**	.03	-.04	-.16**	-.16**	.39**	-.07	.10	.16**
Tech assist	.08*	.02	.38**	.20**	.01	.04	-.11	-.05	.11	.01	.05
Utility subsidy	.01	-.04	.32**	.08*	-.03	.10	-.07	-.06	.07	-.06	-.03
Training	.04	-.04	.40**	.14**	-.01	.02	-.12*	.01	.06	.09	-.08
Visitation	.15**	.08*	.31**	.16**	.12**	.15**	-.29**	-.10	.04	.35**	.01
Require training	.12**	.02	.44**	.12**	.06	.18**	-.11	-.07	.02	.01	-.08
N	12	195	190	22	9	93	99	29	68	12	14

\* Significant at .05 level

\*\* Significant at the .01 level

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*Traditional:* The 195 cities in this cluster focus on the strategies of infrastructure investment, tax incentives, and eased governmental regulations. In short, a very conservative and traditional approach to economic development is clearly more prevalent among cities here than the balanced approach above. These cities are high on policies that tend to benefit businesses: special tax districts and development zones, infrastructure investment, one-stop permitting and tax abatements. There is, however, also some effort to direct development policies so that there is some enhanced investment in the local community. Downtown development, investment in the arts, special events, and even growth management are used to a high extent in these cities. In short, while the overall strategy approach is very traditional, these cities also invest locally without requiring that businesses do so.

*Shooters:* The 190 cities in this cluster represent the old adage about economic development coined by Rubin; “shoot anything that flies, claim anything that falls” (Rubin 1988:236). In short, cities in this cluster are significantly higher than those in other clusters on all economic development strategies and on each of the 34 policies.

*Entrepreneurial:* The 22 cities in this cluster emphasize an entrepreneurial or business development approach to economic development. They tend to embrace strategies and policies that build investment up from inside as opposed to more traditional attraction strategies. They are higher on the strategies of land development, business assistance, marketing, and Type 2, but lower on eased regulations. The entrepreneurial focus is seen in positive correlations with a number of individual policies including development of export markets, business incubators, a variety of business development loans, research and development subsidies, technical assistance, and training. Thus, while they are not willing to waive or lower restrictions on development, they make affirmative efforts to assist new firms and businesses. Traditional attraction incentives, such as tax abatements and development zones, are not used heavily in these cities.

*Low Cost Approach:* The nine cities in this cluster are not particularly active in economic development but pursue strategies and policies with limited up-front costs for the municipality. Overall, their strategy focus is on marketing and eased governmental regulations. They are generally low in infrastructure investment. There are relatively few individual policies significantly correlated with membership in this cluster. These cities emphasize export market development, impact fees, ombudsperson and one-stops, site inventories, visits to firms, and hiring

targets—none of which burden the city with significant development costs.

*Local Investors:* There are 93 cities in this cluster that focus their development effort on strategies of infrastructure investment, business assistance, marketing, and Type 2 but avoid eased regulations and tax policies. These cities differ from the more balanced strategy group in their avoidance of tax incentives and emphasis on business development. In other words, they are more internally focused in their development efforts, using policies that almost exclusively invest in the local community—investment in the arts, local services, the downtown, special events, infrastructure, and worker training.

*No policies:* There are 99 cities that show no evidence of economic development strategies or policies; in short, they are significantly lower on every activity than are cities in any of the other clusters.

*Tax Reliant:* Twenty-nine cities are in a cluster where the most significant trait of economic development strategy and policy is a reliance on tax incentives and policies. These cities are higher in tax strategies and are significantly lower on marketing and eased regulatory strategies. The only development policies on which they are significantly higher than cities in other clusters are special tax districts and development zones and tax abatements.

*Local Infrastructure:* The 68 cities in this cluster are similar to those in the local investor group but avoid Type 2 policies, are more likely to use land development strategies, and are willing to ease local regulations to facilitate investment. Thus, they take a more active approach to development that focuses on a wider array of infrastructure investments, such as investment in the arts and special events, rehabilitation of older buildings, site development and assembly, the sale and lease of development and business sites, business relocation, enhanced local services, and downtown development.

*Marketing-based:* The 12 cities in this cluster take an essentially passive or marketing-based approach to development. They pursue marketing activities particularly directed to foreign firms, try to develop export markets, create promotional materials, visit prospective new firms, and provide inventories of available sites, but otherwise do little in the way of economic development. They focus on making businesses aware of their attributes but do not provide other incentives. They are particularly low on infrastructure investment and eased regulations.

*Passive:* The 14 cities in this cluster embrace tax strategies and eased governmental restrictions, thus facilitating development, but do little else actively to recruit or de-

velop new investment. They are low on infrastructure investment and service expenditures to enhance the city but offer tax abatement and use special development zones.

### ***The Correlates of Development Clusters***

While the trends in U.S. and Canadian local development policies described earlier in the paper are interesting in a descriptive sense, the analysis raises the question of to what extent “country” really matters in determining policy profiles. Is there really a distinctive U.S. or Canadian local approach to development? One way to answer this question is by looking at correlates of the policy clusters just described to determine if any of the clusters are predominately composed of cities from a single country. Or are the clusters better defined by other municipal attributes such as size, fiscal health, and form of government, for example? To address these questions correlation analysis was run using the policy clusters and other explanatory variables including country; results are presented in table 6.

Obviously the results are far from conclusive: some of the clusters have a reasonably large body of descriptive traits, whereas others appear to have no consistent patterns. Two of the policy clusters appear to be uniquely Canadian: the balanced policy cluster and the entrepreneurial strategy cluster. That makes sense because, as indicated in the trend data, many of the individual policies in these clusters have been used more heavily by Canadian cities over time. Cities in the balanced policy cluster have larger populations, have been growing economically over the past five years, and are more likely to be located in Canada. Entrepreneurial cities are also more Canadian, with the only other significant correlations being with larger economic development staffs. The relationship between policy cluster and country is isolated in table 7 which clearly illustrates the patterns just noted. Although there are fewer Canadian cities in almost all of the clusters because of their representation in the data set, more Canadian cities are included in the entrepreneurial cluster making this a uniquely Canadian type of policy profile.

Four clusters appear to be more heavily composed of U.S. cities: the shooters, cities with no development policies, the tax reliant cities, and those in the local infrastructure investment cluster. Besides being located in the U.S., cities in the shooter cluster are significantly more likely to have strong mayors, larger economic development staffs, and bigger budgets devoted to economic development. In short, cities attempting all development

policies may be more politicized and appear to have the necessary budget and staff to pursue an active economic development agenda. On the other hand, the most passive cities are also more likely to be in the U.S. Additionally these cities include those with at-large, yet partisan, elections, smaller development staffs, higher property values, yet lower economic growth. The cities in the local infrastructure cluster are more likely to have at-large elections and city managers and are hence those in the U.S. with more reformed local government structures. Finally, the tax reliant cities are significantly more likely to be in the U.S.; no other variable is correlated beyond country. That is likely the case because Provinces are more likely to restrict tax incentives or “bonuses” than States.

The cities within each cluster were identified by location to see if any regional, as opposed to national, patterns might be present in the data portraying economic development approaches. Most of the clusters show no evidence of discernable regional patterns, whether cross-border or within nation. The only exceptions to this trend is a slight tendency for the cities in the entrepreneurial cluster to be located in Canada generally and in Québec in particular, for the nine cities in the low cost cluster to be in the southern and western U.S., for the no policy cities to be in the midwest and eastern U.S., and for the local infrastructure investors to be in the southern and western U.S.

### **Conclusions and Future Research**

A number of conclusions can be drawn from this analysis of trends in local economic development policy in the two countries. Canadian and U.S. cities have followed distinct trajectories. For cities in Canada, the trend is for increased use of economic development policies almost across the board, leading to more diverse and active development strategies. In many cases the increased policy use has concomitantly implied a more active role for the local state in the economy. That trend is even more evident with respect to cities in Ontario, where a decade of increased policy use is quite visible.

Cities in the U.S. do not evidence this trend. Although policy use increased fairly indiscriminately from 1990 to 1994 (as seen in the Michigan cities), there has been some contraction in these trends from 1994 to 2001. Many policies have decreased in use, particularly among the more “experimental” or entrepreneurial business development techniques that were being promoted in the late 1980s (Eisinger 1988). Indeed, it appears almost that cities tried these approaches and then—either because of resources constraints or lack of immediate results—began to return

**Table 6. Correlates of policy types**

	Balanced	Traditional	Shooting	Entrepreneurial	Low Cost	Local Investors	No policies	Tax reliant	Local Infrastructure	Marketing-based	Passive
Country	.11**	-.02	-.10**	.32**	-.04	.06	-.06	-.07*	-.07*	.02	-.05
Population	.09**	-.03	.06	-.03	-.01	-.06	-.09*	-.01	-.03	-.02	.01
Ward council	-.01	.04	.05	.01	.02	-.03	-.07	.00	-.11**	.00	.02
Partisan	.00	-.06	-.04	.01	.02	.04	.07*	-.04	-.04	.00	.03
Mayor	-.01	-.03	.09**	.00	-.01	.04	-.02	-.02	-.08*	.00	-.02
Staff	.04	-.02	.11**	.30**	.00	-.08*	-.11**	-.04	-.05	-.02	-.03
Budget	-.01	.02	.08*	.02	-.02	-.01	-.07	.00	-.05	-.05	-.05
Prop value	.01	-.03	-.03	.00	.00	-.03	.12**	-.02	-.01	-.01	-.01
Econ growth	.09**	.01	.01	.00	.05	-.01	-.09**	-.01	.04	-.04	-.02
Location	-.06	.01	.04	.02	.04	.00	-.04	.02	-.04	.04	-.07

\* Significant at .05 level

\*\* Significant at the .01 level.

**Table 7. Canadian and U.S. policy clusters**

Policy Cluster	Number of Cities	
	Canada	U.S
Balanced*	5	7
Traditional	21	173
Shooting*	12	178
Entrepreneurial*	17	5
Low cost	0	9
Local investors	16	76
No policies	7	91
Tax reliant*	0	28
Local infrastructure*	3	64
Marketing-based	2	10
Passive	0	14

\* Chi square significant at the .05 level

to a more traditional package of infrastructure investment, land development, and service investment. One effect of this trend is that cities in the U.S. are more likely to be focusing on policies that invest in the locality while also benefiting businesses.

There is no clear trend that Canadian and U.S. cities are converging or diverging in their policy use over time. To the extent that Canadian policy use has increased more broadly, there is some tendency for Canadian cities to be experimenting with policies, such as tax incentives, loans, and other financial inducements more heavily used by U.S. cities in the past. Whether that is evidence of policy transmission or borrowing or is simply a function of increased use of development policies in general is not clear from this analysis. Overall, however, the most common economic development policies in both nations have been and continue to be very similar.

It does appear that cities can be classified based on their economic development strategies into identifiable development approaches; there appear to be 11 overall policy profiles. The most common overall strategies are a traditional approach which focuses on local investment, tax policies, and governmental regulations and an attempt to shoot anything that flies by using any and all economic development incentives in the hope that something might be effective. Other common strategies include a focus on local investment as opposed to business assistance and attraction. However, there is also a large group of cities in both countries that appear to be doing little in the way of economic development.

Whether a city is located in Canada or the U.S. matters with respect to general policy profile, so that whereas the

use of individual development policies is quite similar among cities in the two nations, there are some distinctive Canadian or U.S. strategy approaches. Canadian cities are more likely to have a balanced approach to development, ensuring that benefits accrue for both the private and public sectors. Cities in Canada are also more likely to be entrepreneurial in their overall approach to development. Cities in the U.S. are more likely to rely on tax incentives and local infrastructure investment approaches. And, despite the trend toward less indiscriminate use of policies over time across the U.S. generally and within the State of Michigan in particular, cities in the U.S. are more likely to “shoot anything that flies” than are their Canadian counterparts. Although other factors such as population and form of government also affect policy approach (more so than fiscal health, for example), country is still important. Moreover, with the exception of the cities in Québec that are more entrepreneurial and those in the southern and western U.S. that focus on local investment or lower cost approaches, there is little evidence of the presence of distinctive regional economic development approaches.

These findings suggest interesting questions for future research. First, there may be a number of other variables correlated with the policy clusters than have been explored in this analysis. For example, geo-coding of the database would allow for a more precise analysis of the possibility of regional trends within the development strategy clusters. That analysis is currently underway. Use of census data might identify other correlates of policy use besides population measures.

Second, it would be interesting to determine with more certainty whether Canadian cities are deliberately copying particularly policies more common in the U.S. (tax abatements and special tax districts for example) or whether the appearance of policy transmission is just a by-product of increasing economic development activity among Canadian cities generally. Case studies in cities identified as increasing the use of such financial incentives would likely be a productive way of answering this question. As an aside, some of the cities increasing the use of tax abatements are located in Ontario where such “bonusing” remains prohibited under provincial law. Are cities getting around provincial restrictions or are they counting as “local” provincially-granted abatements? That is also not clear from the surveys.

This role of provincial or state enabling legislation and policy has other potential impacts that should be addressed in future research. It also remains open to question whether the visible policy convergence is lo-

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cally-initiated, i.e. local officials are looking at their neighbors across the border and are consciously trying new policies. An alternative explanation would be that the provinces are playing a role in encouraging particular policies through the use of enabling legislation (perhaps limiting certain policies) or incentives that might encourage others.

Finally, the policy strategy cluster portrays policy types as of 2001. It would be interesting to explore policy approach clusters from the previous time periods as well as change over time. Such an analysis would allow an examination of change in overall strategy over time (as opposed to individual policies) and could explore whether cities move from cluster to cluster over time in some type of patterned fashion. Do cities change clusters over time? Do cities tend to add policies within a cluster strategy or is change among cluster more likely? These sorts of overarching strategy questions would be very interesting to explore since economic development policies do not exist and change as independent techniques but rather are part of an overall approach to development that also may be changing over time.

Intensive case studies in a small number of communities might also reveal additional information about the motivations and mechanics of changes in strategies and policies over time. For example, paired observations of similar cities in Ontario and Michigan would allow for an examination of cross-border policy transmission, the effects of inter-local competition, policy-making processes, and stimuli for policy change that would greatly enhance the understanding of the more general trends present in the large survey database. Additionally, case studies could focus on a true panel analysis, looking at change in the same Michigan and Ontario cities over the decade to assure that any patterns are the result of actual changes as opposed to random error introduced because different cities responded to the questionnaire in each wave. In short, whereas the findings here provide an interesting picture of trends in economic development policy and strategy and an initial categorization of cities based on policy use, much remains to be understood about policy processes and the extent to which policy transmission is occurring on a self-conscious level.

**Appendix**

<b>Economic Development Policies</b>	
<b>Index</b>	<b>Factor Loading</b>
<b>Type II</b>	
Targeted employment requirements	.84
Worker training requirements	.84
Performance guarantees	.69
Linkage programs	.76
<b>Infrastructure policy</b>	
Improve/expand public services	.81
Improve/expand infrastructure	.81
Invest in culture/arts	.66
Downtown streetscape	.64
<b>Land development</b>	
Site assembly and development	.79
Business relocation	.81
Property management	.78
Building rehabilitation	.75
Industrial parks	.54
<b>Tax policy</b>	
Tax policies	.81
Special tax districts	.69
Special development zones	.79
<b>Business assistance</b>	
Direct loans	.69
Underwrite training	.74
Subsidized R&D	.71
Technical assistance	.73
Utility rate subsidy	.59
Business incubators	.66
Sale-lease back	.60
<b>Marketing</b>	
Inventory and promotion of sites	.77
Promotional activities	.80
Solicit foreign business	.80
Visits to prospects	.84
Develop export markets	.74
<b>Governmental regulation</b>	
One-stop permits	.87
Ombudsperson for development	.87

Notes

- 1 Fifteen states, including those that border Canada through a body of water, were broadly defined as border states: Idaho, Illinois, Indiana, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Ohio, Pennsylvania, Vermont, Washington, and Wisconsin.
- 2 In emails and phone calls, a number of municipalities indicated that they did not actually have the requisite population of at least 10,000 in the 2001 survey. Therefore, it is likely that responding cities represent a somewhat larger portion of the total because some of the non-responders were self-selected on the basis of insufficient population. The population criteria were selected based on the assumption (supported by previous research) that very small communities either tend not to have particularly active economic development programs or rely on regional or county support for their efforts. Although response rates may seem somewhat low, they are comparable to other surveys focusing on local economic development officials, including those conducted by the International City/County Management Association, approximately 30 percent (ICMA 1989, 1999).
- 3 For the 1994 survey population, size of cities in the sample is quite representative of the population. Median population for the Canadian sample was 28,275, whereas the median population of U.S. cities was 19,478. Median population size for non-responding cities in Canada was 19,883 and for U.S. cities was 22,884. Greater detail on the characteristics of the 1994 sample can be found in Reese and Rosenfeld, 2001. The table below provides a more detailed population comparison of the responding cities and the universe of cities for each country for 2001. Based on the comparison, it is reasonable to assume that those cities responding are reflective of the universe even though the response rates were lower for this survey.
- 4 For the factor analysis, the standard SPSS default modes were employed including varimax rotation, listwise deletion of missing data, and principle components analysis. A.50 or higher loading was the criteria used for inclusion in a factor. No variable loaded on more than one factor. Factor scores were converted to f or standardized scores because of differences in measurement frame and added to create an index score.
- 5 Complete cluster analysis results using the 34 policies are available from the author upon request.
- 6 There are admittedly larger jumps in the coefficients at stages 11 and 12, but neither of these solutions did as good a job of discriminating among clusters; each resulted in fewer clusters with more cases bunched together.

City Size	U.S. (border only)		Canada	
	Universe	Sample	Universe	Sample
50,000 and under	86.2	79.5	69.0	64.9
50,001-100,000	9.6	12.5	15.6	10.4
100,001-250,000	3.3	5.3	8.6	14.3
250,001-500,000	.5	2.3	2.9	3.9
Over 500,000	.4	.4	3.9	6.5
TOTAL (%)	100.0	99.9	100.0	100.0
Mean	38,860	47,199	139,904	183,177
Median	19,515	23,546	27,183	33,438

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# *Assessing the Health of Core Areas of Mid-Sized Cities in Ontario and Michigan*

Gary Sands

Planners and public officials in both Canada and the United States place a high priority on restoring and maintaining the health of the core areas of their cities. Although economic and societal changes, especially in employment and retailing, over the last fifty years have significantly altered the functions of most downtown areas, the core area continues to have symbolic value as one of the most important places in the community. Indeed, many suburban communities are consciously attempting to create downtown developments to provide a sense of place and identity.

In large measure, the special characteristics of the core areas of North American cities are related to their physical form. The downtowns that emerged in North American urban areas during the last decades of the nineteenth century were relatively compact, even in the largest cities. Because of their predominantly pedestrian orientation, vertical rather than horizontal expansion was favored. Market forces, in particular high land values in the city center, contributed to the high-rise form of the downtown skyline. A substantial portion of the urban area's (middle and upper class) population came to the city center on a regular basis, making congestion a dominant feature (Fogelson 2001).

The dominance of downtown as *the* Central Business District in the metropolitan area has been relatively short lived. By mid twentieth century, changes in transportation and communication technologies, along with rising incomes, made lower density development the norm in most North American metropolitan areas (Filion, et al.

1999). The post-World War II suburban boom created new sources of competition for center city retail and office activities. Suburban shopping malls typically provide the lion's share of sales and employment in most metropolitan areas (Fogelson 2001). Suburban office stock now exceeds that of the downtown core in many North American metropolitan areas (Lang and LeFurgy 2004).

Nevertheless, civic leaders continue to regard the core as one of the most important parts of the urban area for a number of reasons (Whyte 1988). The city center represents a substantial historic investment in infrastructure, both public and private. In many communities, the core constitutes a large portion of the municipal property tax base. It is the focus of the transportation system and network and may have retained a distinct historic character. It continues to be a major employment center in some urban areas. As a result, city center revitalization is a high priority in many urban areas (Ontario Ministry of Municipal Affairs and Housing 2002; Salvasen 1999; McMahon and Cohill 2003).

Core area revitalization strategies have evolved over the past half century (Filion, et al. 2004; Abbot 1993; Robertson 1999). By the 1960s, the dominant paradigm for downtown planning had shifted from one of development regulation and reduction of congestion to efforts to ensure that downtown remained competitive with suburban business centers (Gruen 1965). Many communities sought to introduce the advantages of plentiful parking and climate controlled retail environments in the city center. This emphasis on replicating suburban models of development in

core areas met with limited success, however, particularly in mid-sized urban areas (Wells 2000; Burayidi 2001; Teaford 1990). Core areas offering the same retail opportunities as suburban malls, but without free parking, were unable to attract suburban residents downtown to shop.

By the 1980s, local government and private interests sought to revitalize city centers by pursuing new functions and activities. Development of convention centers and sports venues was a common approach to downtown revival (Turner and Rosentraub 2002). Residential development was encouraged in many areas in an effort to extend the level of activity in downtown beyond the Monday to Friday work week (Suchman 2002; Knack 1998). Other communities sought to promote their downtown as the leading entertainment center in the metropolitan area (Hannigan 1998; Beyard, et al. 2001). The success of these strategies has been, at best, mixed (Robertson 1999).

Current efforts at downtown revitalization continue to give high priority to increasing the number of residents in the core and to marketing of downtown as an entertainment center for the metropolitan area (Haque 2001; Keating and Krumholz 1991). There has also been increased emphasis on design considerations, including the use of street furniture and other amenities to imbue the core area with a distinct sense of place and to preserve and adaptively reuse historic properties (Paumier 2004). Business associations or quasi-public authorities are often seen as an essential ingredient of success (Alexander 1986). An increasingly important strategy in some communities is the use of financial incentives to attract private investment (Ontario Ministry of Municipal Affairs and Housing 2000).

Efforts to offset the decline of city centers are particularly difficult in small and medium sized urban areas, those with populations between 100,000 and 250,000 (Haque 2001; Wells 2000; Palma 2000; Filion, et al. 2004). Urban areas in this size range typically have a downtown business district that lacks the more fully developed public transit systems that often exist in larger communities (Filion and Hoernig 2003). The office employment base of core areas in this size range has also historically been relatively limited. The potential for specialty retailing may be limited by the relatively small population base in these market areas.

A recent survey of planners and other urban professionals confirmed that the cores of most mid-sized urban areas were not highly regarded (Filion, et al. 2004). In addition to identifying successful core areas, the survey also asked respondents to identify those features of the city center that contributed to an area's image of success.

The most important of these attributes were a pedestrian friendly environment, with people on the streets, active, street oriented retail, cultural events, and employment. Green spaces, civic events, tourist activities, historic character, strong neighborhoods and architectural quality were also considered to be important. In addition, the successful city centers were often found in provincial capital cities, incorporated waterfront developments and benefited from the location of a large university close to the core.

It is evident that not all of these attributes of successful core areas fall within the purview of public policies and revitalization efforts. The following sections of the paper consider the role that policy plays in revitalization in four case study communities. These communities have been selected to represent a range of viability, as well as differences in strategies. The next section provides an overview of the communities, while the following section describes current conditions and strategies in these core areas. The concluding section assesses revitalization strategies and makes recommendations about those that might be successful in a number of different locations.

### Community Profiles

The four urban areas included in this study represent both successful and unsuccessful core areas in Canada and the United States. The two struggling core areas were identified in the previously noted survey (Filion, et al. 2004). Both Brantford and Saginaw were ranked near the bottom in this survey. The two successful mid sized urban area cores, Ann Arbor and Oakville, were excluded from the original survey because they are part of larger consolidated metropolitan areas. Nevertheless, respondents volunteered them as examples of successful city centers and, since they are located in close proximity to the struggling cores and are subject to the same state or provincial regulations and statutes, they seem to provide a reasonable basis of comparison.

Table 1 summarizes some of the demographic and economic characteristics of these four cities. Substantial differences are evident between the successful and struggling communities, as well as between the Canadian and American cities.

Both cities with successful core areas, Ann Arbor and Oakville, are prosperous, with relatively high incomes and housing costs and with low unemployment. The population in Oakville is growing much more rapidly

Table 1. Selected characteristics, 2000/1<sup>1</sup>

	Ann Arbor	Oakville	Brantford	Saginaw
Population	114,024	144,738	86,417	61,799
Change in 1990s	+3.9%	+20.8%	+4.2%	-11.1%
Households	45,693	49,260	33,850	23,182
% 65 +	7.4%	10.9%	10.3%	11.2%
Median HH Income	\$46,300	\$84,000	\$43,900	\$26,500
Unemployment Rate	4.0%	4.5%	6.8%	12.7%
Public Transit Commuters	6.6%	13.3%	3.2%	2.5%
Percent Homeowners	45%	81%	67%	56%
Median Home Value	\$178,500	\$306,200	\$136,500	\$47,000
Median Rent	\$696	\$1,019	\$620	\$347

Source: Statistics Canada, U.S. Census.

than that of Ann Arbor. The substantial university population in Ann Arbor accounts for the relatively low average household size, a low proportion of elderly residents, and a higher proportion of renter households than in Oakville. Although Ann Arbor has some of the highest rents and housing values of any central city in Michigan, the figures are well below those of Oakville. The high proportion of Oakville public transit commuters largely reflects intercity commuting, primarily to Toronto.<sup>2</sup>

Brantford and Saginaw generally compare unfavorably with the other two cities on most economic indicators. Unemployment rates are higher in these communities, whereas household incomes, home values and rents are lower. Few residents in either Brantford or Saginaw commute to work by public transit, whereas the cities with successful cores have substantially higher proportions of transit commuters. Although Brantford actually compares relatively well to Ann Arbor on some of the indicators, it is clearly at a disadvantage compared to Oakville. Saginaw is the only one of the four municipalities that actually lost population during the 1990s.

### The Healthy Cores

Ann Arbor’s central business district, as defined by the Downtown Development Authority, covers all or part of 67 blocks, a total of about 271 acres. The District abuts the central campus of the University of Michigan. There are four subareas within the DDA: Kerrytown, Main Street, South University, and State Street. Each of these areas has a distinct “personality” and serves a distinct niche market. Although recent developments in the core area have been mid- to high-rise structures, downtown Ann Arbor retains

a number of older and historic buildings that contribute to a human-scale, pedestrian friendly environment.

As recently as the early 1980s, the central business district had two department stores, as well as numerous smaller shops. Both city and county offices, including courts, are located in the downtown area. Numerous professional offices and the headquarters of financial institutions are also located in the core. Currently the city center is seen as a cultural and entertainment center, with an emphasis on museums, concert halls, and galleries.

Downtown Ann Arbor also has an extensive resident population. Four of every five blocks in the core have some resident population. There are several hotels in the downtown area, contributing to the area’s population base and helping to promote downtown as a round the clock activity area. The University of Michigan contributes both residents and activities that attract residents to downtown.

The downtown core of Oakville, as defined by the Business Improvement Association (BIA), consists of a dozen blocks on either side of Lakeshore Road encompassing about 20 acres. Additional businesses are located on some of the cross streets. Surface and public parking structures are located primarily north of Lakeshore, leaving the primary shopping street with an unbroken façade of pedestrian oriented retail. The one exception is the Towne Square at Lakeshore and George Street. This plaza area provides space for outdoor cafes and seating areas, as well as a link to the historic residential area that lies between the downtown and the lakefront.

Downtown Oakville provides specialty retailing; restaurants and entertainment venues are also important components of the downtown core. There are some 400 businesses in the downtown, including clothing and spe-

cialty shops, restaurants and cafes, professional offices, personal services, and financial institutions.<sup>3</sup> A number of public facilities (library, theatre) and some office development are located immediately west of the BIA area. Residential uses within the core are limited to the south side of the BIA area.

The functional core of Oakville appears to be substantially larger than the area covered by the Business Improvement Association, however. Sixteen Mile Creek on the west is the location of a large marina and parklands that connect to lakefront parks. A number of historic buildings and museums are located along Navy Street which parallels the creek on the east. High density residential development is located to the west of the creek. Commercial uses also extend along Lakeshore Road to the east.

Table 2 presents summary statistics for the Ann Arbor and Oakville cores, comparing each of them to their respective citywide figures.<sup>4</sup> The index number represents the ratio between the value for the core area and the citywide figure, with 100 representing equivalent figures for the two areas. For example, the unemployment rate for Ann Arbor core area residents is about 30 percent higher than the city of Ann Arbor average.

Both Ann Arbor and Oakville record high index values for median home value, and in Oakville, the core surpassed citywide figures for median rent. One person and non-family households are much more common in the downtowns than in the rest of each city. The proportion of elderly residents is higher in both downtowns but substantially so in Oakville. Ann Arbor's core has a much higher proportion of new housing than is the case elsewhere in the city. Ann Arbor city center residents are much more likely to be unemployed and somewhat less likely to be in the labor force than other Ann Arborites or downtown Oakville residents.

About 70 percent of the downtown residents in both cities are employed in knowledge based occupations, including managerial and professional occupations, education, health care, and the arts.<sup>5</sup> That is slightly below the citywide figures of more than 75 percent in this classification in both Ann Arbor and Oakville. It compares favorably, however, with the national comparable figures of 49 percent for Canada and 59 percent for the United States.

**Table 2. Demographics of successful core area**

	Ann Arbor		Oakville	
	Value	Index	Value	Index
Population Change	+2.6%	65	+12.6%	26
Percent 65 +	8.9%	120	25.8%	237
Household Change	+6.8%	70	+19.9%	67
Family Households	8.6%	16	54.1%	65
One Person Households	70.5%	199	44.2%	276
Median HH Income	\$11,232	24	\$59,157	70
Homeownership	18.6%	41	18.6%	52
Median Home Value	\$350,000	196	\$549,485	179
Median Rent	\$642	92	\$1,057	104
Built in 1990s	6.8%	158	4.0%	17
% Transit Commuters	1.7%	26	10.5%	87
Labor Force Participation	56.2%	85	62.3%	87
% Unemployed	5.2%	130	2.0%	44
% Knowledge Workers	73.3%	93	69.8%	107

Sources: U.S. Census, Statistics Canada.

Oakville and Ann Arbor each have a long standing commitment to growth management and quality development. Both communities have stringent standards for new development and are regarded by the development community as difficult to work in. According to the Oakville Economic Development Alliance, "Oakville prides itself on meticulous planning to insure a promising future" (Oakville Economic Development Alliance 2000).

There are a number of significant differences, however. Ann Arbor has adopted a planning strategy that emphasizes increasing densities in the downtown core area. The plan favors mixed use developments with substantial residential components. The city has also invested heavily in structure parking. Congestion levels in the core area are not seen as a major problem.

Oakville, on the other hand, sees its Old Oakville area as a location for small scale development, with locally owned shops and services that offer a variety of unique shopping and dining opportunities. Whereas two parking structures have been built, surface parking (not on Lakeshore) is still viable. Plans do not contemplate increasing

the density of either the commercial core or the adjacent residential areas.

### The Struggling Cores

Manufacturing industries played a dominant role in the history of both Brantford and Saginaw throughout the twentieth century. The secular decline in manufacturing has contributed to high unemployment but with relatively high wages for those residents who still have manufacturing jobs. (See table 1.) Population and household growth rates have been slow.

The core of Brantford covers a 35 block area. Victoria Park provides a large gathering space used for concerts and other public events. Retail options in the core are severely limited both Eaton's and Woolworth's having closed their downtown stores. Retail uses formerly were located along Colborne and Dalhousie streets, but what little retail activity that remains now is largely concentrated in an enclosed mall, built on the site of the former Eaton's department store. Downtown remains a major employment center, however, as the result of the introduction of a number of call center operations that have located in unused retail space in the downtown mall. There is no identifiable pedestrian oriented retail street in the core area.

Redevelopment of the area south of the core (but physically separated from it by a substantial difference in elevation) has provided sites for a gambling casino, a municipal ice arena, and a suburban-style retail development. The Brantford urban area has undergone a municipal consolidation in recent years. That has brought all of the peripheral development activity into the central city tax base. Although the revitalization of the city center remains a high priority, the continuation of sprawling development activity is not perceived as particularly detrimental.

The downtown area of Saginaw is on the east side of the Saginaw River between the Johnson Street and Holland Avenue bridges, an area of about 16 blocks. Direct access to the river is limited, however. Historically, retail has been concentrated on Washington and Genesee Streets but has all but disappeared from the downtown, with the last downtown department store closing in 2001. Increasing suburban competition has had a serious impact on retailing in downtown Saginaw. Since the development of the 110 store Fashion Square Mall in the 1960s, there has been a steady migration of retail facilities to suburban Saginaw Township. A large outlet mall in Birch Run Township about ten miles south of the city also weakens the development potential of the city of Saginaw's core area. Office development has followed retail activities, and sub-

urban locations have attracted hotels and restaurants as well.

Revitalization projects from the 1970s, including an enclosed mall, major hotel, and new federal office building, have all closed or been converted to different uses. Downtown residential development has been limited to a small amount of subsidized housing. More recently, the creation of a tax free zone covering most of the core area has done little to attract new investment or jobs (Sands 2003).

**Table 3. Demographics of struggling cores**

	Brantford Core		Saginaw Core	
	Value	Index	Value	Index
Population Change	-7.9%	na	-19.6%	-177
% 65 +	10.3%	76	6.9%	62
Household Change	+6.1%	55	18.8%	165
Family Households	35.0%	49	33.1%	51
One Person Households	57.8%	215	28.5%	97
Median HH Income	\$21,458	49	\$20,839	79
Homeownership	4.3%	6	55.5%	87
Median Home Value	\$96,045	70	\$32,800	70
Median Rent	\$532	86	\$352	101
% Built in 1990s	6.2%	68	1.1%	183
% Transit Commuters	17.6%	550	2.5%	167
Labor Force Participation	64.7%	99	58.3%	99
% Unemployed	14.6%	215	18.1%	183
% Knowledge Workers	47.7%	115	30.5%	106

Sources: U.S. Census, Statistics Canada.

The data in table 3 suggest that both Brantford and Saginaw have downtown residential cores that compare unfavorably with their respective citywide statistics, which are in turn less robust than the comparable statistics for the successful core cities. Not only did Brantford's core lose population during the 1990s while the city experienced a slight gain, it has substantially higher unemployment, and lower housing values and homeownership. Non-family and single person households are much more common than in the rest of Brantford. The median income of downtown residents is less than half the citywide median.

Downtown Saginaw, while losing population much more rapidly than the city as a whole, is generally closer to the local average than is the case for Brantford. For example, the index value for median household income in Saginaw is a full 30 points higher than Brantford’s, and for homeownership it is more than 80 points higher. Rents in Saginaw’s core are close to the city average and there was some new residential construction during the 1990s. Although there has been little new housing construction in either core area in recent years, Brantford’s core has had a more active residential development market.

Both of the struggling downtowns have a higher proportion of resident knowledge workers than do their respective cities. In part that appears to be because of the relatively low proportions of knowledge workers citywide and in part because of the relatively low labor force participation among core area residents. The majority of core area residents in both cities hold technical and support positions rather than professional or managerial jobs.

### Core Area Development Strategies

The four communities have employed a number of similar revitalization strategies (table 4). Streetscape improvements, cultural facilities, promotion of entertainment activities, creating a downtown plan, and a targeted business development organization are strategies pursued in each of the communities. The struggling cores are more likely to have relied on large scale investments—such as enclosed retail malls, sports venues, and conventions centers—these activities are found in the struggling cores, not in the successful ones. Successful cores have been able to attract market rate housing. While affordable housing dominates the residential supply in Saginaw and Brantford, Ann Arbor is able to require the inclusion of affordable housing as a condition for permission to build market rate units.

#### Ann Arbor

The Downtown Development Authority, which is responsible for administering the District, has formulated a plan to maintain the character and quality of the core area that includes public improvements, design guidelines for private development and historic preservation, and promotional activities. (The latter are primarily the responsibility of the four sub area associations.)

Table 4. Selected revitalization strategies

	Ann Arbor	Oakville	Brantford	Saginaw
Streetscape Improvements	X	X	X	X
Pedestrianized Street	X		X	
Parking Structures	X	X	X	X
Farmers Market	X		X	X
Enclosed Mall			X	X
Cultural Facilities	X	X	X	X
Sport Facilities			X	X
Entertainment	X	X	X	X
Municipal Convention Center			X	X
Casino Gambling			X	
Market Rate Residential	X	X		
Affordable Residential	X		X	X
Downtown Plan	X	X	X	X
BIA/DDA	X	X	X	X
Total	10	7	13	11

The DDA has direct responsibility for constructing and maintaining a range of public improvements, including street furniture, sidewalks, landscaping, parking structures, transportation, and other infrastructure improvements. These developments are supported by revenues from the tax increment financing district that is coterminous with the DDA.

Mixed use new development is encouraged by the DDA, with a particular emphasis on street level retail uses and increasing the residential base of downtown. Priority is given to retail that meets the needs of core area residents and promotes interaction between merchants and residents. A broad range of housing to meet the needs of a variety of household types and incomes is also encouraged. Developing linkages between downtown residents and surrounding neighborhoods is another priority of the DDA.

### **Oakville**

Overall planning for the municipality of Oakville identifies three major commercial centers: Old Oakville, Midtown and Uptown. These retail centers each have distinct roles, and future developments should reinforce them. New retail commercial development in North Oakville will serve primarily the new population in that area and will not include major retail facilities that would compete with these existing centers.

The Town of Oakville continues to see the Old Oakville Downtown as a primary location for (primarily upscale) specialty retailing and restaurants. Several strategies have been identified to strengthen the downtown core, including:

- Promoting tourist activities;
- Promoting the upscale heritage theme of the core;
- Improving connections between the commercial core and the waterfront;
- Improving traffic patterns and parking; and
- Strengthening neighborhoods adjacent to downtown (Randolph Group 1997; Town of Oakville 2002).

In addition, the city-wide policies related to heritage preservation, urban aesthetics and environmental management also implicitly contribute to strengthening the core.

### **Brantford**

Brantford's municipal government has been quite active in efforts to promote the core area. Although incentives are available to private firms, most of the development activity has involved public investment. The city has attempted to attract private investment to downtown by waiving development charges and making grants to encourage investments (Brantford Economic Development Commission 2003). The city has created demand for considerable amounts of office space in the downtown, particularly in vacant retail facilities, and supported renovation of a historic theatre for live performances. Brantford has embarked on a second phase of core area revitalization. Perhaps the most important of these new initiatives is the development of a new campus for Wilfred Laurier University which presently occupies several buildings scattered through the downtown area. Additional development, including new construction and rehabilitation of existing structures will increase both classroom and residential facilities to serve an eventual student population of 1,800 to 2,000. The city also plans to develop a new civic square

to complement the existing Victoria Park, which many consider to be overused. The City has tentatively offered to purchase the struggling shopping mall in order to convert it to municipal offices, although financial limitations may delay this effort (Marion 2004).

### **Saginaw**

Like Brantford, Saginaw has attempted to utilize a number of different revitalization strategies. These have included urban renewal projects, affordable housing development, street improvements, historic renovations, an enclosed shopping mall, and extensive use of tax abatements to attract development. These efforts have generally met with only limited success in stopping the suburban migration of most downtown businesses.

Saginaw is currently pursuing a number of revitalization strategies for its core. These include planned improvements to the riverfront that will provide opportunities for both active and passive recreation. The expansion of St. Mary's Hospital facilities into downtown is another key element in the strategy. The new municipal sports and convention complex and restored historic theatre are intended to make the core area the regional focus of entertainment.

### **Discussion**

The case studies provide a rather mixed picture with respect to the potential contribution of public policies and economic development strategies to the health of core areas. These four communities have pursued a variety of strategies to maintain or revitalize their downtown core areas. Brantford has utilized the broadest range of strategies, but with relatively little success to date. Saginaw has also adopted many of the revitalization strategies that have been *en vogue* over the years. The more successful core areas, Ann Arbor and Oakville, exhibit a more limited range of strategies. They also have the ability to be more selective in the development allowed, emphasizing both design and growth controls.

So, is the potential for a successful downtown area just a matter of "place luck", of being located in a prosperous urban area? <sup>6</sup> Or are there specific actions that can be expected to make a significant difference in the prospects for the downtowns of middle size urban areas? The case studies suggest a number of relevant principles for the design of successful core area revitalization strategies:

- A successful core area is likely to be one that has a distinct physical appearance, regardless of the market niche it serves. A downtown that retains its historic character (providing a physically distinctive environment) is more likely to be successful. The distinct physical character that often exists in core areas helps to establish the identity of the downtown as a special place (Filion and Hoernig 2003). The street and building patterns in downtown create an attractive environment. Well designed public spaces and buildings contribute to the success of the core (Paumier 2004). Whereas both Oakville and Ann Arbor have made conscious efforts to retain the distinct character of their downtowns, Brantford has lost many of its heritage buildings.<sup>7</sup> In Saginaw, extensive demolition has resulted in the isolation of the remaining historic buildings.
- The absence of detrimental policies (such as urban renewal that removes historic structures, traffic schemes that discourage pedestrian activity, retail precincts interrupted by surface parking or blank building walls) can contribute to the health of the core. Planning initiatives that implicitly attempt to create a suburban environment in the cores seem generally inimical to the success of traditional city centers. Saginaw and Brantford have pursued, and continue to pursue, both of these strategies.
- A downtown that serves a range of populations and markets, through the promotion of variety in land uses and activities, will be more sustainable and have a greater potential for success than more narrowly focused core areas. Markets vary by time of day, day of the week and season of the year. Attracting residents to downtown locations generally will require the existence of activities (retail, restaurants and entertainment) that may also serve other market segments: downtown workers, tourists, and residents of the metropolitan area.
- Downtown revitalization efforts must be approached at an appropriate scale. The historic core may represent too large an area to be successfully revitalized. Particularly in a downtown that has experienced a long period of decline, there may simply be too much downtown to revitalize. Strategic choices must be made to ensure that the necessary critical mass of activity is achieved. In slow growing markets, strategies based on encouraging development at multiple locations with the expectation that the spaces in between will be filled in, are unlikely to produce the desired results. In Saginaw, the distance between the medical center development and the entertainment complex is over half a mile (one kilometer), seemingly too great to be filled in easily. Similarly, the sports facility and casino in Brantford are well outside of the downtown precinct. Moreover, large scale revitalization projects may not be as cost effective as a series of smaller scale initiatives. Major investments in parking facilities or sports arena may not be as effective as money spent on landscaping and comfortable seating.
- Whereas the public sector may have an important role in revitalization efforts, the sustainability of downtown also requires interest and participation by the private sector—whether investors, residents, employees or shoppers.
- An organization that is an effective downtown advocate (BIA, DDA, merchants' association) is probably a prerequisite for success. Although there are substantial differences between the Canadian BIA (membership of both property and business owners, funded by an added levy, limited capital improvement budget) and the American DDA (property owners only, funded by property taxes generated by new development, often responsible for parking and other capital improvements), these differences do not seem to have a significant impact on their relative effectiveness. While having some downtown advocate appears to be important, as is the relationship of this entity to the municipal government, neither organizational structure seems to be inherently superior. The maintenance of existing public areas and facilities is also important.
- Successful cores are likely to be able to attract higher quality developments than their struggling counterparts. It is clear that both Ann Arbor and Oakville are in a position to pick and choose among development proposals. Both Brantford and Saginaw, on the other hand, seem more likely to take whatever development is offered. Even with substantial inducements, a struggling downtown may not be able to attract the same quality of development as one that is more successful.
- A healthy core is likely to benefit from favorable demographics. The presence of middle and upper income residents is likely to be more important than simply having people living in the core. High proportions of knowledge workers were also associated with successful core areas. It is unlikely that a desirable mix of residents can be attracted to a downtown that does not already possess a certain critical mass of activities.

- While there is often a university presence in healthy cores, that does seem to be essential. However, downtowns without a university may have different demographic characteristics. For example, Ann Arbor's downtown, which clearly benefits from having a major university close by, is thriving with few family households and low labor force participation. Oakville, on the other hand, has been able to attract a relatively high proportion of family households and higher labor force participation to its successful core area.
- Finally, the case studies suggest that even a struggling core area may be perceived as having some level of success, so long as there are tangible signs of improvement. Brantford is hoping to increase core activity by bringing educational institutions and new public facilities to the core. While these big ticket public investments include an element of risk, there are signs that some positive spin offs are occurring. Likewise, Saginaw is promoting entertainment and leisure activities in the core, along with the expansion of medical service facilities. The potential for success of these strategies is not clear, however. Certainly not every community can aspire to be a major entertainment center. Other activity generators, such as universities and government offices, may be more appropriate strategies.

Downtown revitalization policies can not rely on a "quick fix" or depend on a "magic bullet" to resolve long-standing and complex problems. Rather, a diverse range of strategies, applied over a long period may initiate the virtuous cycle that is necessary for sustaining a healthy core. Urban areas that have more successful cores also have higher incomes, better educated residents, and higher levels of economic growth, along with more diverse and stable economies. These attributes have greater potential to support downtown locations for restaurants, entertainment venues and cultural activities. That, in turn, can foster success in other downtown activities, such as specialty retail and residential. The development of downtown as a neighborhood will in turn contribute to other types of retail growth. A downtown that is diverse and active will continue to attract the investment required to sustain it as a distinct place in the metropolitan framework.

### **Convergence and Divergence**

This paper provides little insight with respect to the broad trends of convergence and divergence in the core areas of mid-sized urban areas in Canada and the United States.

The study is limited to a small number of case studies, with scant longitudinal data considered. Nevertheless, these case studies do suggest that there are a number of important parallels in the recent history of core area revitalization efforts in Canada and the United States.

The contextual processes affecting mid-sized core areas seem to be generally similar and to produce generally similar results. Struggling core areas in Ontario may have more in common with struggling core areas in Michigan than they do with successful core areas in Ontario. Moreover, attributes of successful cores are similar on both sides of the border. The differences are not so much a result of geographic location as they are of broader market considerations. Given current deindustrialization and globalization trends, it would be surprising if many mid-sized cities were able to resist these pressures. Successful urban areas and their cores are these who are able to adapt to structural changes.

Local core area revitalization strategies are not always ineffective, however. Individual strategies appear to have achieved comparable levels of success whether in the United States or Canada. Distinct physical settings, active programming of civic events, heritage preservation, support for cultural and entertainment venues, and encouragement of middle income residential developments have contributed to downtown area success in both countries.

### **Further Research**

Given these case studies, there appear to be a number of issues that would merit consideration based on a broader range of locations. Of particular interest would be an examination of the role of downtown associations in revitalization activities. Ontario Business Improvement Associations and Michigan Downtown Development Authorities have different funding mechanisms and different responsibilities. It is also clear from the case study communities that they may have different relationships with their respective municipal administrations.

A closer examination of the relationship between the proportion of knowledge workers and core area vitality would be interesting as well. Michigan's Cool Cities initiative, for example, emphasizes the importance of retaining well educated young professional workers through public policies often aimed at downtown areas. However, neither the range of potentially useful policy initiatives nor their efficacy is well understood.

The standards by which core areas are judged to be successful or struggling are for the most part quite subjective. Although there often appears to be considerable

consensus on which areas are successful, without some quantifiable, objective measures, it is difficult for a community to measure its progress over time. Similarly, it is difficult to compare communities directly. It would appear that even those criteria for success that are readily quantifiable (pedestrian counts on downtown streets, for example) are often expensive to collect and lack uniform standards for data collection. An investigation to determine what standards are commonly used and how well they match more subjective perceptions could provide useful information.

The relative impacts of large and small investments in core area revitalization could also be examined. The “big ticket” items, such as enclosed retail malls, sports and convention facilities, and pedestrianized streets, may produce only limited benefits, whereas relatively low cost initiatives, such as streetscape improvements or promotional activities, may be more effective. While strict cost-benefit calculations may not be possible, a closer examination of these strategies might provide some useful guidance.

Finally, further examination of the relationship between the health of the core area and the health of the municipality and its urban area could provide some useful insights. If healthy core areas are found only in healthy regions, then it may be necessary to pursue different strategies in those metropolitan areas that are struggling, perhaps by including the core in regional economic development initiatives.

## Notes

- 1 Throughout this paper, dollar amounts are given in local currency. At the time of the Census, the Canadian dollar was trading at about US\$0.70.
- 2 About 15 percent of Oakville workers commute to Toronto.
- 3 The Kerr Street commercial area, which is located northwest of the core, provides grocery and other neighborhood commercial facilities.
- 4 The core area of each city is defined in terms of census tract boundaries. The result is, at best, a rough approximation of the core and does not necessarily correspond to the core as defined by local organizations.
- 5 The specific occupational categories from the U.S. Census are management, business, financial operations, professional and related occupations; the equivalent categories from Statistics Canada are management, business, finance, natural and applied sciences, health, social science, education, government, arts, culture, recreations and sports occupations.
- 6 This “place luck” may also include being the destination of large numbers of tourists or being the location of nationally significant historic sites.
- 7 Current plans for a new civic square and city hall would require the demolition of some pre-Confederation buildings.
- 8 See also Reese (2004) for a discussion of economic development policy transfer between Michigan and Ontario.

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PART VII  
CANADIAN CULTURAL UNIQUENESS

Nationalism and Activism in Literature, Film, and Sport



# *Im/political Acts: Re-Siting Canadian Writing*

Alessandra Capperdoni

If the ambivalent figure of the nation is a problem of its transitional history, its conceptual indeterminacy, its wavering between vocabularies, then what effect does this have on narratives and discourses that signify a sense of nationness....

Homi K. Bhabha, *Nation and Narration* (1990)

Recent political events have exposed even more forcibly the urgency to re-think the “nation” and the affiliation it demands of its subjects, as well as interrogate the Canada-U.S.A. relationship within a global net of relationships that unsettle the self-containment of the North American context. In the last decades, the concept of nation has been subject to fruitful investigations and critics have reminded us how this notion—still so powerful in our political and social identifications—is inextricable from the rise of modernity and capitalism; how it had to be “imagined” (Anderson 1983) before becoming reality; and how the invoked unity of its subjects—“the people-as-one”—rests upon values of citizenship that privilege some (male gendered, white, middle-class, heterosexual subjects) and disenfranchise many others.<sup>1</sup> That the nation is at a point of crisis, if not dissolution, is made clear by a process of globalization (the new buzz word in many milieus) that has become most visible in the expansion of financial markets in the 1990s and which seems to point to a transnationalism whose tangible effects are the demise of the sovereignty of the nation-state and its replacement by corporative interests. Yet, in the aftermath

of September 11<sup>th</sup> and wars against Afghanistan and Iraq in the name of national defence, security, or war to “global terror,” we have all witnessed how easily and problematically the unity of the nation has been called upon to justify political acts that overtly endanger hard-won civil rights. Despite heralded notions of post-nationalism and global subjectivities, the nation returns through the back door to haunt the present with its unresolved questions, and we are left to ponder about the incommensurability of the proclaimed free-market ideology (presumably holding the magic formula to world development and limitless economic growth) with an increasing sense of loss of control on the part of local communities and ordinary citizens on the future of their lives. Is the borderlessness of transnational corporative interests the only viable response for the future of political entities? In the wake of the commodification of “difference” to assert consumerist values, is there no alternative to the homogenizing process of social cohesion? Is the nation, as it was conceived and constructed by nationalist ideologies since the nineteenth century, the only solution to the threat of the alien “Other”?

Far from claiming that the nation has reached its historical endpoint, I believe that the “de-territorialization” of the nation-state (labour outsourcing, cross-national capital flows, global migratory drifts are only the most evident traces) that affects both Canada and the U.S.A.—though most evident in the latter because of its status as a leading world power—is both the effect and the cause of the “territorialization” of resources necessary to the expansion

(and sustaining) of capitalist economies. As cultural critic Roy Miki, echoing Stuart Hall in his essay “The Local and the Global,” rightly observes, globalization is not a new historical phase “beyond” the nation-state but rather, the reconfiguration of older hegemonies and privileges.<sup>2</sup> Yet such anxieties cannot be left to translate themselves into a cultural and political isolationism whose effects are never predictable.

The mourning of the nation is not a new phenomenon, especially in the Canadian context punctually afflicted by the search for a distinct Canadian identity. From Northrop Frye’s famous question “Where is here?” (“Conclusion” 1965) to George Grant’s *Lament for a Nation* (1965) and Jonathan Kertzer’s *Worrying the Nation* (1998), the search for “place” and a narrative of (impossible) origins has been marked by a nostalgic mode which, it is worth noting, has been pervasive also in the U.S.A. since the rise of identity politics and which has sharply increased since September 11<sup>th</sup>. The focus of my paper is the experimental poetics of West Coast writers Phyllis Webb and Roy Kiyooka in the decades from 1960s to 1980s. Their writing practises unsettled dominant notions of nationness at a time when cultural nationalism, at its highest in Canada, led to the formation of the contested categories of CanLit and Can-Crit. From the vantage point of their “marginal”—gendered, sexual (Webb), and racialized (Kiyooka)—subject positions, they engaged throughout their writing in critical poetics that call into question and radically rearticulate the discourse of the nation. Their deconstructive critiques of “Canada” expose the limits of the nationalist ideologies that construed this “imagined community” (Anderson 1983) through the elision of the violent histories upon which the nation-state was founded. I will argue that Webb’s and Kiyooka’s critical poetics can offer us insights into the discursive practices of nation formation and, therefore, can help us rethink the meaning of nationness and belonging in these post-national times.

Although this essay focuses on Canadian writers and privileges Canadian cultural criticism, my analysis necessarily involves a comparison with the cultural milieu of the U.S.A. and will briefly gesture toward possible convergences with the experimental writing of Korean-American Theresa Hak Kyung Cha. In this sense, I have to point out my discomfort in using categories such as “Canada” and “the U.S.A.” as if they existed as self-contained and fully autonomous entities whose practices (cultural, political, legal, and economic) can “converge and diverge or both.” As I hope to demonstrate, the existence of borders always invokes their trespassing and calls attention to their “porous” nature. Though Canada and the U.S.A. are sovereign

states, they are also powerful signs both in the minds of their citizens and in international relations, and it is the semiotic nature of their politics that underlies my analysis.

Webb’s and Kiyooka’s writing practices cannot be separated from the context of the nation-discourse that characterized Canadian cultural politics in the years following the end of WWII and out of which the avant-garde scene of writing of the West Coast emerged. It is important to remember how the role of the State-and-Arts binary in the formation of Canadian culture differentiates it from the American model. In the U.S.A., literature and the arts have been more explicitly dominated by commercial interests, and although federal support has never been absent (though often taking indirect routes), the value of literature has been inseparable from a market-driven ideology. In Canada the state has played a larger role in the emergence of a “distinct” Canadian culture that would defend Canadian identity from the engulfing presence of American and British metropolitan centres. Since Confederation (1867) a cultural nationalism construed along the linear narrative pattern of the historical progression from “colony to nation”<sup>3</sup> has been instrumental to the construction of “Canada.” But the era after WWII, a time of newly won assurance about Canada’s role in international relationships and economic development, marks an important moment in national re-definition. The works of the Royal Commission on National Development in Arts, Letters and Science, which published its Report in 1951, is the most evident attempt to shape Canadian culture and undoubtedly reflects the liberal humanist ideology and Anglo-elitist values held by the members of the Commission. Their Arnoldian vision of culture as enhancement of social betterment is patterned after their humanist values of romantic nationalism and the belief that a highbrow Canadian culture rooted in the European (British and French) traditions would defend “Canadianness” from the contamination of American mass culture and the logic of commodification. The upsurge in cultural production in the postwar years cannot be examined independently of this perceived threat of Americanization—a fragile Canadian political identity being infiltrated with the values of American imperialism. Hence the Canadian state’s invested interest in the policing of culture, which becomes effectively a technology of citizenship. At stake were not only cultural values but also, and especially, Canadian sovereignty.

Yet, as Homi K. Bhabha (1990) reminds us, the nation is an ambivalent formation and, though grounded in its historicity, its effects permeate discourses and narratives

of nationness. In Canada the trope of “place” and its corollaries (regionalism, localism, and linguistic identifications) has translated since the beginning the anxiety underlying the colonial powers’ weaving of an imperial narrative of progress that would justify the violence of the colonization of space, which entailed the exploitation of natural resources, the attempted erasure of indigenous cultures<sup>4</sup> and the management of emerging social relations.<sup>5</sup> Frye’s famous statement that the question for the Canadian mind is not “Who am I?” but “Where is here?” (Frye 1965:825) unknowingly exposes the fissures in the nation-discourse whose construction of “place” would create the premises for the ensuing logic of late capitalism—the de-materialization of space and the erosion of nation-state control. These tensions were problematized in theorists’ investigations in technology and communication that pointed to the inevitable unravelling of the nation in an increasingly globalized world. It is not coincidental that the works of economic historian Harold Innis<sup>6</sup> on technology, empire, and communication (built on his early work on space and economics and still retaining a humanist approach) and of communication theorist Marshall McLuhan<sup>7</sup> were published around the same year that the Massey Report was released.<sup>8</sup>

The cultural nationalism of the fifties and sixties reached the climax with the celebration of the Centennial in 1967 and was punctuated by landmark events and policies such as the conclusion of the flag debate (the maple leaf was officially exhibited for the first time in 1965), the *Official Languages Act* in 1969 (meant to normalize the strenuous relations between Québec and English Canada), as well as a concerted effort to stimulate the cultural production of artists and writers with a “Canadian” content. As Jody Berland remarks, “the connection between the arts and national defence—between autonomous art and an autonomous nation—was a fundamental component of postwar reconstruction and continued to lay the rhetorical foundation for cultural policy” (Berland 2000:22). From the mid 1960s and throughout the seventies the offering of courses in Canadian literature rose dramatically, and departments of Canadian Studies were opened, while the Canada Council’s financial support to artists, writers, and small presses ensured the visibility, as well as absorption, of “Canadian-ness.” Undoubtedly these were decades of cultural innovation and creative synergy, but the efforts of the nationalist defenders of a distinctly Canadian (read anglophile and high-brow) culture in Eastern Canada did not remain unchallenged and were met by the opposition of regional identities (the “localism” claimed by the Prairies

and the West) and by the critique of emergent radical poetics affiliated with language-centred writing in the U.S.A.<sup>9</sup>

Dear Phyllis

Yes i have read Peg’s SURVIVAL tho not re-read it yet. its got to be one of the deep probes into Canuck-Psyche via mainline W.A.S.P. eyes. I mean Peg does belong to the companions of Canadian Shield Seers who via literature probe the litter / compost of our i-denti-ties. But her is it thesis is too too pat for yours truly who does not if he has had thoughts abt it at all think of himself as an anima/ victim despite the hazards of the 49<sup>th</sup> Peril and Yankee mendacities. Its my belief that WE who abide in the Westcoast do propose another take which I wont go into here.  
[...]  
... And it must be that ‘shamanistic spirit’ we also live within that has something to do with our take on Can/Lit:Survival.

*totem/ fact/ polis*

(*transcanada letters*, Vancouver BC /’72)

The extract is from Kiyooka’s serial poem *transcanada letters*. The “letter” format acknowledges the presence of a literary community (“WE”) alternative to, but also intersecting with, the literary establishment of central Canada. It also embodies the preoccupations of a new poetic foregrounding the materiality of language and working for its de-familiarization. The addressee Phyllis Webb recurs throughout the text and points to a life-long friendship and common preoccupation with the hegemonic structures (and homogenizing process) of Canadian cultural institutions. The occasion is Margaret Atwood’s *Survival: A Thematic Guide to Canadian Literature*, whose publication in 1972 re-affirmed the prominence of thematic criticism in English Canada and re-inscribed the “victim position” for a fragile Canadian identity—unable to distinguish itself from the legacy of British colonialism and threatened by the economic supremacy of American imperialism.

Atwood’s text, which was marketed and circulated as a “guide” for the teaching of literature in high schools, represents a major attempt to reinforce the established critical practices of Canadian criticism (CanCrit) that its major representative, Northrop Frye, had helped to forge. Atwood’s status as an icon of Canadian literature—being virtually the only internationally marketed author at the

time as well as Frye's former university student—was the guarantee for the legitimation and success of the book. The theme of a besieged Canadian culture barely disguised the older “garrison” motif, which posited the centrality of a stable Canadian ethos (white, Protestant, and Anglo-Saxon) defending itself against a monstrous and primitive nature and, by extension, the savage and native “Other.” The guide thus re-inscribed into the Canadian psyche popular themes of the construction of a Canadian self.<sup>10</sup> Despite Atwood's somewhat ironic tone, her “despair try” becomes an instance for validating the engineering of a dominant Canadian culture.

Kiyooka's acute rendering of the posited centrality of the “Canadian / Shield Seers” to the Canadian imaginary exposes the ethnocentricity of *Survival* as well as CanLit, and their investment in the defence of a Canadian-ness construed through an attentive cultural politics. While the nation-state fully participates into the global flux of capital and bodies, for which the permeability of borders is the necessary condition to ensure its project of growth and progress, cultural nationalism re-tools itself and uses the institutionalization of Canadian Literature and Criticism as a strategic barrier against Americanization. The poet plays on the sound patterns of “litter / compost,” echoing letter, composition, Letters, literality, and literacy, thus drawing attention to the textualization of our identities in a world in constant transformation. The de/composition suggested by “compost” and the fragmentation of “i-dentities” comments on the social construction of social identities and their fluid nature.

The field of cultural production from the late 1950s to the 1970s is commonly understood as polarized between mainstream and counterculture, with the latter producing an avant-garde (postmodern) scene of writing contesting dominant values and struggling for recognition.<sup>11</sup> In this cultural framework, the critical reception of the poetics of Roy Kiyooka and Phyllis Webb has been marked by a limited (and in Kiyooka's case belated) recognition, despite their close ties to the community of West Coast writers, their ties to artists across the country, and their visibility as Canadian cultural figures. Before coming to writing, Kiyooka was a well-respected painter and photographer in artistic circles. Phyllis Webb was probably best known for her role as producer in the CBC series *Ideas*, as well as for her poetry. But Webb's and Kiyooka's embracement of the “open form” of the New American Poetry went beyond formal experimentation. It signified the opening up of the text of the nation-discourse, the entering of its fissures by making visible the exclusionary practices through which

it had been written, thus exposing the instability of the margins of the nation.

Roy Kiyooka's diasporic sensibility was marked by the racialization process that construed his Japanese identity as “Other” and which he had to negotiate at several points in his life. It is this first bodily and linguistic experience that set the premises for a poetics of cultural hybridity resting on notions of “athwartedness” and “cleft tongues” (Interview with Roy Miki in “Interface” 1991). Growing up in the aftermath of the displacement of Japanese-Canadians during WWII and the politics of dispersal engineered by the government to prevent their resettlement on the West Coast, he internalized the effects of governmental “racialization” that branded him as an “enemy alien.” The wound will stay with him for the rest of his life but will also enable his intimate insights into the social process of identity formation and the textualization of consciousness through the inscription of discourses of race, gender, and sexuality.

His first trip to Japan is the visit to his sister Mariko who had been separated from the family thirty years earlier. Her being stranded in Japan during WWII had sharpened in Kiyooka a sense of in-betweenness and the first realization that the closure of the nation-state cannot preclude, but rather rests upon, diasporic traversals. Walking in the streets of Kyoto, he experiences the bodily encounter and mis/recognition of his own “Japanese-ness” marked by his linguistic estrangement:

I am among  
them a tongue-  
twisted alien.

(Kiyooka “9 The Street,” Kyoto Airs)

The “cleft tongue” that he describes in reference to his poetics is both the reflection of the dialogic space that he inhabited in his formative years—the mixing of languages and cultures of the migrant neighbourhood where he grew up in Calgary—as well as his coming to terms with an English language that bespoke him and through him. The invitation of the Canadian government to produce a sculpture for the Canadian Pavilion at Expo 70 in Osaka as a representative “Canadian” artist will make him even more critically aware of the shiftiness of the borders of the nation-state. The re-appropriation of his ethnicity is oblivious to the violent histories constitutive of ethnic relations in Canada, and it is also prescient of the “unity in difference” underlying the *Multiculturalism Act* which, passed into law in 1988, was meant to manage social and cultural diversity while preserving national cohesiveness.

That is the first World Fair to be held in Asia in the spirit of East-West reconciliation and, foremost, in the interest of new directions in the global economy—and Kiyooka's Japanese identity is a hot commodity.

That was his second trip to Japan, and it exposed even more vividly the global drifts in which the Canadian nation was both caught and implicated. Out of this experience will come the poetic collage of *StoneDGloves*, published in 1970 as a catalogue for his photo exhibit and the poetic travelogue/journal *Wheels*, which was started in 1969 and would be privately published in its whole length only in 1985 after many revisions. *StoneDGloves* rearticulates the present of a Canada-Japan relationship, not in the futurity of the celebrated Global Village but in the unravelling of archival histories. Photos of the gloves abandoned on the pavilion site by the construction workers (many of whom were migrants) are interspersed and juxtaposed with poems that address the layers of history and the burial of the plagued bodies of Hiroshima victims—thus recontextualizing Canada's supply of uranium for the construction of the atomic bomb in a former phase of global economy. The sojourn in Kyoto, from which he would regularly visit the construction sites, was also the occasion to travel through Honshu's backcountry with his father and to articulate his condition of "athwartedness,"<sup>12</sup> a condition of (non)belonging that escapes the totalizing closure of the nation's text.

Phyllis Webb's critique of the patriarchal structures of culture and the nation-state underlies her whole poetic production, but rarely has it been recognized either by official criticism or by the coteries of poets with whom she maintained a close relationship.<sup>13</sup> Her early poetry, which takes the form of exploration of the relationship of power, resistance, and subjectivity through the mediation of anarchist figures, already reveals her interest in power formations. The project began in 1967 and was carried on through several years. The *Kropotkin Poems* were never completed, and part of this work would be published only in 1980 in the collection *Wilson's Bowl* in the sections "Portraits," "Crimes," and the "Poems of Failure." In her "Foreword" she defines these as "a study of power" and also indicates how the dominance of male figures could only signify "the domination of a male culture in [her] educational and emotional formation." But it is especially with her *Naked Poems*, a serial/long poem published in 1965 and conceived alongside *The Kropotkin Poems*, that she takes to task the patriarchal and heteronormative assumptions of the nation-state. The lack of critical recognition of the lesbian poetic of the text, until the emergence of a feminist writing scene and criticism in

the early 1980s, comments on the powerful heterosexist values underlying our society.

The poem is organized as a series of "Suites" reverberating with the musical quality of its lyricism and the delicacy of its form and content (suite/sweet), but the novelty resides especially in its embodiment of a spatial poetic. The concreteness of space seeping through the visual arrangement of the lines on the blank page foregrounds the materiality of language. The "Suites" displace the reader from the position of entranced listener, which is typical of the lyric form, and invite entry into the poem and the room where the love act takes place. Though lyrical in its mode, the poem also disrupts the closure and the fixity of the subject positions (active singer/passive listener) on which the traditional lyric rests. The influence of the New American Poetry, with its privileging of the concrete, is evident. *Naked Poems* was published shortly after the 1963 Vancouver Poetry Conference at U.B.C. that saw the productive convergence of poets from Black Mountain, San Francisco, and Vancouver on Canada's West Coast (Allan Ginsberg, Robert Creeley, Robert Duncan, Charles Olson, Denise Levertov, and Margaret Avison were the most prominent figures) and which Webb also attended.

Radical experimentation of form characterized both the New American Poetics and Canada's West Coast writing, and Webb also claimed that the solution to the "problem of the sentence structure" (Webb 1982:158) was what first moved her to write *Naked Poems*. But her poetic of space is not confined to formalist experiment and it probes, rather, the relationship of subjectivity with power. The loving act between women takes place within the realm of a room (house), with traditional associations of privatized space, domesticity, reproduction, unwaged labour, intimacy, passion, sexuality, and nature. Thus, it performs a sexualization of space that comments on the gendered and sexualized nature of social identities. Women have historically been construed as private, embodied, and cast as apolitical against the productivity of the market place and the political action of the *polis*; the gendering of the nation as female is instrumental to the managing of gender and sexuality on which the preservation of patriarchal and heterosexist power structures rest.<sup>14</sup> The lesbian relationship is made explicit by the reference to the "blouse" left on the floor. The lack of acknowledgement of this relationship on the part of the reading public, despite the poem's publication during the sexual revolution of the sixties, makes the point about its disruption of the naturalization of heteronormative sexuality.

Space is a powerful determinant in the formation of our subjectivity and, as Doreen Massey points out by echoing

Foucault, is “a moment in the intersection of configured social relations” (Massey 1992:81). The regulation of gender and sexuality through the management of opposed public and private spheres (Duncan 1996) is a heritage of the birth of the nation-state in the eighteenth century when the increased privacy of the domestic space and the strengthening of the institution of the family was both the result of, and response to, the power of state control on the reproductive unit—the preservation of heterosexual norms requiring unwarranted intrusion and surveillance on the part of the state on the citizens’ sexual practices.

The “Suite” where the love encounter takes place is not a self-contained space. Though a room and a house, its dimensions recede and expand with the sensations experienced by the women lovers. The shiftiness of walls and boundaries weaves through the fluid subjectivity of the two women. Lovemaking never becomes aestheticized, nor is it offered as a spectacle for the intruding gaze. Rather, the domestic is radically transformed into a site for political empowerment. Through the breaking down of the boundaries between the private and the public, the text performs the denaturalization of traditional gendered and sexed associations which underlie the division.

The nation-discourse and the unraveling of the nation-state have attracted much attention in the last years, and creative texts have actively contributed to the critical discourse that has ensued. But few writers formed in the immediate post-war years have been critically aware of the process of nation-formation and national identities as technologies of citizenship. Webb’s and Kiyooka’s close attention to language is the realization that language is a site of power and, in order to break open the totality of the nation-discourse, is not enough to engage in an oppositional poetic. In closing, I would like to gesture briefly toward the work of American writer and artist Theresa Hak Kyung Cha that offers an interesting comparative perspective to Webb’s and Kiyooka’s writing practices. Her text *Dictée* (1982) investigates the relationship between language and subjectivity, colonialism and nationalism, while the attention paid to the location of writing escapes the dominant logic of identity politics in the U.S.A. with its cultural nationalism and the “claiming of America” on the part of minorities. The text blurs generic conventions by assembling fragments, photographs, historical narratives, calligraphy, lyric, and prose poems. By unsettling the boundaries of cultures and geographies that make up ethnocentric narratives it also undermines the readers’ desire for a national identity. It retrieves the archival histories of Korean nationalism, Japanese colonialism, and the U.S. role in the Korean War and weaves these hidden

histories with contemporary anti-immigrant rhetoric in the United States and corporate expansion in the Third World, which relies on the fragmentation of identities. Her work on “dictation” offers an interesting analysis of the constitution of the subject in discourse, interpellation, and the authority of language. Yet, in her text, the subject position of resistance to cultural assimilation and national identity does not open fully the text as a site of agency. Cha’s writing remains oppositional and marked by a refusal to be “dictated.” But a poetic of radical openness necessitates the opening up of textual space to empowerment. Phyllis Webb’s and Roy Kiyooka’s critical poetic enact—drawing from Jeff Derksen’s notion of antisystemic writing—“a move from a position of refusal to being an agent of rearticulation” (Derksen 2002:151), thus refiguring the meaning of community and nationness for our (post)national times.

## Notes

- 1 I refer in particular to cultural historians, sociologists, and literary critics who have emphasized the constructed and conceptual nature of the “nation.” Eric Hobsbawm, Ernest Gellner, Anthony Smith, and Benedict Anderson, though with different approaches, have helped dismantle the romantic view of the nation as the natural development of former political entities and embodying the unity of social and cultural values (ethnicity, language, religion, and culture). More recent critiques to the patriarchal values underlying the modern nation-state and the assumed neutrality of citizenship have been raised from the areas of feminist and postcolonial inquiry. Stuart Hall’s and Homi K. Bhabha’s criticism, in particular, has helped to re-conceive national belonging from the “migratory” perspective of the (always) unstable margins of the nation.
- 2 Paper presented at the conference “Postcolonialism and Pedagogy Symposium: Canadian Literatures in the Classroom,” held in Ottawa, May 2002. I am grateful to Professor Roy Miki for giving me access to this paper before the publication of the proceedings, which helped me clarify some of these issues. The paper has been included in the collection *Home-Work: Postcolonialism, Pedagogy and Canadian Literature*. Edited by Cynthia Sugars. 2004.
- 3 See Lower, Arthur R.M. 1946. *From Colony to Nation: A History of Canada*. Toronto: Longmans, Green and Company.

- 4 A case in point is the visual representation of landscape in the celebrated paintings of the Group of Seven where the Aboriginal presence is erased.
- 5 In their analysis of imperialism and colonial subjectivity, Ann Stoler (1997) and Anne McClintock (1995) have been the first to examine how race, gender, and sexuality are constitutive of the formation of nation-states. Nations and nationalisms are always predicated upon “difference” structured in racial, gendered and sexual terms.
- 6 Innis, Harold. 1964 [1951]. *The Bias of Communication*. Toronto: University of Toronto Press. This was first presented as a paper in 1949. See also *Empire and Communications* (1950).
- 7 See McLuhan Marshall. 1951. *The Mechanical Bride: Folklore of Industrial Man*. New York: Vanguard Press; 1964. *Understanding Media: The Extensions of Man*. New York: McGraw-Hill; 1967. *The Medium is the Massage*. New York: Random House.
- 8 Both are prominent figures in Canadian cultural history and Frye’s contemporaries. It is also worth noting George Grant’s own *Lament for a Nation and Technology and Empire*, which were published respectively in 1965 and 1969.
- 9 The socio-political and cultural context was also marked by the emergence of a culture of dissent that had arisen with the Civil Rights movement, anti-Vietnam war protests and an identity politics that articulated the “claiming of America” for ethnic minorities.
- 10 For example, the defensiveness of Canadian identity against the frontier motif of American expansionism, communality against individualism, and the monstrosity of nature, with which man has nevertheless to cooperate against the appropriation and domination of natural resources. Native populations were also aligned to nature.
- 11 Although this is a widely held belief, it is somewhat problematic given the state funding that supported many small presses and magazines and which avant-garde writers chose as their main avenue of publication (Davey 1994).
- 12 Interview with Roy Miki: “You are of it, and you are not, and you know that very clearly” (Miki 1998:71).
- 13 In “The Struggle for ‘Phyllis Webb,’” Frank Davey traces the different appropriations of Webb’s writing to legitimize very different critical positions, while ensuring her status of marginal writer to the literary establishment. Roy Kiyooka’s writing has been seldom acknowledged despite its central presence to the literary community of the West Coast until Roy Miki’s editing

of *Pacific Windows* in 1997 (Kiyooka died in 1984) and the symposium held in his honour in 1999.

- 14 The later phase of transnational capitalism also relies on the disruption of traditional ways of life and the proletarianization of women. Furthermore, the metaphorical association of women with nature and body carries the historical burden of the naturalization of colonial “penetration” of “untouched” territories.

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*The Far West as Cultural Mirror  
in Québécois Literature, 1960–1990:  
A Consideration of Texts by Jacques  
Ferron, Godbout, and Poulin*

Steven J. Daniell

Whenever one considers Québécois literature, it is unlikely that the North American West would spring to mind as a prevalent image. Indeed, even a novel such as Louis Hamelin's *Cowboy* takes place in northern Québec. The novelist notes in a 1992 interview that the cowboy is "[a] myth that we have appropriated for ourselves in Québec where we have a Western culture without having a Western history. Our real cowboy for us is the *coureur des bois*" (Ruggeri 1998:17).<sup>1</sup> While images traditionally associated with the West have Québécois counterparts, such as cowboy and *coureur des bois*, the overarching concept of the West has not fully inserted itself into Québec's mythic landscape. When the region does appear in a Québécois text, it tends to carry further semantic weight than a similar text would were it written by a U.S. American or an English Canadian. This essay looks at the role of the West in four texts, two published prior to the May 1980 Sovereignty-Association Referendum, and two afterwards. Each text reflects, in fact personifies, Québec at a critical juncture in its cultural history. Simultaneously, the West comes to symbolize hopes and fears of a province that is letting go of part of the old order yet trying to maintain its identity in the larger North American context.

Following a discussion that will attempt to provide a framework within which to discuss the West, the focus

will shift to the texts and how they portray the interplay between Québec, as personified by a protagonist or other main character, and an aspect of the West. The first text, Jacques Poulin's short story "La Vache morte du canyon" (1962) personifies Québec at the threshold of the Quiet Revolution in the character of François Laterrière. His West is a canyon outside Calgary where he wants to become an *habitant* like his father but confronts, instead, the failings of his native culture. Jacques Godbout's novel *L'isle au dragon* (1976) depicts another young Québécois in the character of Michel Beuparlant. The novel's publication at the beginning of the politically dynamic René Lévesque premiership shows the province at a crossroads of retaining and embracing its special (distinct) nature and allowing itself to be absorbed. Beuparlant's West, though initially geographic, soon becomes caricatured in the person of oilman William T. Shaheen, Jr., a robber-baron-style capitalist who threatens Beuparlant's way of life.

The two novels following the 1980 Referendum, Jacques Poulin's *Volkswagen Blues* (1988) and Jacques Godbout's *Une histoire américaine* (1988), split the danger Shaheen personifies in half. Poulin's character Théo, the object of Jack Waterman's "quest," as Antoine Sirois aptly labels the journey, goes to San Francisco (Sirois 1999).<sup>2</sup> Théo's experiences as a latter-day *coureur des bois* come to reflect the fear of assimilation: not just the longstanding anxiety

dating back to Lord Durham's Report, but a much more visceral and immediate one that has Québec's culture utterly obliterated in the new global community signified by the Bay Area. Godbout's Gregory Francœur personifies the reverse side of that fear in his own extended visit to the same city. In Francœur's case, exclusion becomes the watchword as he is first jailed, then deported from the United States for following his curiosity too far.

In each of these texts, the author has created a tension between a major character and his version of the West. As the characters each represent Québec at a critical juncture, their versions of the West represent at once a dream for a better future, and a nightmare of losing what distinguishes them from everyone else. As diverse as each of their personal Wests may be, the dynamics of how they interact with that landscape and mindscape reveal much about a culture undergoing significant, even radical, transition between 1960 and 1990.

### The Wests

As François Laterrière discovers in Ferron's "La Vache morte du canyon" (1987), the West (alternately Far West) is somewhat of a moving target. Fort Duquesne (now Pittsburgh) served as a western outpost for the French up to the end of the Seven Years War, and Daniel Boone was a frontiersman in the wilds of Kentucky in the decades after American independence from Britain. Even Northwestern University in Evanston, Illinois, is more than one hundred miles east of the Mississippi River. Today, most North Americans would consider the Pacific coast and the Rocky Mountains as the West, but as William H. Katerberg cautions, "Neither British Columbia nor California easily or entirely fits common images of the West. But if they are not Western, what are they?" (Katerberg 2003:543). Furthermore, some of the most iconic locations associated with the West—Abilene (Texas and Kansas, at the end-points of a major cattle drive trail), Dodge City (Kansas), Deadwood (South Dakota), and more recently Dallas—are hundreds of miles east of the Rockies and more than one thousand miles east of the Pacific.

Dallas, and more specifically the primetime soap opera *Dallas*, distributed worldwide since the early 1980s, is where geography and myth intersect. In the essay "French Frontier," Jacques Godbout notes of the series, "*Dallas* is to urban life what the western was to the conquest of the West. Even the hats one wears there remind us of this, just in case the symbol would have escaped us" (Godbout 1990:23).<sup>3</sup> Later, Godbout notes that World War II effectively ended the western frontier just as it changed French

Canada's position in the world (Godbout 1990:29). Indeed, the iconic West of cowboys, gunfights and stampedes had ended long before even then. Like the prospectors in California and the Yukon, the Pony Express, and the pioneers in Conestogas, these iconic images are based on very narrow groups and fleeting events. Yet they represent a mythos that has more recent parallels in images as diverse as the Canadian Venture Exchange, the Southern California surf culture, Haight-Ashbury, and Silicon Valley. Highly charged corporate images, embodied in such firms as Bechtel, Enron, and Halliburton, provide the negative counterpart to these freewheeling contemporary symbols. In other words, the mythic lives on in both the (often youthful) free-spirited individual (be it beach bum, hippie, or entrepreneur) and in the above-the-law corporation reminiscent of the West Coast robber barons of old.

On whichever end of the spectrum these entities (historic or modern) lie, they all appear to fit within the single framework of what Katerberg characterizes as "emphasiz[ing] adaptation rather than cultural inheritance" (Katerberg 2003:548). Major companies, especially those involved in high risk ventures (and sometimes simply high risk corporate behavior), tend to perform better away from the direct oversight of the central government, whether in Washington or Ottawa. Social movements, especially those emphasizing the individual liberties that push the boundaries of society's accepted mores (from Latter-Day Saints in the nineteenth century, to Beatniks and hippies of the 1950s and 1960s, to the contemporary medical marijuana movement in the U.S.) also tend to take root in the West—if not uniquely, most vigorously.

It is precisely within this framework that the texts considered here approach the geographic and mythic Wests. The protagonists find themselves constrained by the "cultural inheritance," or even simple lethargy, at home. The West represents for them a chance for a dynamic new beginning. It also represents a direct threat, not only to themselves, but to the culture they have left.

### "La Vache morte du canyon" (1962)

Jacques Ferron's short story "La Vache morte du canyon" ("The Dead Cow in the Canyon"), first published in 1962 as a part of the collection *Contes du pays incertain* is the earliest text under consideration here. As such, the story gives a perspective of Québec on the threshold between the *Grande Noirceur* and the Quiet Revolution. Ferron contrasts the Québécois *habitant* lifestyle with that of the "Farouest." In doing so, he compares both the depleted

legitimacy of the passing regime and the moral ambiguity of the coming one. The Far West in this story comes to epitomize, and even parody, the broader North American work ethic. On one hand, hard work leads to success; on the other, money trumps morality.

The story centers on François Laterrière, fifth and youngest son of Esdras of the Trompe-Souris *rang* of Saint-Justin de Maskinongé parish. At the age of 16, Laterrière receives a calling of sorts, to become an *habitant*, like his father. Because of the strict inheritance guidelines governing who will receive the *rang*, Laterrière can find no land near Trompe-Souris. The village priest, who is somewhat responsible for Laterrière's calling, advises the young man to go to the Far West:

"There was no more land in France. Our ancestors found it in Canada. There's no more in the county, no more in the province, you say? Your son won't let that stand in his way. He'll find land somewhere else!"

"Where?" the habitant [Esdras] asked.

"In the Farwest," the priest replied.

Esdras Laterrière had never heard of any such country. The Farwest, Patagonia ... they were one and the same to him. But no matter. His worries were over. His boy would not be setting himself up at his expense (Ferron 1987:361).

The priest's advice, which thoroughly pleases Esdras, accomplishes two things. First, the West has sufficient land to meet Laterrière's needs, reflecting the notion of what Lee Clark Mitchell terms the "wasted desert" awaiting the plow (Mitchell 2003:501).<sup>4</sup> Second, the Québec church throughout the pre-1960 era had considered colonizing and converting North America to French Catholicism a priority, despite the extremely long odds of achieving such an endeavor.<sup>5</sup>

The first challenge Laterrière faces is in simply finding the "Farwest." His father's difficulty in discerning it from Patagonia indicates that a mythic rather than physical geography may be at play here. "The lad from Trompe-Souris was beginning to find the Farwest a little too much for him. In Toronto they had told him it was in Winnipeg; in Winnipeg they had said it was in Regina; and now he had reached Regina only to discover it had already moved to Calgary. The land of Esdras Laterrière had never shifted an inch. True, it was very well fenced..." (Ferron 1987:361). Such difficulties underscore how much the geographic West had already receded, even if the mythic West and its accompanying attitudes remained.

Once Laterrière finally reaches the Far West, he discovers an uncle of his named Siméon, who runs a tavern and tourist rooms near Calgary. Through a local Amerindian chief, this uncle helps Laterrière find some land for his *terrain*, as well as an Amerindian "maiden" named Eglantine (the Chief's daughter) to marry. The couple goes on to build a farmhouse in the Québec style, and to raise cows rather than buffalo, also in the Québec style (Ferron 1987:367). This arrangement works until Laterrière and Eglantine have to return to Calgary to tend to the Chief's trial and hanging for having stabbed Siméon to death. When they return to the canyon after three months, the cow they had bought had died during a drought, though her ghost continued to roam the Laterrière farm. After being frustrated by the cow's repeated rejection, the Laterrière's young bull attacks the pregnant Eglantine: "Frustrated by a dead cow, [the bull] needed nothing more. The morphology of the two parties did not lend itself to their union. The fair Eglantine died. François, who had rushed to the scene, now furious at finding himself a widower, killed the bull, then collapsed himself on the two bodies. When he came to, he heard a wail. It was a baby girl, lying there, kicking, in the blood of her mother and the monster. François Laterrière left the canyon that same day" (Ferron 1987:374). This incident closes the ancestral portion of the story and opens the Western part. The formerly successful *habitant* returns in a state of utter ruin with the infant Chaouac to his late uncle's tavern. The new manager Beauty Rose comments on his condition, "He hasn't a cent and he's sick; his own mother wouldn't want him now" (Ferron 1987:375). This pitiable condition sets up the mythic pattern of Laterrière's picking himself up by his bootstraps and helps dovetail the Western myth of individual success through hard work with the overarching North American myth depicted in the Horatio Alger stories of the nineteenth century.

As Chaouac grows up, Laterrière engages in typically Western careers related to cattle. He first works as a cow-hand; then because of his unfortunate tendency to castrate the bulls he is supposed to tend, becomes a rodeo star named Frank Laterreur (Ferron 1987:382). As his daughter grows older, Laterrière finally takes over the Tourist Rooms from Beauty Rose, then returns to Montréal to run the same there. After he has become very rich in that business, he returns to Saint-Justin to visit his old village priest. The priest praises him for becoming rich, but Laterrière knows that running a brothel is hardly a commendable path to success:

THE FAR WEST AS CULTURAL MIRROR IN QUÉBÉCOIS LITERATURE, 1960–1990:  
A CONSIDERATION OF TEXTS BY JACQUES FERRON, GODBOUT, AND POULIN

When François Laterrière left Saint-Justin for the first time, wearing his cow-hide boots, he wept, and could find no solace till, in a far off canyon, he had managed to recreate the likeness of his Homeland. When, thirty years later, in his big black limousine, he left the village for the second time, no tear blurred his vision. He knew then that he had never been loved. He also knew that a country that values itself more highly than its children and doesn't hesitate to get rid of them, ... concerned only with the preservation of its own old togs, is a country that does not deserve to be loved. And he was perhaps sadder than the first time (Ferron 1987:387).

He sells his Tourist Rooms and his limousine and returns "to that absurd and unlikely canyon, which was the place in all America where he felt least like an exile" (Ferron 1987:388).

Much of what drives Laterrière's journey centers on luck or fate, emphasizing that facet of the Old World or traditional Québécois model. Being the fifth son in his family is out of his control, as is the manner in which he lost his wife and his dream of an *habitant's* life. Setting out on the road out West results from a sort of supernatural calling, resulting from the advice of God's representative in Saint-Justin, the priest. The loss of Eglantine results, too, from a sort of supernatural intervention (the ghost cow's refusal of the bull's advances). As long as Laterrière tries to remain within the Québécois tradition, he is subject to the whims of fate, whether it be birth order, chance encounters, or family calamity. Once he abandons the traditional homestead, he fully enters the West where talent and perseverance replace fortune, at least on the mythic level, as the path to success.

Though the notion of success through hard work alone is as much a myth of the West as the gunslinger or the lone cowboy, it does serve to differentiate between the Québec of the *Grande Noirceur* and the new Québec of the early Quiet Revolution. Success in the new paradigm does not guarantee happiness, or even contentment, though. Laterrière's return to the canyon illustrates the anxiety underlying Québec's new position in the early 1960s: the old way is now as "unattainable" as Trompe-Souris, and the new way risks being just as unpleasant, but with nothing to fall back on. The best Laterrière can expect is to find a place where he feels "least like an exile."

Laterrière clearly personifies Godbout's paradox of the Québécois self-image from *L'Ecran du bonheur*: "In each Québécois, two myths will long lie dormant: the one of a paradise to attain in the American West, and the one of

the paradise that Canada could have been if France had not lost it to English hands" (Godbout 1990:24).<sup>6</sup> In essence, the West is the West because it expanded through (in highly simplified terms) an Anglo-Saxon construct of conquest and colonization, rather than (again, highly simplified) the French model of trade and collaboration, the pioneer farmer versus the *coureur des bois*. In short, it would never have evolved in the same way had the French maintained control of North America. As we shall see, the Quiet Revolution does little to abate the anxiety.

### L'Isle au dragon (1976)

Like Ferron's "La Vache morte du canyon," Jacques Godbout's novel *L'Isle au dragon* comes at a critical juncture in Québec's post-1960 history. Published in 1976, it appears on the eve of René Lévesque's premiership, one which led to the passage of the province's language and culture laws, particularly Bill 101, and which led to the 1980 Sovereignty-Association Referendum. The anxieties provoked by these political events focused on different specifics in the mid 1970s, but as in the early 1960s, Québec as a society was contemplating the abandonment of an old order which predated Confederation by more than a century. The Quiet Revolution shattered the ecclesiastic grip that had held French Québec since the seventeenth century. The rising Sovereignty-Association movement would realign Québec's linguistic and political position within Canada, and ultimately North America. For a society as traditionally conservative as Québec's, such seismic changes could not go unfelt, even among the most ardent separatists and *souverainistes*.

Similar to François Laterrière, Michel Beuparlant is a young Québécois striking out on his own. "*HE'S WORKING HIS WAY THROUGH COLLEGE*" is how he describes himself when he goes to Banff National Park to work on the set of a Marilyn Monroe film financed by William T. Shaheen, Jr., of the Pennsylvania & Texas International (Godbout 1976:33). The park epitomizes the Canadian Rockies, pinpointing the geographic West of the novel. Interestingly, the narrator locates both Lake Louise and Banff in British Columbia, rather than in Alberta (Godbout 1976, 34). This placement has at least two interpretations: either the creation of a fictitious space while maintaining the imagery associated with the geographic space, or the reflection of Beuparlant's naïveté about the West, parallel to that seen in other texts. Shaheen, in turn, embodies the mythic West and, by extension, the American corporate ethos that Beuparlant comes to loathe almost immediately. Furthermore, Pennsylvania and Texas

were the United States' first two oil states, creating a link with the oilman theme of the Western mythic image.

When at Lake Louise, Beuparlant becomes a chauffeur for Shaheen. Initially, chauffeuring Marilyn Monroe, herself an iconic symbol, thrills Beuparlant until he witnesses in his rearview mirror the Penn & Tex president's fondling of the starlet: "We were driving along quickly on a half-paved road, and William T. was trying to nibble the nipple he was holding outside the blouse, but his moustache was tickling her and making her giggle; I stole a glimpse of my friend Marilyn's tearful look, and we understood each other in that painful instant" (Godbout 1976:38).<sup>7</sup> When Shaheen orders Beuparlant to pick up him and Marilyn Monroe later for an evening ride, Beuparlant quits his job on the spot, "refusing to transform a production car into a rolling bordello. *Question of principle*" (Godbout 1976:39).<sup>8</sup>

The actions and reactions of Shaheen and Beuparlant set the state for a far more significant conflict later, one during which Beuparlant finds himself again in the weaker position. Shaheen personifies the worst oilman image; what he wants, he has. His treatment of Marilyn Monroe predicts his treatment, through his company's virtually unlimited power, of iconic and legendary locations throughout the world in his placement of atomic waste depositories:

He [Shaheen] informed me that essentially the sites chosen for the Controlled Atomic Depositories (DACs) had to have been sung by poets, described by novelists, inhabited by dragons, photographed by postcard vendors, dramatized on stage or on screen, and that only mythic places had so far yielded good results, technical as well as psychological, since one found the deepest pits only at these sites, and at these locations as well, long before the installation of the DACs, the populations saw their dreams, their desires, and their deaths play out (Godbout 1976:74).<sup>9</sup>

The site that most concerns Beuparlant is, of course, his own home of Isle Verte. Effectively, once Shaheen makes his claim, no other considerations apply. The notion of property rights being the only law of the West, as Ruggeri notes, comes into full view here, a reflection of the parody of the Golden Rule: Who has the gold, makes the rules (Ruggeri 1998:11). Beuparlant does not wish to lose the heritage of a "magical" place such as Isle Verte, with its own dragon legend even, to the corporate machinations of Penn & Tex International.

Beuparlant, who has had significant training and experience in dragon hunting by this point, soon finds himself totally alone in facing Shaheen's atomic waste plan. Much to his dismay, all his neighbors, indeed the entire island, sold out to Penn & Tex on the word of pliant government officials: "The population was ecstatic, you see me contrite about it, but that's how it was: they preferred to believe the ministers and deputies' speeches who, like old toothless witches, have nothing left in their mouths but the word jobs, and repeatedly speak from meeting to meeting about the creation of the same" (Godbout 1976:138).<sup>10</sup> The result, however, after the initial construction is complete, is that "there is no longer, in a Controlled Atomic Depository, any work but for thirty-four employees," and all but ten are typically foreign (Godbout 1976:139).<sup>11</sup> The Anglo-Saxon capitalist ethos has easily outmaneuvered the Québécois magical mythos. Beuparlant refuses to be deterred and lures Shaheen to Isle Verte (using a magical golden pin) for the final battle between capitalism and heritage on the island: "I just lost my bait [Shaheen], which one of the dragon's heads swallowed completely, the hook, the steel line, the nylon cable, and the embalmed flesh of the asshole of the consortiums, my Siamese ex-brother, the one who surely raped Marilyn more than once, the president, CEO, and majority stockholder of the Pennsylvania & Texas International, all that in one bite. There are dragons, thank God, who are hungry! Adieu William T.!" (Godbout 1976:155).<sup>12</sup> Though Shaheen is gone, so too are the other residents of the island, aside from Beuparlant (and the dragon), leaving Beuparlant alone to toss message bottles into the sea toward the North, Québec's traditional frontier (Godbout 1976:155). Beuparlant's position as the lone holdout reflects the change-related anxieties of the mid 1970s, especially among the people who wanted to preserve Québec's special position: would francophone North America, especially Québec, be able to survive the corporate onslaught, and how many Québécois would resist?

In "La Vache morte du canyon," Laterrière acknowledges the loss of a theo-political arrangement but laments the lack of a significantly better replacement in the success-driven model he acquires in the Far West. Beuparlant finds a similar dichotomy in his experiences, but he may be expecting more dire results. During his travels out West, he has confronted in Shaheen one of the two forces that most readily threaten his home, heritage, and lifestyle: an unbridled corporate expansion. At home, he encounters the other primary threat, the loss of a sense of magic about his beloved Isle Verte to the point where the neighbors abandon the island for temporary jobs. This result is

echoed twenty years later in Godbout's documentary *Le Sort de l'Amérique* (1997). Godbout and his crew search for the history section at the provincial Ministry of Education in Québec City for comments regarding their Plains of Abraham material. Instead, they find a mostly empty room with tables, chairs, and partitions stacked around the edges. Godbout's reaction sums up well the anxieties Beauparlant expresses: "I belong perhaps to the last generation for whom that [the Plains of Abraham] represents something. My children, my grandchildren even less, you understand, the Plains of Abraham, they couldn't care less, they're into their Nintendos. They aren't asking themselves questions about the English, the French in formation, who shot first? ... And it's this tension between the English and the French that make the country. And if this tension disappears because we've forgotten the history behind it, what happens then?" (Godbout 1997:26-27).<sup>13</sup> Selling out a sense of magic to an oilman, like losing a sense of history to playing video games, represents the complacency that threatens the survival of Québec's culture more than any external force. Shaheen did not force anyone on Isle Verte to leave; he simply offered enough money and convinced the right government officials to make the deal seem attractive to the residents.

### Volkswagen Blues (1984)

The anxieties regarding Québec's cultural future come much closer to the surface after the failure of the Sovereignty-Association Referendum in May 1980. Godbout's first novel following that event, *Les têtes à Papineau* (1981), depicts a set of twins who share the same body, but who have two distinct heads and brains. Charles is English, François French. After an operation to take one hemisphere of each brain and combine them surgically (Charles' left hemisphere and François's right), the resulting individual can no longer produce or understand French: "French was in the left side of François' brain. The voices of the right side still occasionally break through. But when I hear the words I cannot reproduce them. It is as though they were a mesmerizing speech!" (Godbout 1981:155).<sup>14</sup>

Jacques Poulin's novel *Volkswagen Blues* reinforces this fear stemming from the Inter-Referenda mingling with the United States, in particular the Western myth. The two principals, Jack Waterman and his métisse hitchhiker friend Pitsémine (nicknamed Grande Sauterelle because of her long legs) turn a road trip to the West Coast into what Antoine Sirois has described as a mythic hero quest. The object of this "quest," Jack's older brother Théo, himself

personifies one fear in the Inter-Referenda Era of 1980-1995: assimilation.

For most of the novel, Théo remains an enigma. An occasional clue to his whereabouts appears every few chapters, beginning with the old postcard Jack finds while going through some papers. The postcard, with very old style handwriting, turns out to be a copy of a Jacques Cartier letter from a book about early French explorers in Canada (Poulin 1988:11). From that discovery in the Gaspésie, Jack and Grande Sauterelle begin a westward journey, first following the Cartier route, then later the Oregon and California trails.

In Toronto the pair discover that Théo had been arrested on unlicensed firearms charges. When they study his arrest record, they discover he answered "traveler" as his occupation, paralleling the *coureur des bois* life of Jack's hero Étienne Brûlé. In addition to the firearm, Théo has in his possession at his arrest a copy of Kerouac's *On the Road*, and one of *The Oregon Trail Revisited* (Poulin 1988:54-55). Théo comes to personify one of Québec's founding archetypes, the one who accepts no boundaries, the one who lets *la bougeotte* be his guide. The missionary would be his ecclesiastic counterpart, while the two place-bound archetypes would be the *habitant* and the parish priest or *curé du village*.

Jack and Grande Sauterelle follow a series of tentative clues, including information from a parking lot attendant in Saint Louis who knows a reporter who might remember Théo and a graffito that reads "THÉO.75" at the Sweetwater River park (Poulin 1988:91, 154). They exhaust the clues just as they must decide whether to proceed to Oregon or to California. Near Fort Hall, they encounter a man who believes he is Ernest Hemingway, and to whom Jack describes his brother in detail. The man tells Jack, "Go to California. Your brother isn't the type you run into in Oregon." When Jack remarks that the man is going to Oregon, he responds, "I'm a rambler, even a tramp, you might say, but I'm not a bum" (Poulin 1988:171). The harsh but succinct "bum" is how Grande Sauterelle sums up the first *coureur des bois*, Étienne Brûlé, as described in a book she read following the scene at the Toronto police headquarters. Were Théo cut from more of an *habitant* mold, Oregon would have been the logical choice; it was a traditionally a destination for people who wanted to work the land (farming, timber, even fishing). However, his *coureur des bois* tendencies made the prospectors' destination of California, particularly San Francisco, more attractive.

San Francisco, as a mythic place, has long represented the boomtown seme of the Far West myth. The 1849 gold rush and the late twentieth century tech boom both

centered on the Bay Area. More importantly, it has also represented a stopover for restless souls and a magnet for the free spirited. Jack London and Mark Twain both spent time there, and John Steinbeck set his *Cannery Row*, a novel populated with the restless and free spirited, there. The beatniks also found their way there to push the frontiers of literature and the social contract. It is with this last group that Théo finally finds a home.

The final clue Jack locates is in a history of the Beat Generation where he sees a photo of Allan Ginsberg and his entourage at the Café Trieste. In this photo, just to Ginsberg's right, is an "unidentified man," Théo (Poulin 1988:193). The loss of identity to others may portend a broader loss of identity for Québécois if they immerse themselves in part of the Western mythos. Others' inability to recognize Théo is just one part of the problem, however. Jack and Grande Sauterelle first ask Lawrence Ferlinghetti whether Théo still may be found in the neighborhood. After considerable reflection, he finally remembers the girlfriend, a woman named Lisa (Lisette) who works as a showcase stripper (Poulin 1988:200-201). She directs them to a park where Jack finally finds his older brother after fifteen years, but Théo does not recognize him. Jack discusses the case with Théo's doctors and discovers that "Théo's paralysis was progressive and that no one could do anything. His memory had been affected and he didn't really know who he was, but with the competent and attentive care being lavished on him, he was not unhappy; in fact, he was as happy as a person could be under the circumstances. Trying to bring back the past might aggravate his condition" (Poulin 1988:212). Though Théo's loss of self results from a degenerative disease, as one regards him as a personification of a Québec after the 1980 Referendum, the loss of memory and of cultural connection carries great symbolic weight. Like François Papineau in the Godbout novel, he has been assimilated, virtually without a trace. Such fears easily translate into a similar, broader anxiety for the province as a whole.

### **Une histoire américaine (1986)**

While Poulin's symbolism of assimilation is clear, the fears Jacques Godbout expresses in his 1986 novel *Une histoire américaine* are more nuanced and perhaps more dire. The narrator-protagonist Gregory Francœur does not go West as a young man like François Laterrière or Michel Beuparlant, but rather as a middle aged man, reflective of the Quiet Revolution's own middle age as a movement, as well as the ages of its earliest proponents and activists. Like Laterrière and Beuparlant, Francœur goes West for

a job opportunity. His career as a "social communicator" in Québec has bogged down following the Referendum, and his marriage to Suzanne has fallen apart as well. The national organization of which he had served as General Secretary, the American Association of Social Communicators, has given him a grant to research "happiness at age forty" in California and has located him a post at the University of California-Berkeley to supplement his grant money (Godbout 1988:10-11, 41).

Just as Banff and Calgary carry certain semes related to the West, so too does the Bay Area of California. The Canadian Rockies maintain a certain quality of unspoiled nature punctuated by the cowboy and RCMP mythos. San Francisco, as one of the most picturesque cities in the United States, maintains the notion of beauty; however, its frontier qualities are found in the idealism of the social movements that start there (a social frontier) and also derive from the research that is pursued there (the high tech frontier).

As with Laterrière's *Farouest*, which seems to be a moving target, Gregory Francœur's San Francisco appears to be a geographic mystery to himself and his colleagues in Montréal: "Like most Canadians, all he know of California were the mythical images: beachboys and limousines, Napa wines and thousand-year-old sequoias. He couldn't even have said whether Berkeley, where he was to do his research, was near Hollywood" (Godbout 1988:11). The tendency emerges here to portray the West as a monolith rather than as a vast collection of converging and contradictory landscapes and mindscapes. Four hundred miles and a fierce competition—on the order of Boston and New York's, or Montréal and Toronto's—separate "So-Cal" and "No-Cal." While the West as a whole may be defined by its ability to push the frontier, it is vital to know which specific frontier one is expanding in order not to run afoul of the established rules. Francœur's relative ignorance about California puts him into jeopardy almost immediately.

A large measure of Francœur's desire to follow his curiosity derives from his isolation upon his arrival. The scene in which he goes to the housing agency becomes key: "Every morning there were dozens of immigrants: Tai, Poles, Japanese, Germans, Pakistanis, Brits, and others, all line up to get the agent's latest list, all looking frantically for the ideal place. The prices were commensurate with the scarcity of apartments. For two days I walked all over the city, going from phone booth to futile visit, to: 'Sorry it's already rented,' to a refusal: 'You don't have references,' to a beautiful but unfurnished house, to a damp hole" (Godbout 1988:20).

The chaotic scene resembles a latter-day Ellis Island, and Francœur, despite his prominence at home, is simply among the masses.

Francœur's suffering from a lack of human contact, epitomized by the repetition of the quintessentially superficial "Have a nice ..." throughout the text, soon leads him down a dangerous path involving the asylum movement for war refugees on the wrong side of Washington's approved political refugee ledger (here, Salvadorans). After settling into a house that sparks memories of his awkward outsider status years before in Addis Ababa, Francœur begins to entangle himself in the network of Allan Hunger, the personification of the Left Coast radical. Francœur's first step is to transport Salvadoran illegal aliens to a safe spot. He soon has contact with a Seventh Day Adventist in the asylum movement named Mary Ann Wong, a Sino-Finnish Californian who instructs Gregory on the welcoming and training of the Ethiopian Terounech Teklé.

At this stage, Francœur has direct contact with Allan Hunger. Hunger's excess of caution (loud music, soundproof attic, electronic communication devices) seems to reveal a significant level of paranoia, but he remarks, that he has been frequently bugged. Then, following a brief history of how the authorities squelched the anti-war movement in the 1960s and 1970s, Hunger explains his current project to Francœur: "If Washington is going to play policeman to the world, my duty is to open the country to those immigrants who are turned back at our borders. You've no doubt noticed that there are television reporters here from all parts of the world. Our enemies sponsor the news programs and think they're in control. Meanwhile, we're working on the reporters. Every time a job opens up, we try to place one of our people in the newsroom. To counter the big lie. We've made friends all over the planet. I don't believe in borders" (Godbout 1988:102, 105). Allan's opposition to the U.S. government's immigration policy reflects a larger aspect of the Western mythos, a concentrated dislike and distrust of the central federal authorities in Washington or Ottawa. Ironically, while his fervor is reminiscent of the Berkeley radicals of the 1960s, his paranoid comportment has tinges of the right-wing survivalist, another vehemently anti-federal image associated with the West (in particular, the U.S. Pacific and Mountain Northwest).

Hunger is murdered soon afterward, leaving Francœur vulnerable to the machinations of the federal authorities he too has crossed. Francœur soon finds himself jailed on invented charges of arson at a Berkeley laboratory and falsely accused of rape. He immediately becomes a pariah in the local media, the "French rapist and arsonist" (God-

bout 1988:125). The use of "French" reinforces his alien status and even compounds it by the use of an inaccurate nationality. Prosecutors know, however, that his alibi would incriminate him with the violations of immigration laws, particularly regarding the smuggling of the Salvadorans (Godbout 1988:159). His only option is to plead guilty to the immigration charge and face deportation, possibly permanent, as seen in the exchange with the prosecutor Marleau:

[Francœur] "All right then, let them deport me and happiness be damned! I don't need a research project to be happy."

"You admit your actions and accept their consequences?"

Gregory wanted to know if he'd ever be able to enter the States again. Visit New York or a beach in Florida.

"You can have your file reviewed every five years, but there's no guarantee they'll wipe it clean. As you know, the Immigration Department is very rigid" (Godbout 1988:160–161).

In this context, the deportation carries great symbolic weight. Like François Laterrière and Michel Beuparlant, Gregory Francœur personifies Québec at a critical crossroads. The failure of the 1980 Referendum has set him adrift professionally and personally. His sabbatical on the West Coast tests the proposition that, as he has asserted to some of his friends, "Québec's future lay with the United States" (Godbout 1988:10). As seen in the housing agency scene, the Québécois Francœur is just one of a flood of foreign nationals trying to gain a foothold the new high tech, socially progressive frontier. His expulsion from this new Ellis Island for a relatively minor infraction underscores the difficulties Québec would have in a rapprochement with the United States. To regain control of its destiny in the Inter-Referenda Era, Québec would have to look within, the late twentieth century configuration of the Western myth not being readily available.<sup>15</sup>

### Concluding Remarks

The purpose of this study has not been to create an exhaustive overview of the West in Québécois literature since 1960, but rather to broach a topic that reinforces both Québec's American-ness or *américanité* and its Otherness within the same context. One feature that may bear further scrutiny is the Canada-U.S. dichotomy in the texts. Prior to 1980, the West shown is in or near the Canadian Rock-

ies; afterwards, it is in the San Francisco Bay area. Even in the 1976 *L'isle au dragon*, however, the personification of the West, Shaheen, is U.S. American. The shift appears to indicate a further symbolic rejection of Québec's Canadian-ness, already seen in the expressions "Québécois" and "Francophone Québécois" in lieu of "Canadien" or "French Canadian," as noted by Jacques Godbout in his short essay "Qu'est-ce qu'un Québécois?" (Godbout 1990:180).

In each of these texts, regardless of the physical location of their Wests, the personification of Québec in transition looks outward, either for opportunities not available at home, or simply for spiritual rejuvenation. Once the West as the place of opportunity comes into play, its predisposition toward "adaptation" rather than "cultural inheritance" or long-established tradition (as noted by Katerberg) becomes apparent. Since Québec stands at the threshold of abandoning long-standing tradition in each of these texts (the role of the Church, the relationship within Canada, the relationship within greater North America), the West provides a glimpse of how Québec might adapt in the new paradigm. The pre-1980 texts depict a Québec that sheds its old ways only to adopt even less satisfying new ways. The post-1980 novels show a much starker choice for the province, between assimilation and exclusion. These characters' interactions with the West not only hold up a mirror to the transitional stage in which Québec finds itself in the 1960s, 1970s, and 1980s, it also reflects the fears of what may lie beyond the transition. The accuracy of their views might lead to an interesting discussion in its own right in a different forum.

## Notes

- 1 "Un mythe que nous nous sommes appropriés (*sic*) au Québec où nous avons une culture western sans avoir d'histoire western. Notre vrai cowboy à nous c'est le coureur des bois" (my translation to English).
- 2 See the chapter "La quête du héros et la descente aux Enfers." Sirois, Antoine. 1999. *Lecture mythocritique du roman québécois*. Montréal: Éditions Triptyque, P. 75-90.
- 3 "*Dallas* est à la vie urbaine ce que le western était à la conquête de l'Ouest. Même les chapeaux qu'on y porte nous le rappellent, au cas où le symbole nous aurait échappé" (my translation to English).
- 4 The reverse of the same image is the "Edenic" West. He goes on to note that these were "the two alternative possibilities that fueled public policy in the nineteenth century" (Mitchell 2003:501).
- 5 François Laterrière is even offered a fleur-de-lis pin in Calgary by his former parish priest for his efforts out West. As the encounter follows all the misery he has faced in trying to be a good *habitant* in a hostile land, he angrily rejects the award (Ferron 1987:384).
- 6 "En chaque Québécois, deux mythes sommeilleront longtemps: celui d'un paradis à atteindre vers l'Ouest américain, et celui du paradis qu'aurait pu être le Canada si la France ne l'avait perdu aux mains des Anglais" (my translation to English).
- 7 "Nous filions à bonne allure sur une route à demi asphaltée, et William T. cherchait à mordiller le tétin qu'il tenait hors du corsage, mais sa moustache la chatouillait et la faisait rigoler, je saisis au vol le regard éploré de mon amie Marilyn, nous nous sommes compris en cet instant douloureux" (my translation to English).
- 8 "[R]efusant de transformer une voiture de la production en bordel ambulante. *Question of principle*" (my translation to English).
- 9 "[I]l m'apprit qu'essentiellement les lieux choisis pour les DAC devaient avoir été chantés par les poètes, décrits par les romanciers, habités par les dragons, photographiés par les entrepreneurs en cartes postales, dramatisés sur scène ou à l'écran, et que seuls les lieux mythiques avaient à ce jour donné de bons résultats, aussi bien techniques que psychologiques, puisqu'on ne trouvait qu'en ces lieux les fosses les plus profondes et qu'en ces lieux encore, bien avant l'installations des DAC, les populations voyaient se jouer leurs rêves, leurs désirs et leur mort" (my translation to English).
- 10 "[L]a population était ravie, vous m'en voyez contrit, mais c'est ainsi: elle préféra croire les discours des

- ministres et députés qui comme de vieilles sorcières édentées n'ont plus à la bouche que le mot emploi, et radotent de meeting en meeting sur la création d'iceux" (my translation to English).
- 11 "[I] n'y a plus, dans un DAC, de travail que pour trente-quatre employés..." (my translation to English).
- 12 "[J]e viens de perdre mon appât que l'une des têtes du dragon a avalé tout rond, l'hameçon, le fil d'acier, le câble de nylon et les chairs embaumées du trou du cul des consortiums, mon ex-frère siamois, celui qui sûrement viola Marilyn plus d'une fois, le président-directeur général et principal actionnaire de la Pennsylvania & Texas International, tout cela d'une bouchée. Il y a des dragons Dieu merci qui ont bon appétit! Adieu William T.!" (my translation to English).
- 13 "[M]oi j'appartiens peut-être à la dernière génération pour qui ça représente quelque chose. Mes enfants, mes petits-enfants encore moins, tu comprends bien, les Plaines d'Abraham, ils s'en tapent, ils sont dans les jeux Nintendo. Ils sont pas en train de se poser des questions sur les Anglais, les Français en formation, qui a tiré sur qui?... Et c'est cette tension entre les Anglais et les Français qui font le pays. Et si cette tension disparaît parce qu'on en oublie l'histoire, qu'est ce qui arrive?" (my translation to English).
- 14 See also *Alias Will James* (1988). Will James, it is revealed in this documentary, despite his reputation as a Western cowboy, author, illustrator, and film star of the 1920s and 1930s, turns out to be Québécois Ernest Dufault. His assimilation is such that he loses much of his ability to speak French by the end of his life. The fear that he will be found out as a non-Westerner leads in part to the alcoholism that will finally kill him.
- 15 Across the Atlantic is another option covered in the texts. The Ethiopian Terounech Téklé, with whom Francœur falls in love, personifies this option. Initially, she is another immigrant brought in by Hunger's group to help "counter the big lie." Michel Beuparlant also attends dragon hunting school in Paris, thus cracking the door open to a relation with Europe.

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# *Cultural Resistance to Globalization: The Case of the Canadian Football League*

Reginald W. Bibby and Trevor W. Harrison

## **Introduction: Culture, Sports, and Change**

Sociologists typically define culture as “the values, beliefs, behaviour, and material objects that constitute a people’s way of life” (Macdonis and Gerber 2005:55). Curiously, however, mainstream sociologists still are inclined to overlook sport as an important element of culture. A scan of articles appearing since 1990 in the two major sociological journals in Canada—*The Canadian Review of Sociology and Anthropology* and *The Canadian Journal of Sociology*—reveals that not a single article has been published dealing with sport and culture. Of course, more specialized sociological journals and some in other disciplines *do* take sport seriously, both as a cultural element and an object worthy of study. Our point, however, is that sport remains a largely neglected phenomenon within much of mainstream sociology, rarely referred to, for example, in those basic overviews of the field—introductory textbooks.

Such an oversight is hard to fathom. As Bruce Kidd has pointed out, “It is impossible to describe modern life accurately without some account of sports” (Kidd 1996:5). Clearly, sport and discussions of sport surround us daily. Sports socialize and discipline individuals, inform notions of sexuality, gender, race, and class (Leonard 1998; White and Young 1999), and provide some of the building blocks of personal identity (Kidd 1996). Sports simultaneously forge a sense of community and embody conflict within and between communities (e.g., the Glasgow Celtic and

Glasgow Rangers). They often reinforce and typify existing social exclusions and hierarchal power structures, yet have sometimes also been one of the first sites of demand for broad social change (e.g., Jackie Robinson as the first person to play in major league baseball). On one level, sports are metaphoric; on another, they are materially integrated into the modern economy and political life (Leonard 1998). Finally, as Kidd argues, sports also “animate a rich, dense tapestry of mythological and symbolic narratives” that underpin nationhood (Kidd 1996:5). In short, sports matter.

Sports, like elements of societal cultures more generally, are dynamic. The rules, regulations and equipment involved in various sports frequently change. Hockey, for example, underwent changes during the twentieth century in the number of players allowed on the ice, adoption of the forward pass and the red line, and the use of curved sticks. Likewise, fan and participant interest in sports may ebb and flow. Boxing and baseball struggle to maintain the fan allegiance in the United States that they once knew in contrast to the increase in fan support experienced by professional football and men’s basketball. Other sports, such as soccer and women’s professional basketball, find it difficult to develop significant followings. Sometimes the sources of change are largely internal to the society. Often, however, the main impetus for change is external.

Years ago, William Ogburn (1964) argued that cultural change follows slowly on the heels of material change. In the late twentieth century, however, the advent of new production, communication and transportation technologies accelerated the process of cultural contact and transformation. In the eyes of some observers, of even greater importance to social and cultural change has been the enormous wealth, political leverage, and technological superiority of dominant countries. The result is that the national cultures of subordinate countries have been threatened by homogenization. Together, these developments are part of the well-known phenomenon of “globalization.”

### Globalization, Culture, and Sport

The term “globalization” emerged in the early 1980s to describe a form of global integration allegedly differing in kind, if not scope and degree, from anything previously witnessed (Giddens 2000; Robertson 2003). While globalization is in the first instance economic, it is clear that its reach also extends to state politics and national cultures, as well as to the outlooks of individual citizens.

There are three primary perspectives on the impact of globalization upon culture (Hesmondhalgh 2002). The *neo-liberal approach*, grounded in classical economics and utilitarianism, emphasizes the importance of markets that are unfettered by national borders or government policies (Robertson 1987, 1990; Ohmae 1991). Globalization involves the necessity of breaking down local cultures and securities in order to develop greater cultural interconnectivity (Tomlinson 1991). The market is seen as the chief instrument in this process. It is rational and democratic; as such, it responds to signals put out by consumers regarding what they value.<sup>1</sup> Everything is a commodity, or at least potentially everything can be commodified, including sports. As commodities, cultural products survive, are modified, or become extinct according to the obdurate principles of supply and demand. Protective measures meant to ensure a product’s survival are futile. The approach is unapologetically Darwinian, assuming cultural destruction and absorption.

In contrast, the *neo-Marxist or political economy approach* sees culture and sports as potential sites for conflict. In the most obvious sense, nations, classes, and other groups may challenge each other through “their” teams (e.g., Liverpool vs. Everton in soccer; Canadian hockey players vs. American hockey players in the Winter Olympics). In an increasingly globalized and commercialized world, however, culture and sport may also represent competition in another arena: the accumulation of profit.

Today, sport is a commodity that represents a source of immense corporate wealth, sometimes—as with other commodities—representing large capital transfers between states and regions.

Unlike neo-liberals, neo-Marxists do not view cultural markets, including the appetite for sports, as “natural” creations. Rather, consumption—or, the *desire* to consume—is itself a product of modern capitalism (Robbins 2004). Moreover, today it is not always (or altogether) the object that is consumed, but the *image* that surrounds and is “embedded” in the object, whether the game itself, the ancillary equipment and paraphernalia (e.g., sports t-shirts), or the “stars,” who are also “manufactured” (Boyle and Haynes 2000). Brookes notes, for example, that the added value of higher-priced Nike training shoes results from “scarcity, celebrity endorsement and design rather than the cost of materials and production” (Brookes 2002:54-55). Again, the neo-Marxist approach draws attention to the idea that sports are a potential site for cultural conflict and resistance.

Hesmondhalgh (2002) describes the third perspective on globalization and culture as the *cultural studies approach*. He argues that this approach has compelled us to take ordinary, everyday culture seriously, and to give greater attention to how culture is defined and who does the defining. Cultural studies, Hesmondhalgh says, “has forefronted issues of textuality, subjectivity, identity, discourse and pleasure in relation to culture” (Hesmondhalgh 2002:40). Put another way, the cultural studies approach differs from neo-liberal and neo-Marxist approaches by allowing culture a certain “relative autonomy” from the economy. Welsch (1999) argues further that this approach stands in contrast to the static notions of homogeneity and conflict seen in the neo-liberal and neo-Marxist approaches respectively. Instead, cultures are seen as constantly changing, marked by annexability and transmutability and by internal and external processes that may result in increased cultural differentiation (Hall 1997; Hesmondhalgh 2002:176) or “hybridity” (Chambers 1994).

Our argument primarily follows the neo-Marxist and cultural studies approaches. We reject the neo-liberal argument of homogenization, and concur that culture and sports are indeed potential spaces for conflict and resistance. However, these cultural responses to globalization are not merely reflections of “reactive ethnicity” or nationalism (Hiller 2000:236). We also maintain that they reflect a positive re-assertion of locality and personal identity through the preservation of sports teams, leagues, ways of playing, and so on.

We further argue that the rise of cultural re-assertions through sports is in direct proportion to the degree that cultural differences in other areas are less distinct. That is to say, where cultural communities share broad linguistic or ethnic similarities, the need to emphasize even minor differences becomes greater. While such broad similarities allow for immediate market entry into “geo-linguistic regions” (Sinclair, et al. 1996:11-14) or “geo-cultural markets” (Hesmondhalgh 2002:180), they also demand the need to assert—sometimes passionately—the reality of differences that remain.

### ***The Canadian Football League***

The Canadian Football League was founded in 1958. By then, however, Canadian football was firmly ensconced in Canada. The first recognized game of North American football (as opposed to soccer football or rugby) dates to 1874, and a game played between McGill University and Harvard University (Harrison 1997). Strictly amateur at the time, the game gradually spread out from the urban centres of Montréal and southern Ontario. In 1909, the Grey Cup, emblematic of football supremacy in Canada, was awarded for the first time (Fulton 2003). In the 1920s, western Canadian teams began competing for the trophy, winning it for the first time in 1935. Following the difficult war years, teams re-emerged in Calgary and Edmonton in the late 1940s. The full compliment of nine teams making up the current CFL was reached in 1954 with the admission of a team in Vancouver, the British Columbia Lions.

By this point in time, a unique brand of football was being played in Canada that has remained quite distinctive from its American counterpart. The differences include: twelve players on the field (vs. eleven in the American game); a wider and longer field (65 x 110 yards vs. 50 x 100 yards); a bigger end zone; unlimited motion in the backfield before the ball is snapped; the mandatory returning of a punt (versus signalling a fair catch); the awarding of a single point on a punt or missed field goal when the ball is kicked into an end zone and not returned by the defending team; and a required one yard between the two lines of scrimmage.

Despite these important rule differences, there also have been significant connections between the two “games,” reflective of broader currents of integration between the two countries. In order to compete with the eastern teams, western Canadian teams in the 1930s began recruiting American players and coaches. Winnipeg’s first western victory in 1935 was credited by some easterners as being

the result of a number of American “ringers” being paid by the Blue Bombers. Consequently, league officials instituted regulations limiting the number of “American” players that a team could have. The rule, though occasionally tweaked such as being re-conceptualized as the “import rule,” has remained in effect until today, not only as a means of protecting jobs—as important as this is—but also to protect the distinctive nature of the game itself.

Professional football began to take off in Canada in the 1950s in the context of post-war prosperity, the emergence of Canadian nationalism, and the advent of television. At that time, the league was not in direct competition with the National Football League for attention or players. Salaries were reasonably close; indeed, some American players could make more money playing in Canada than in the United States.<sup>2</sup> Black players, in particular, were afforded opportunities denied them in their home country, much to the benefit of Canadian teams and their fans.<sup>3</sup> And though Canada occasionally “lost” American “stars” to the NFL,<sup>4</sup> no convincing argument could be made that the CFL was offering an inferior product. The games were simply different. As of the mid 1950s, the NFL had twelve teams, the CFL nine. Indicative of the relative health of the NFL, an expansion team, the Dallas Texans, was born in 1953—and died a year later.

The late 1960s saw a rise in Canadian nationalism, stimulated by the 1967 centennial anniversary of the country’s birth. That fanning of nationalism was intensified by a concomitant rise in anti-American sentiment, fuelled by assassinations, scandals, and the unpopular Vietnam War. In this context, cultural markers of Canadian distinctiveness, such as the CFL, grew in importance. The Grey Cup game—an opportunity for venting traditional East-West rivalries, not to mention a good chance to party—became a central signifier of Canadian national identity.

At the same time, however, the political economy of sports began to change. NFL salaries in the United States, sparked by a gigantic hike in television revenues and bidding wars with the upstart American Football League, began to dwarf those of players in Canada. Also, movement toward greater racial equality in the U.S. meant that African-American players, except in certain skilled positions such as quarterback, had increased opportunities to play in their own country.<sup>5</sup> Beginning in the 1970s, a growing number of American-born players began treating the CFL as a launching pad for a career in the “big show.” Many U.S. players previously had put down roots in Canada, becoming citizens and active members of their communities. Such ties became less common.

Still further, a heightened presence of the NFL in Canada became possible not only because of the league's extensive financial resources but also because of the arrival of cable television and a dramatic increase in the league's exposure. Ironically, the NFL could market its product more aggressively and receive more television exposure in Canada than could the CFL. Particularly in border cities such as Toronto and Vancouver, the idea that Canadian football was "second rate" or "minor league" began to take hold. Cultural differences, like the "rouge"—the point awarded on missed field goals—not to mention having two of nine teams called the "Roughriders,"<sup>6</sup> became sources of ridicule for "NFL-ophiles."

In 1972, John Bassett Sr., owner of the Toronto Argonauts, proposed the CFL expand to New York City. A prospective owner was announced. But the CFL's five western teams rejected the move, arguing it would be dangerous financially for the other teams to compete with such a large market. Bassett suggested he did not much care if the western teams survived (Goodman 1980:16). He soon sold the Toronto team, but other threats quickly emerged—beginning with a project of his own son.

Early in 1974, John Bassett Jr. announced he was going to seek a franchise for Toronto in the newly formed World Football League. The WFL declared itself a competitor of the NFL, but it was clearly also a threat to the CFL. It was felt that the market could not sustain two teams, and the demise of the CFL's Argonauts would have created a huge hole in the nine-team league. Bassett's plan to use the same stadium as the Argos was seen as a conflict of interest. Canada's federal government was fresh off an election victory in 1974 that had included a platform of Canadianization that included a greater commitment to defend the economy and culture. The government introduced and passed a special bill that prevented Bassett from bringing a WFL team to Toronto (Harrison 1997).

By the early 1980s, however, the Canadianization effort had largely failed, beset by federal-provincial bickering, an uncertain world economy and pressures from Washington. Ronald Reagan's new political regime in Washington embarked on a program of trade liberalization (Clarkson 1985). In concert, the new Canadian government of Brian Mulroney said Canada was open for business (Laxer 1989). Protectionism was out; free trade was in, signalled by the implementation—following the 1988 federal election—of an agreement carrying that same name (Tomlin and Doern 1991).

The Canadian government said culture was not among the items up for sale, but the American government and its business supporters had other views. In the years that

followed, Canadian culture experienced renewed pressure from its southern neighbour to treat culture, not as an expression of a way of life, but rather as any other commodity (McQuaig 1991). Music and books were seen as no different from automobile parts or barrels of oil. More than a few Canadian nationalists predicted free trade would result in the erosion of Canada's cultural distinctiveness, if not the country's political absorption into the American monolith.

Free trade between the U.S. and Canada was only an initial step in the larger American-led project of globalization. Free trade with Canada provided a model for the expanded North American Free Trade Agreement (NAFTA) in 1993 that included Mexico. Subsequently, discussions have centred on the notion of an even larger free trade zone of the Americas.

The fate of the CFL during these years seems fairly symptomatic of what was happening to Canada as a whole. The Canadian dollar rose abruptly, then fell to new lows, making salaries in Canada non-competitive with those in the U.S. New sources of entertainment competed for increasingly scarce discretionary income, resulting in declining attendance in some CFL cities. Widespread moves towards privatization elsewhere in the economy carried over to the CFL where several teams were bought and sold—occasionally involving unscrupulous or incompetent owners. (In that regard, of course, such dysfunctions in the CFL would also come to light in the larger corporate world.)

Canada's National Policy of 1879 had created an economy that flowed east and west, and the Canadian Football League had developed in a similar way (Goodman 1980:11). Free trade, however, created an economy that flowed north and south. In 1993, the CFL likewise announced it too was abandoning the notion of borders and within two years had expanded into four American cities (Sacramento, Las Vegas, Baltimore, and Shreveport). In 1994, the British Columbia Lions, replete with their contingent of non-import players, defeated the "all American" Baltimore Stallions 26-23 on a last minute field goal. The victory was a source of immense pride and relief for many Canadians. The next year saw the CFL expansion effort running into serious financial problems. The Las Vegas franchise folded, while Sacramento relocated to San Antonio. Meanwhile, two additional American cities (Memphis and Birmingham) entered the league. That year, the Baltimore Stallions won the Grey Cup, the only non-Canadian team ever to do so. For many, the Stallions' victory was further evidence of a league, a culture, and a country that all were disappearing. The title of Frank

Cosentino's book on the CFL, *A Passing Game*, published in 1995, said it all.

At the conclusion of the 1995 season, however, the Baltimore team relocated to Montréal and the remaining four U.S. teams ceased operations. Significantly, in contrast to the NFL's experience in Canada, the CFL lacked the ability to introduce Americans to its version of football and market its product, in large part because it was unable to obtain a major U.S. television contract (Fulton 2003). A related difficulty was not subtle: major American multinational corporations, such as Budweiser and Pizza Hut that give major support to promoting the NFL in Canada, were not about to provide the same favour for the CFL in the United States.

The result was that the CFL had to retreat back to Canada and attempt to re-market itself as "Radically Canadian." Many observers saw the failure of the U.S. expansion experiment as a prelude to the final days of the CFL. Such perception became more pervasive with the collapse of the Ottawa franchise at the end of the 1996 season. A large contingent of media, led by those based in Toronto, suggested as the season wound down that the league itself gracefully and mercifully put an end to its dying operation following the Grey Cup Game in Hamilton. The league did not act on such advice.

Surprising to most people and shocking to some, the Canadian Football League today is not only alive but actually experiencing a level of prosperity that has not been matched at least since the 1980s. The league returned to Ottawa in 2002, and that city will host this year's prestigious Grey Cup game. Attendance, television ratings, corporate sponsorship, and merchandising revenues all have increased markedly in recent years.

For the survey researcher who has been charting league interest, the turnaround is not a great surprise. What has been rather remarkable is that, even during the league's down years, Canadian interest in the CFL continued to be both sizeable and steady. Such data suggested that all along there was a solid, resilient market there for the taking. What was slow in coming was the organizational response to that latent market on the part of the CFL, television networks, and the corporate community more generally. In part, it seems, everyone "up here" was buying into the NFL hype instead of listening to Canadians.

## The Surveys and What They Have Found

### Background

During the Canadian Football League's turbulent 90s decade, three Canadian national surveys were conducted that included items monitoring interest in both the CFL and NFL. Carried out by mail in 1990, 1995, and 2000, these "Project Canada" surveys were conducted by mail from the University of Lethbridge and included highly representative samples of about 1,200 Canadians each (for methodological details, see Bibby 2001:331). In addition, an item pertaining to receptivity to the NFL expanding to Canada that appeared in the 1995 Project Canada survey was also included in Gallup's February 1997 national omnibus telephone survey, with a representative sample of 1,008 people. All four of the surveys are accurate within about three percentage points either way, 19 times in 20.

In each of the Project Canada surveys, Canadians were asked how closely they follow the CFL and the NFL, along with the NHL, Major League Baseball, and the NBA. Response options were "Very Closely," "Fairly Closely," "Not Very Closely," and "Not Closely At All." As mentioned, an item exploring openness to the NFL expanding to Canada was included in the 1995 Project Canada survey and the 1997 Gallup survey. The item obviously was cognizant of the implications of the expansion possibility for the existence of the Canadian Football League. The item read: "*In recent years, there's been talk about the NFL expanding to Canada. How do YOU feel about such a possibility?*" The options provided were (1) *I'd be happy to see the NFL come, even if it meant the end of the CFL,* (2) *I'd be happy, but only if the CFL continued to operate,* (3) *I don't want to see the NFL come to Canada,* (4) *I don't really care much either way.*

**Table 1. Interest in CFL and NFL, 1990–2000**

% Indicating Follow "Very Closely" or "Fairly Closely"

CFL	NFL		
2000	15%	12	
1995	15	13	
1990	16	11	

### Findings

During the 1990s, interest in the CFL remained constant with some 15 percent of Canadian adults indicating they were following the league "very closely" or "fairly closely.

For all the additional exposure and aggressive marketing of the NFL during the decade, public interest failed to increase significantly and remained slightly below that shown the CFL at about 12 percent.

As we pointed out earlier, it has been widely assumed that in Ontario in particular, interest in the NFL grew significantly during the 1990s at the expense of interest in the CFL. The surveys reveal that neither assumption was accurate. The proportion of Ontario residents following either the NFL or the CFL remained virtually unchanged during the 90s, remaining at around 15 percent for both leagues.

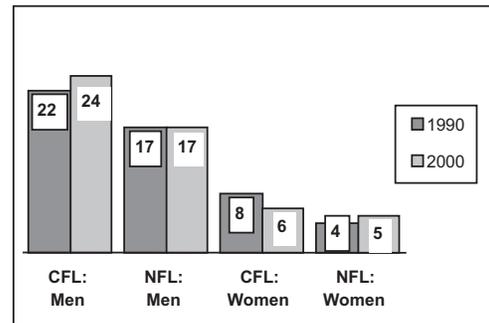
**Table 2. Interest in the CFL and NFL by region, 1990-2000**

	CFL		NFL	
	2000	1990	2000	1990
Ontario	16%	14	15	15
Prairies	31	33	11	9
BC	14	21	10	10
Québec	10	4	11	8
Atlantic	7	13	7	8

The CFL's largest regional following during the period was in the three Prairie provinces (Manitoba, Saskatchewan, and Alberta)—the home of four CFL teams (in Winnipeg, Regina,<sup>7</sup> Edmonton, and Calgary). NFL gains in those three provinces were minimal. In Québec, with the rebirth of the Montréal Alouettes in 1996, interest in the CFL more than doubled in the 90s, bringing the interest level up to about the same level as that of the NFL. However, in both British Columbia and the four Atlantic provinces, the league encountered a fan decrease. Nevertheless, in British Columbia, the level of interest in the CFL remained higher than that of the NFL, while the interest level for the two leagues by the end of the decade was similar in the Atlantic region—which, significantly, does not have a CFL team.

Professional football continues to be a sport followed primarily by men rather than women. As of 2000, only eight percent of women say they are following the CFL while just four percent indicate they are NFL fans. Both levels changed little during the 90s; to the extent they did, the CFL experienced a slight market gain among women.

**Figure 1. Interest in CFL and NFL in 2000, by gender**



**Table 3. Male interest in the CFL and NFL, by age cohorts, 1990 and 2000**

	CFL		NFL	
	2000	1990	2000	1990
18-34	30	18%	15	19
35-54	22	26	20	18
55+	22	22	14	15

Of considerable importance, the 1990s saw a major increase in CFL interest among males under the age of 35, whereas the NFL experienced a slight loss within this same demographic. There was little change among interest in either league among other age cohorts. If the 18 percent level of interest among 18 to 34 year olds in 1990 provides some support for the widely held notion that the CFL of the 1990s had “lost” a generation of fans, the findings for 2000 indicate the league was highly successful in connecting again with young adults.

**Table 4. CFL fans, NFL fans, and fans of both leagues, 1990 and 2000**

*% Indicating Follow “Very Closely” or “Fairly Closely”*

	Both	CFL Only	NFL Only	Neither	Totals
2000	7%	8	481		100
1990	69	5	80		100

Obviously, many football fans follow both leagues. Interest in the CFL and NFL is hardly mutually exclusive for most people who simply like pro football. An examination of interest across leagues shows that, during the 1990s, about seven percent of Canadians followed both leagues, while about eight percent were CFL die-hards and around four percent “pure” NFL fans. Overall, the proportion of Canadians following pro football remained at about 20 percent through the 1990s.

In short, these findings reveal that about two in three people who have been following the NFL also have fol-

lowed the CFL; conversely, close to one in two CFL fans also have been fans of the NFL.

**Table 5. View of the NFL expanding to Canada**

\* The respective sample sizes are 141, 116, and 55.

		Don't Want the NFL	Only If CFL Lives	Even if CFL Ends	Don't Really Care	Totals
<b>Nationally</b>	<b>1995</b>	<b>13%</b>	<b>11</b>	<b>9</b>	<b>67</b>	<b>100</b>
	<b>1997</b>	<b>18</b>	<b>12</b>	<b>8</b>	<b>62</b>	<b>100</b>
<b>1997</b>						
Sask-Man		47	5	2	46	100
Alberta		26	16	3	55	100
BC		19	9	10	62	100
Quebec		15	11	7	67	100
Ontario		14	14	11	61	100
Atlantic		9	11	2	78	100
Toronto*		9	16	10	65	100
Montreal*		15	16	11	58	100
Vancouver*		25	11	13	51	100
18-29		23	15	11	51	100
30-39		19	15	10	56	100
40-49		15	11	9	65	100
50-64		13	8	3	76	100
65+		21	8	3	68	100

And what about support for the NFL coming to Canada? In 1995, Baltimore became the first U.S.-based team to win the Grey Cup. Yet, throughout the season crowds in the four American cities were poor and by season's end, four folded and Baltimore moved to Montréal. Yet, despite the problems of the CFL, there was little enthusiasm for the NFL to expand to Canada. The 1995 Project Canada survey found that 33 percent of Canadians expressed views on the topic—about twice the number of people who were actually CFL fans. The 33 percent who said they cared about such a possible development were comprised of 24 percent who either said that they did not want the NFL to come to Canada (13 percent) or would only want the U.S. league if the CFL continued to operate (11 percent). Just eight percent said they would welcome the NFL, even if it were to mean the end of the CFL.

Two years later in December of 1997, the CFL had just completed two seasons without its American cities and one year without its long-standing Ottawa franchise. Montréal had gone into receivership after the end of its first season back in the league in 1996, and had suffered from low attendance under new ownership in 1997—although the team's home playoff game held at antiquated McGill Stadium because of the unavailability of the team's Olympic Stadium home had drawn an encouraging, season-high crowd. Things looked fairly bleak. Again, as in 1995, the league seemed to be vulnerable to a competitor, especially one as powerful as the NFL.

However, in December of 1997, an even higher percentage of Canadians—38 percent—indicated they cared

about the possibility of the NFL coming to Canada. And the sentiments were very much the same as two years earlier: the 38 percent consisted of 30 percent who either said that they did not want the NFL to come to Canada (18 percent) or would only want the U.S. league if the CFL continued to operate (12 percent). Just eight percent said they would welcome the NFL, even if it were to mean the end of the CFL. In no region of the country, including Ontario, did a majority of football fans favour NFL expansion at the price of the end of the CFL. The same pattern was true in Toronto, as well as among both younger and older fans.

### Discussion

These survey findings for 1990-2000 point to a surprising conclusion. Despite the many problems encountered by the Canadian Football League during the decade and the heightened exposure of the National Football League in Canada during the same period, interest in the CFL remained very stable, whereas the fan market share of the NFL grew very little. What is particularly noteworthy was the growing rather than declining interest in the CFL among young adults—primarily males—under the age of 35. As the new century began, the league enjoyed grassroots support that not only was continuing to match interest in the NFL but actually was slightly exceeding it.

Since 2000, the CFL has made considerable progress toward achieving levels of stability, health, and vitality that may be largely unprecedented in its lengthy history. As the 2004 season winds down, the league has nine franchises with solid ownership, including committed and deep-pocketed owners in Vancouver and in the two key Toronto and Hamilton markets in southern Ontario. Attendance in Vancouver has increased considerably in recent years, while Toronto and Hamilton posted major turnstile gains in 2004. Hamilton's attendance for the season surpassed 250,000—the largest total home attendance in the team's long history.

Positives go well beyond ownership and attendance: television exposure is more extensive than ever before, with games now carried season-long on two networks (the CBC and TSN) with a third cable network (Sportsnet) also airing some games. The greater TV exposure is no accident: in the last two to three years, ratings have increased significantly, a relative rarity for any league of any kind in North America. The 2002 Grey Cup set an all-time TV viewership record with more than five million people watching the game (Fulton 2003)—a figure

unmatched, for example, by any Super Bowl audience total in Canada.

A recent illustration of the growing strength of the CFL? On Sunday, October 18, 2004 a CFL doubleheader on the cable network TSN went head-to-head with televised NFL games on one Canadian network, CBS, and FOX. Sunday games are uncommon, and Sunday doubleheaders are virtually unheard of because of the presumed problem of trying to compete with the NFL. The result? TSN had its two largest audiences of the 2004 season—582,000 and 477,000 respectively. The Minnesota-New Orleans NFL game on the same network Sunday night in prime time drew 237,000. Still further, around the same time period, the first four Yankees-Red Sox play-off games on another sports cable channel, Sportsnet, had an average audience of 423,000 (Zelkovich 2004).

At long last recognizing the interest that Canadians have in the CFL, more and more corporations have jumped on board, with the result that corporate sponsorships are at an all-time high for individual clubs and the league itself. The stability of the league has put an increasing focus on the actual game, in the process resulting in more extensive marketing of individual players, which in turn is heightening interest. It also needs to be pointed out that the relatively modest salaries of players and reasonable ticket prices appear to be in keeping with the place that Canadians give to professional sport and are striking a positive chord with many sports fans across the country.

In many ways, the survival and newfound success of the Canadian Football League is something of a cultural miracle. As mentioned earlier, the league receives virtually no exposure in the U.S. or from American media whose reach extends to Canada, in sharp contrast to the immense attention the NFL receives on both sides of the border. The CFL loses many of its stars to the NFL. Yet, in a city like Calgary that has seen an array of Americans move on in recent years—notably quarterbacks Doug Flutie, Jeff Garcia, and Dave Dickenson—such migration is seen as a fact of CFL life. There are no illusions that the league is trying to operate on the scale of the NFL and perhaps no particular desire on the part of most people to have it aspire to do so. Players leave and life goes on with virtually no affect on interest or attendance. The Calgary response is similar to that of an Edmonton fan who loses a quarterback like Ricky Ray to the New York Jets, or a Saskatchewan fan who temporarily loses a Henry Burris to Green Bay or a Kenton Keith to the Jets. The losses have become normalized and attention fairly quickly moves to who will fill the position.

In short, the seemingly obvious outcome, the demise of a Canadian culture product in the face of its having to compete with a powerful American cultural product that has the support American multinationals and is heavily marketed and widely exposed, has not taken place. After the hurricane-like impact of the NFL on Canada, one awakens “the day after” to see the CFL still standing.

It is not what the neo-liberal proponents of globalization had expected. In the absence of government protectionist policies that has resulted in the outcome being determined by the market, a powerful U.S. sports corporation has failed to make significant headway. To be accurate, the American sports version of Wal-Mart has found a place in the Canadian sports market. But the indigenous football company has not gone the way of Wal-Mart's competitors. Globalization—or this case, Americanization—has failed to put its smaller storefront opponent the Canadian Football League out of business.

In keeping with neo-Marxist thought, the ongoing embracing of the CFL appears to be in part an example of resistance to the adoption of American culture at the expense of a historically valued component of Canadian culture. Here one is reminded of Kidd's observation that, far from having the inevitable result of cultural penetration, globalization generally and Americanization more specifically can be met with adaptation and resistance (Kidd 1991:180-181). Moreover, the impetus to assert and protect cultural differences is likely more important where otherwise cultural similarities may be present.<sup>8</sup> In this vein, both Adams (2003) and Drache (2004) have noted that, contrary to expectations by Canadian nationalists in 1988, the value orientations of Canadians and Americans have been steadily diverging in recent years. Drache writes, “Small qualitative differences between the two neighbours have grown larger, not diminished in importance” (Drache 2004:107).

At its extreme, such resistance has taken such forms as buttons being distributed during preparations for the 1995 Grey Cup Game in Regina that read, “The CFL is alive and well, the NFL can go to hell.” In a less explicit attack on the National Football League, the “Radically Canadian” campaign that was launched upon the retrenchment to Canada in 1996 was an obvious effort to re-position the league in the North American sports marketplace.

For all the talk about a CFL-NFL alliance that attempts to grow football as a whole in Canada, there is no doubt that the two leagues compete for media play, television audiences, corporate support, merchandise dollars, and, to some extent, players and coaches. Bruce Kidd argued a decade or so ago that it was no coincidence that the

very corporate interests “who fought for the 1989 Free Trade Agreement with the United States [were] eager to replace the Canadian Football League ... with the NFL” (Kidd 1991:179-180). Perhaps the strangest reality that our survey findings point to is the reticence that the Canadian media, corporate community, and yes—even the CFL itself—all had to take seriously the interest that Canadians have had “all along” in the CFL. For years the assumption was that a decreasing number of people cared about the league and that crowds were, therefore, destined to be smaller and extensive television exposure and corporate support were not warranted. Then again, given the desire of some to bring the NFL to Toronto, perhaps it was no accident that such myths were spread.

Consistent with the thinking of cultural studies emphases, it appears that the CFL contributes to collective solidarity, to the assertion of locality and to personal identity. In the face of globalization, Canadian pro football stands out, in the words of the league itself, as “the only professional sports organization to operate wholly within Canada” (Fulton 2003). Consistent with such an emphasis on the deep cultural roots of the CFL, when Bob Young took over as the new owner of the Hamilton Tiger-Cats in the spring of 2004, he described the team as “a Canadian treasure,” and in one season tapped into unprecedented support. He rallied the community behind the team by giving primary emphasis to the fact that the team belonged to the people and needed to provide a welcoming environment for its fans. Clearly he hit nerves. For many years the team had been an intricate part of Hamilton-area culture, a situation that is found throughout all the league cities.

One might occasionally look to the NFL for entertainment, but entertainment is not the same as embedded culture. In other cities across the league—notably, Regina, Edmonton, Calgary, Winnipeg, Montréal, Ottawa, and, increasingly, Vancouver and Toronto as well—the CFL is not merely entertainment, akin to going to a movie or a rock show. As the former federal minister of Health and Welfare, Marc Lalonde, told a Regina audience some three decades ago, football in that province is “not so much a game as a way of life. Football—Canadian football—matters. It is not just another form of entertainment. It is your game, part of your life” (Cosentino 1995:74). The CFL is part of who communities are and part of individual biographies, complete with memories and emotions. Owners who have understood that reality have spoken of “the need to connect with the community.” To the extent they have succeeded, they invariably have found that sizable untapped interest exists. The prognosis of Dwight Zakus appears to be sound: “The CFL will continue as a culturally

unique sport in localized markets” (Zakus 2003:220). And because of their strength in localized markets, the league will continue to have a strong national presence as well.

## Conclusion

Canadians have always found it difficult to develop something of a unique culture in view of its proximity to the United States. It is assumed that cultures that are not protected from foreign competitors will disappear and that it is therefore “unacceptable to leave culture to a ‘free market’” (Marsh 1995). So it is that extensive controls have been put in place to protect, for example, the Canadian publishing and music industries. We do not contest the power of markets to shape consumer demand, or the need under some circumstances for governments to protect small and local producers from predatory practices. However, the case of the Canadian Football League suggests that even when potential cultural competitors have the apparent advantage of vastly superior resources, greater exposure, missing gatekeepers, and media that devalue its Canadian counterpart, their acceptance and adoption in Canada is still not guaranteed. Indeed, the appearance of a new American cultural product may actually function to increase the interest that Canadians have in their own indigenous offerings, arousing latent support that has been part of local cultures and personal biographies.

The NFL’s experience with the CFL should serve as a valuable reminder that American culture—and any other society’s culture—cannot simply be imposed on Canadians through the turning on of relentless “marketing machines.” Sports preferences and other preferences are deeply ingrained in national and local cultures and cannot be altered simply by using a combination of media hype and laser lights, noise, and glitz. Canadian author Pierre Berton once observed that, compared to Americans, “we are not good salesmen and we are not good showmen.” (Berton 1982:58) Part of the reason is that Canadian clients and audiences are not readily swayed by just any sales pitch and just any show. Existing culture clearly interacts with and scrutinizes any new cultural player, be it a new chain of restaurants, a department store, or a U.S.-looking Raptor.

All of this would seem to add up to pretty good news for the Canadian Football League. Thanks largely to culture, it appears to have a future after all.

## Notes

- 1 Cox (1999) argues that, for neo-liberals, the 'market' has become a secular equivalent to God: unseen and omnipotent.
- 2 Billy Vessels won the Heisman Trophy as the best player in American college football in 1952, but chose to come to Canada to play for the Edmonton Eskimos.
- 3 For example, Johnny Bright of Drake University, a first round draft choice of the Philadelphia Eagles in 1953, chose to play in Canada to escape the racism he experienced in the United States, including being assaulted by white players during a college game.
- 4 Some stars included Frank Tripucka, John Henry Jackson, Hopalong Cassidy, and Sam Etcheverry.
- 5 The classic example was star quarterback Warren Moon who was overlooked by the NFL draft in 1978 but came to Canada and won five Grey Cups with the Edmonton Eskimos before finally going to the Houston Oilers. He is in the football Hall of Fame in both countries.
- 6 Actually, the spelling was different (Saskatchewan Roughriders versus Ottawa Rough Riders); it was not enough of a difference for people to notice.
- 7 Though it plays its games in Regina, the Saskatchewan Roughriders are so named in order to appeal to fans throughout Saskatchewan as "their" team.
- 8 In a backhand way, Japan's adoption of American baseball, starting prior to the Second World War, illustrates the point. Baseball could be enthusiastically welcomed in that country precisely because, in a host of other ways, Japanese culture was not capable of being threatened.

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# *From The Corporation to The Fix: Social Activism in Recent Canadian Documentaries*

Seth Feldman

Despite the growth of feature filmmaking, the sporadic golden ages of television drama, and the strength of experimental films and animation, there is no question that documentary is the mode of film and media production for which Canada is most widely recognized. Standard histories of cinema seldom fail to mention the work of the National Film Board of Canada and of independent Canadian documentary filmmakers, often as their only mention of Canadian work. Of the 17 Academy Awards won by Canadian films, eight have been for documentaries. Canadian documentaries have consistently won top honors at film and television festivals worldwide while Canada itself hosts two of the world's most important festivals of documentary film—Hot Docs in Toronto and *Rencontres internationales du documentaire de Montréal* (RDIM). The Toronto, Montréal, and Vancouver International Film Festivals, as well as the Banff International Television Festival, also screen significant documentary programs.

Documentary cinema has become emblematic of Canada precisely because of the persistent symbiotic relationship it has enjoyed with Canadian society: documentaries have influenced Canadians just as Canadians have greatly influenced the development of the genre. Moreover, that was exactly the way John Grierson planned it when creating the National Film Board—and with it, modern Canadian documentary—in 1939. Grierson, who had coined the term “documentary” in 1926, defined the new agency's pursuit as he had defined documentary itself, a tool for the conceptualization and addressing of public issues. As

Gary Evans and John Ellis have demonstrated, the nearly 500 films Grierson oversaw during the first six years of the Film Board—from war propaganda newsreels to ethnographic studies—posited a singular geopolitical vision. And they did so with a cinematic rhetoric emblematic of Grierson's original documentary film movement. Viewers were bombarded with a tightly constructed montage of images directly and thematically associated with the subject at hand while a booming voiceover (most often the CBC's “voice of doom,” Lorne Green) captioned the images with specific meanings. The idea was to have the montage of idea and image pass quickly enough to give the viewer the impression that the ideas were actually being illustrated and hence validated by the images.

After Grierson's departure, the post-war NFB—now in the hands of the first generation of Canadian documentary filmmakers—reconceptualized the Canadian ethos in work that was recognized as the *avant garde* of documentary itself (Morris 1984). That may be seen particularly in the work of the filmmakers at the Film Board's Unit B. Just as Grierson's wartime films were monuments to single minded conviction, these were the documentaries of post-war and, particularly, post-war Canadian existential doubt. As Peter Harcourt wrote of seeing the Unit B work while still a student in Britain, “There is in all these films a quality of suspended judgement, of something left open in the end, of something undecided....there is also something academic about the way the Canadian films have been conceived. There is something rather detached from the immediate pressures of existence, something rather apart”

(Harcourt 1977:72). Bruce Elder is more critical, seeing these works not for their romantic ambiguity but rather for their ironic stance, evidence, he argues, of a colonial detachment, a feeling of being far from the imperial centre and anything that mattered. Perhaps the last word, though, came from the Unit B directors themselves in their pioneering of the technologies and film forms that would come to be known as *cinéma vérité* or direct cinema (and indeed both approaches were practiced under the umbrella of Unit B's Candid Eye). In the late 1950s and early 1960s, the work of the Film Board's French unit played an essential role in the Quiet Revolution, providing a window for ethnographic and political self-realization. During the 1960s, the subject-participation documentaries of the Challenge for Change program both stimulated grass roots social involvement and invented new documentary formats and tools for that purpose. The rise of a feminist documentary unit, Studio D, and the later recruitment of New Canadian and aboriginal voices at the Board in effect institutionalized change as an element of Canadian documentary.

The same may be said of documentarians outside the NFB. The CBC evolved its own program of socially conscious documentary, the work of both in-house producers and independents such as Allan King (Feldman 1974) and Donald Brittain. With the rise of public film funding agencies in the 1960s and 1970s, the socially conscious documentary became the work of independent filmmakers providing their work to a variety of markets.

Canadian society, until recently, has supported documentary's social discourse through public funding. From 1922, the federal government had maintained the Canadian Government Motion Picture Bureau for the purposes of making, for the most part, educational films and travelogues. The government of Ontario, the Saskatchewan Wheat Pool, and the Canadian Pacific Railroad also sponsored non-fiction filmmaking. In addition to its 65 year commitment to the NFB, the federal government has sponsored documentaries via both Telefilm and the Canada Council. The CBC, one of the largest markets for, as well as employers of, in-house documentarians, regularly screens documentary in prime time and in 2000 commissioned, as its most ambitious single production, the multi-part documentary *Canada, A People's History*. The NFB in its outreach programs both trains and subsidises independent documentary production. Provincial film funding agencies and arts councils have contributed to documentary film. Provincial governments have also aided documentaries through college and university film programs that have trained, since the 1970s, thousands of

filmmakers. The result is a \$400 million per year industry sustaining an estimated 14,000 direct and indirect full time equivalent jobs—representing in 2001-2002 some 13 percent of CAVCO and CRTC certified Canadian Content production (*Getting Real* 2003:28, 18, 19).

That is all very heartening—made more heartening still by a record of success of Canadian documentaries that seems to continue on in good times and bad. We have more than our share of superlatives: perhaps the most respected Aboriginal documentarian in the world in Alanis Obomsawin; the outstanding work of Rhombus Media in documenting the planet's foremost performing artists; Ron Mann's international reputation for his films on popular culture; and, as we shall see below, the extraordinary work of Mark Achbar/Jennifer Abbot and Nettie Wild. As much as documentary filmmakers anywhere, Canadians may look forward to the prospect of participating in a worldwide renaissance of documentary filmmaking.

Yet it is also true that this sanguine outlook is being eroded by at least three factors.

First, there is a general decline in public support. The NFB, the CBC, and the Arts Councils have faced, for nearly two decades, severe budget cuts. They will probably face more as the current federal and provincial governments scramble for money to repair the health care system. At the same time, Telefilm and the provincial film funding agencies are almost entirely oriented toward the subsidy of feature films, co-productions, television variety specials, television series, and perhaps above all the incentives for the "runaway" Hollywood productions that have had a devastating effect on the economic realities of small scale independent filmmaking. (Recent American legislation may well lead to a serious erosion of these runaway productions that account for approximately one third of all film production in Canada.)

Secondly, what public funding remains is for the most part channeled to documentary via television, giving broadcasters a substantial amount of control over which documentaries come to be made. Television has masked the public sector cutbacks by an increase in commissioning of documentaries on the part of independent broadcasters, particularly the proliferating cable channels both in Canada and abroad (*Getting Real* 2003:7). However, that has led to a second negative influence, the redirection of documentary toward formulaic "reality programming." It may be argued that in the last ten years, "reality" itself as depicted on television has evolved from the site of social discourse to a source of cheaply produced entertainment. Reality television is what was once thought to be impossible in a genre formed in the social turmoil of the 1930s

and re-invented in a similarly progressive 1960s. It is documentary as reactionary, unchallenging, faux-informative. Collective social action is replaced by makeovers, sexual fantasies, self-parodic consumerism, and social Darwinism—all with the assurance that it is only television. It is difficult to exaggerate the impact that has had on the documentary heritage. As the British critic John Corner has written in an article appropriately entitled, “What Can We Say About Documentary?”:

However barbaric it might seem to use the “post” prefix, there is a very real sense in which we are moving into the “post-documentary” era. We are doing this *not* as a result of documentary’s collapse under the pressure of postmodern doubt or of digital image technology but, by contrast, as a result of the widespread dispersal (and, in part, perhaps dissipation) of documentarist energies and appeals across a much larger area of audio-visual culture. Having been variously framed with the terms of “authoritarian,” “radical” and “public” models of communicative action, documentary practices have now, in the newer forms of realist diversion, become a commercially successful ingredient of the “popular” (Corner 2000:687-688).

The documentarian is being asked not to change the world but to amuse it—a role particularly out of place in the Canadian documentary tradition. Worse still, the documentarian is also being asked to pay for the privilege. Making documentaries in Canada is becoming a poor profession, composed largely of freelancers scrambling to finance their films and then to recoup costs by accumulating low paying leasing fees from a variety of television outlets at home and abroad. The Documentary Organization of Canada—a researcher organization and lobby group for some 600 independent documentary filmmakers—has pointed out that, while global demands for media product have actually increased the production of Canadian documentaries by 24 percent over the last six years, there has been a 30 percent decrease in the amount of money being spent on these film and television productions (*Getting Real* 2003:5, 9). David Hogarth, as the subtitle of his book declares, contends that this funding regime has reoriented Canadian documentary, “from national public service to global marketplace” (Hogarth 2003). The television format documentary shows, even those that are not simply reality TV, are being made in an increasingly generic fashion so that they may be marketed internationally.

Thirdly, what remains unclear for Canadian documentary is the shape it will take amid the continuing develop-

ment of digital communications technology. When, in the 1930s, John Grierson invented the non-theatrical circuit (schools, factory cafeterias, church basements, labor halls) as the home of documentary film, there was as yet no television and not yet a glimmer of what would become the internet. Today, the understanding of digital technologies in this context is as unclear as it is essential. In their shaping of documentary, digital technologies have at once democratized the presentation of fact while at the same time presenting information as being free of social context and collective argument. As Toby Miller (1988) argues, digital communication has redefined community itself as flexible groups of like-minded individuals accessing and interacting with sites of interest to them.

There is, in Canada, the beginnings of a response to all three of these challenges: the general decrease in funding, the pressure to adhere to generic television forms and values, and the vast unknown of the internet audience. There is, as of course there must be in all recovery programs, an acknowledgement of these dilemmas. It has crystallized to some extent around the research and lobbying efforts of the Documentary Organization of Canada and its franco-phone counterpart, *l’Observatoire du documentaire*. These organizations and others have provoked two initiatives. The first is a re-evaluation of terms of reference for documentary funding being undertaken by Telefilm and the Association of Provincial Funding Agencies. The second initiative began at the Documentary Summit hosted by 2003 Hot Docs Festival. The summit yielded a concerted effort on the part of the National Film Board to study the present and future role of documentary in Canadian society.

The NFB itself may be part of the solution. Long regarded as a Canadian treasure by people around the world, the Film Board, if not entirely forgotten by Canadians, has too often been dismissed as a brain dead bureaucracy or worse, unfair competition in a privatized film industry. The 1982 Applebaum/Hebert Commission went so far as to recommend that the Film Board get out of production altogether and become nothing more than another film academy. (In other words, the institution was so irrelevant that it might as well teach).

Today, Applebaum/Hebert’s recommendation is long forgotten and the National Film Board has emerged under its current commissioner Jacques Bensimon with a new sense of purpose. With very few in-house directors (only three in English documentary) the NFB has used its \$30 million per year documentary budget to become a major funder of independent Canadian documentary. Bensimon has been especially active in exporting NFB documentar-

ies and has made the Board an aggressive player in a newly created World Documentary Fund.

Another of Bensimon's initiatives is to engage audiences in the most retro aspect of documentary imaginable—that of bringing people together in a room to watch and discuss a film, offering the impetus for live rather than televised or virtual communities. To that end he has supported the spread of mediatheques, individual digital screening spaces to which any film in the collection may be sent. A next step currently being discussed is the creation of small digital theatres designed for community audiences wishing to use documentary film as a social or educational tool.

Bensimon's achievement points to a more general reconsideration of the means by which documentary may be revived, if not re-invented, as an aspect of twenty-first century civil society. We are inundated to be sure, as Grierson would put it, with "creative treatments of actuality," presenting not only contradictory perspectives but contradictory modes of presenting those perspectives. The voice-over documentary, cinema vérité, reality television, even the animated documentary, offer simultaneous claims as paths to verisimilitude. Karl Plantinga, like many other theorists of non-fiction film, would suggest that we have reached the point where there are, in fact, no absolute textual indices within the works themselves. "The distinction between fiction and non-fiction," Plantinga writes, "is not based solely on intrinsic textual properties, but also on the extrinsic concept of production, distribution and reception" (Plantinga 1997:16). Ultimately, a film becomes a documentary when it is received as one.

But there is also, with some relation to Plantinga's reception model, a narrower more utilitarian approach to the role of documentary. That approach begins with a distinction between films that present an illusion of engagement—that are, in Corner's sense, victims of their popularity—and those that in one way or another mobilize their viewers. Jill Godmilow, who makes and teaches the political use of documentary, argues that most of the work that we take to be important documentaries mimic that sense of engagement without actually providing it. These films allow "viewers to have the coherence, manageability, and often the moral order of their lives reaffirmed, while simultaneously allowing them to feel that they're interested in other classes, other people's tragedies, other countries' crises. By producing the subject as heroic and allowing us to be glad for their victories, or by producing them as tragic and allowing us to weep, the audience experiences itself as not implicated, exempt from the responsibility

either to act or even consider the structures of their own situation" (Godmilow and Shapiro 1977:87).

The converse of what Godmilow describes—and indeed what she prescribes as a corrective for contemporary documentary—is exactly that "implication" of the audience in the subject of the documentary, leading to its mobilization. To carry forward from Plantinga, viewers acknowledge the reality of a documentary—and hence define it as a documentary—by acting upon it. There is nothing new about this; it was Grierson's original intention for documentary, summarized neatly in his insistence that "art is a hammer not a mirror" or by the ease with which he accepted the label of propagandist.

A return to the Griersonian documentary in both content and form is most readily apparent in the work of Michael Moore. *Bowling for Columbine* and *Fahrenheit 9/11* are direct appeals to their audiences to do something concrete—change the American gun laws, vote Bush out. Moore has also accomplished the broader goal of raising the profile of the progressive documentary itself. *Bowling for Columbine's* winning its Academy Award at the 2003 Oscars in effect spoke directly to the need for re-inventing an activist documentary. The films awarded best documentary Oscars in the years prior to *Bowling for Columbine* were exactly the sort of false engagement Godmilow identified. Four of the 11 films are on holocaust subjects, one remembered the Munich Olympics massacre, two memorialized the Vietnam war (one literally so by focusing on Maya Lin's building of the Vietnam memorial), one celebrated Mohammed Ali, and another a heroic high school principal. It had been a long time since any Oscar winning documentary gave anyone something to do. For that reason, it came as no surprise that Moore used the Oscar presentation as a continuation of the film's argument and—in surrounding himself on stage with the other documentary nominees—as a means of announcing the return of the point of view documentary as a significant element in public discourse. His recent announcement that he will seek not the Best Documentary but Best Picture award for *Fahrenheit 9/11* is the next logical step in this use of the Oscars.

Moore's films not only lead to calls for action but are rhetorically structured throughout toward that end. Moore's bits of guerilla theatre in *Bowling for Columbine* and the sheer shock value of images in *Fahrenheit 9/11* call attention to both the extreme nature of the problem at hand and the possibilities of its further malignancy. They build toward the call for a solution—and they do so in tandem with the films' expositions. If not as bombastic as Lorne Green, Moore's voiceovers are equally in tune

with his audience's standards of credibility. The smart, involved, iconoclastic, and ironic voice is—at least for any progressive audience Moore might hope to reach—the voice of authority. His images, like the images in Grierson's NFB films, are there to illustrate that authoritative nature. Critics of *Fahrenheit 9/11* have argued that these images are carefully selected from among some theoretical continuum of objectivity, but that, of course, is the point.

Moore, with some help from the repressive times in which we live, has enabled a re-invention of the point of view documentary aimed at mass audiences. Committed filmmakers whose work might otherwise be relegated to audiences of the converted or to university political science classes have to some extent regained a public voice. That very rare beast, the theatrical documentary, is once again viable. Broadcasters, and even the cable channels, are looking at point of view documentaries with the hope of programming them in conjunction with theatrical releases.

What Moore personifies is to a degree reflected in Mark Achbar and Jennifer Abbot's Canadian documentary *The Corporation*. That is not to say that the filmmakers are working in a Canadian branch plant of the booming Michael Moore industry. Achbar in particular, established his own style and reputation in 1992 with *Manufacturing Consent: Noam Chomsky and the Media*, a film he co-directed with Peter Wintonick and a film that was, until *The Corporation*, the most widely seen Canadian documentary. Nevertheless, *The Corporation* benefits from the retro ideal of documentary as rhetorical statement—underlined by the appearance of Moore himself as one of the film's major interview subjects.

Based on research by Joel Bakan, *The Corporation* follows a rhetorical strategy that if anything is more rigorous and more linear than Moore's. It is divided into three one-hour sections (partially to facilitate its presentation on its two sponsoring channels, TV Ontario and Vision TV).

Part one is designed to provide a provocative exposition of the problem. If corporations are legal persons, the filmmakers ask, what sort of persons are they? The film answers that question by showing us in a step-by-step argument that corporations as they exist today neatly fit the World Health Organization's criteria of a psychotic personality.

The second part of the film is more forward looking, documenting corporate practices that will make it ever more difficult to extract ourselves from their domination. Corporate advertising creates an ever more attractive and ever less sustainable lifestyle. Our children are particularly at risk. Intellectual property laws are quickly leading to corporate control of all the planet's resources, including

our DNA. That has already caused immense suffering in the developed world and is heading our way.

Part three moves toward solutions. It begins by documenting the collusion between corporations and dictatorial governments, i.e., what we are up against. The film then provides examples of social activism moving from a bloody popular uprising in Bolivia to its least surprising moment, an American town hall meeting where young activists from central casting say the right things.

All three parts of the film are divided into sub-sections, each designed to elaborate on a particular point or case study. Within these, the film offers two modes of exposition. The first is an unending stream of largely archival footage, some of it horrific, some ironic (there is much made of post-war industrial and educational films). The archival footage is precisely attuned to Bakan and Harold Crook's voiceover commentary as delivered by the anonymous narrator, Canadian actor Mikela J. Mikael. Some of the archival footage is also used to illustrate comments by the people interviewed by the filmmakers. It is these talking heads, some filmed in their own environments, most against a neutral backdrop, who provide the film's second mode of exposition. Most testify on behalf of the film's argument while a few unrepentant CEOs and Michael Walker of the Fraser Institute offer comments that are quickly undercut by images and other onscreen commentators. Among the personalities receiving the most screen time are Noam Chomsky, Michael Moore, and American CEO Ray Anderson, who now works for sustainable corporate development. Much of the film's argument is also underscored, quite forcibly, by Velcrow Ripper's evocative music track.

The net impression of the *The Corporation's* argument, posited as it is within this tight structure, is to make the film appear as highly organized as any corporate undertaking and, by implication, as effective. Achbar and Abbot are fighting PowerPoint with PowerPoint. As the film concludes, there is no hope of dispensing with the corporation altogether. Rather one must simply make it subservient to higher ideals. The same is true with the language of corporate efficiency. And there are other good reasons for this exercise in good rhetorical order. First, the subject is just too large to proceed with in any other way. Audiences are, after all, fish swimming in a corporate sea. That water must be presented systematically in order to be seen. Secondly, the highly organized sales pitch, drawing upon an array of authorities and ranging freely through space and time is itself the language of authority. What else, we may ask rhetorically, have audiences been conditioned to believe? Thirdly, to promise that the corporation as it now exists

may be replaced by something other than anarchy, the language of that promise must exude a competence at least equal to that of the present corporate hegemony.

*Other aspects of The Corporation* mirror its target. Like the corporations, *The Corporation* is also selling a lifestyle. There is, toward the end of the film, an evocative montage of a post-corporate nirvana in which wind generators spin and nature returns. Bloody riots and the recitation of platitudes in a church basement—like the products corporations sell - represent aspects of participation in this life. Nor is *The Corporation* limited to a single product, the film that will leave us when the lights come up. Instead, it has a website providing news about the film's screenings, favourable reviews, and updates on the stories we have seen. The site links to *iCorp*, an activist anti-Corporate group, to *Docback*, an online magazine, and to the store at which one might purchase both Bakan's book and a sweatshop free t-shirt.

There is also a sense that *The Corporation* exists in a kind of international corporate space that is perhaps an intentional mirroring of its subject. *The Corporation* is a deliberately North American rather than Canadian or American film, set in a post-free trade geography. The talking heads we meet are more or less evenly divided between Americans and Canadians with a small number of voices from Europe and the developing world. When the directors need images of the seats of government, we see in quick succession both the Capitol Dome in Washington and the Peace Tower in Ottawa. The corporate logos and CEOs are almost entirely American, though when the camera takes us inside the Summit of the Americas meeting in Québec City, the government and corporate leaders chatting ever so amiably amid the riots are all Canadian. To a Canadian, of course, this cross-border mélange merely mirrors the nightly news. In the United States, where the film is now widely distributed, equating a neo-gothic tower with the very idea of government might well require a more difficult reading.

The last word in *The Corporation* goes to Michael Moore who both acknowledges and validates the corporate structuring of the anti-corporation movement. He muses as to why the corporations that back his films and television program put up with him and concludes that they have their eye on the revenue he generates while believing that audiences have already been acculturated into passivity. Moore ends the film by asking the audience watching him to get off its collective couch and prove them wrong.

That's one strategy.

The second is Nettie Wild's in her career and more particularly in her most recent film, *Fix: The Story of an*

*Addicted City*. Wild, a former actor and full time Vancouver based activist, has made three other films since 1988, all of them direct cinema studies characterized by her personal presence within a complex confrontation. Her first feature *A Rustling of Leaves: Inside the Philippine Revolution* placed her and her crew within the war against the Aquino government after its reneging on a long list of promised reforms. The film contains both interviews with heavy handed government officials and her accompanying the rebels into a firefight in which her sound recorder is killed. *Blockade* (1993) as the subtitle implies is "about the land and who controls it." The film put Wild between the Gitksan native band and the non-natives of the town of Kitawanga in a bitter dispute over logging rights. Her camera is once again on the right side of the line when the RCMP come to break up the Gitksan blockade of the railroad tracks that pass through the disputed territory.

Wild's best known film to date has been *A Place Called Chiapas* (1999) made in the aftermath of the 1994 Zapatista revolution. The film is an anatomy of an event that illustrates not only the issues and personalities involved but Wild's own role as both a participant and observer of social conflict. Perhaps the film's most memorable sequence is a kind of Zapatista Woodstock in which the enigmatic Subcommandante Marcos invites sympathizers from North America and Europe to visit his "postmodern revolution." Wild films the political tourists with various degrees of bemusement but also with a growing realization that she herself is just another visitor. When she finally is granted her interview with Marcos, the resulting footage says more about the awkwardness of the encounter than it does about the causes of the revolution.

It is with this same sense of non-detached irony that Wild films a small revolution in her own city. *Fix* documents the personalities and events that surround efforts to change the Vancouver's approach to its large community of heroin and cocaine addicts. Wild keeps herself off screen in the film, but she does have a kind of alter-ego in Ann Livingston, a non-addict, who is a co-founder of VANDU, a drug users' advocacy group. Livingston is organized, tough, and determined to replace Vancouver's sporadic and purposeless persecution of the addicts with a more supportive program. More pointedly, she is out to save lives in Canada's densest population of HIV-positive persons.

One of the lives Livingston is trying to save is that of Dean Wilson, a charming and articulate former IBM salesman and long time junkie. Wilson is President of VANDU and together with Livingston is working to open a safe injection site. "Together," as we discover well into the film,

is a complex term here as Livingston and Wilson are also trying to work out the emotional intricacies of their personal lives together as partners.

The struggle itself has both its iconographic moments and its surprises. There are the demonstrations and the villain in the person of a particularly unctuous businessman who wants all the junkies cleared out and does not care how. The surprises are far more interesting. There is the adjacent Chinese community whom our villain mobilizes to his cause. But the Chinese, as Wild takes the time to depict them, also have a case. Not only do they feel their businesses are jeopardized but their culture itself has been the long time victim of an imposed drug culture. Even the police are human, one constable refusing to be type cast as he lists the addicts' lives he has saved in the neighbourhood—that morning.

But the biggest surprise of the film is Phillip Owen, the conservative mayor of Vancouver, who becomes VANDU's most powerful ally. Owen's motives may well be pragmatic—the war on drugs is not working and safe injection sites have, in European cities, lowered the body count. As Wild shows, though, his commitment is genuine as he faces down his own city council and, as it turns out (though we do not see this in the film), he loses his job over his attempts to reform the city's drug policies.

Wild presents all of this, from Livingston and Wilson's home life to interviews with addicts on the street, from an eye-to-eye stance. The film was shot over approximately two years, though this timeframe is difficult to determine while watching it. Livingston and Wilson's totally illegal safe injection site is set up, used for an undisclosed period of time, and then they are evicted by the landlord. Sometime during the film's timeframe, Wilson goes to Europe to learn about similar sites. There are hearings at City Hall and a report is written. Its recommendations seem to be in limbo when the film ends.

If Wild's laid back structure is the opposite of Achbar's corporate organization, it is equally appropriate for its topic. The lifestyle she examines is biologically rather than economically based, and it is altogether unclear whether any remedies for it are at all useful. Streets we see in the film are the same streets on which Allan King filmed the alcoholics of *Skidrow* in 1956. The injection site is at best a partial fix. As Livingston tells a chirpy reporter early in the film, the much touted medical recovery programs are about three percent effective. Wilson illustrates this later in the film when he tries again and fails again to kick his habit. We keep on keeping on.

What Wild keeps on doing is to use the film to effect change in attitudes about the addict communities in every

city. She has taken the film on the road, along with some of its principle participants. In more than 40 Canadian cities, her company Canada Wild Productions has booked theatres and invited policy makers, local activists and addicts to their screenings to debate the issues. They have used the screenings as fundraising events. Like the makers of *The Corporation* and like so many of the participants in the 65 year history of modern Canadian documentary, she sees her film as a beginning of a resolution to the situation it depicts.

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# Reconsidering Canadian Wilderness Theories in a Global Era

Rebecca Raglon

The host of statements made to promote, underpin, and protect wild space in the United States and Canada collectively creates a fairly coherent narrative that has long provided a powerful antidote to an ideology of human progress and development-at-any-cost. U.S. writers such as Henry David Thoreau, John Muir, Edward Abbey, Gary Snyder, Leslie Marmon Silko, Scott Momaday, Peter Matthiessen, Barry Lopez, Aldo Leopold, Mary Austin and Annie Dillard and Canadian writers such as Catherine Parr Traill, Ernest Thomas Seton, Charles G.D. Roberts, Grey Owl, Fred Bodsworth, and Farley Mowet, are but a few of the many authors who have, in a variety of literary genres—the essay, fiction, poetry, memoir—sought to articulate the value of wild nature. Perhaps John Muir’s essay on “Wild Wool,” in *Wilderness Essays* most succinctly encapsulates one of the most important ideas these writers each in his or her own way has elaborated: No dogma taught by the present civilization seems to form so insuperable an obstacle in the way of a right understanding of the relations which culture sustains to wildness as that which regards the world as made especially for the uses of man. Every animal, plant, and crystal controverts it in the plainest terms. Yet it is taught from century to century as something ever new and precious, and in the resulting darkness, the enormous conceit is allowed to go unchallenged (Muir 1990:235-6).

English Canadian writers have shared some of the same concerns and anxieties as their U.S. counterparts. For example, in a letter to the Editor of the *Genesee Farmer*, Catharine Parr Traill writes, in a Thoreauvian way,<sup>1</sup> that

she wishes to “speak a few words on behalf of the natives of the soil—I mean the lovely Wild Flowers” (Traill 1996:73). Traill, who was at pains to collect, and record the flowers of Canada, notes that many of flowers that she once admired are now gone:

I am a great admirer of the indigenous flowers of the forest, and it is with a feeling strongly allied to regret, that I see them fading away from the face of the earth. Many families, containing blossoms of the greatest beauty and fragrance are fast disappearing before the destructive agency of the chopper’s axe, fire and the plow. They flee from the face of men and are lost, like the aborigines of the country, and the place that knew them once, now knows them no more. I look for the lovely children of the forest, those flowers that first attracted my attention, but they have passed away, and I seek them in vain—another race of plants has filled their place. Man has altered the face of the soil—the mighty giants of the forest are gone, and the lowly shrub, the lovely flower, the ferns and mosses, that flourished beneath the shade, have departed with them. The ripening fields of grain, the stately plantations of Indian corn, with the coarser herbage of the potato and tunip, grasses and clover, have usurped their places, a new race of wild plants, suited to the new condition of the soil springs up, to dispute the possession of the ground with the foreign usurper. Where now are the lilies of the woods, the lovely and fragrant Pyrolas, the Blood-root, the delicate sweet

scented *Michella ripens*, the spotless *Monotrope*, with Orchis of many colours, and a thousand other lovely flowers? (Traill 1996:73)

Suggested here, though perhaps in a more muted way than either Muir or Thoreau, is the sense that there should be some end-point or moderation to the voracious claims humans place on the land; that the flowers which once stood where turnips now stand, also have a “right” to exist, and, most important, need a voice to speak out on their behalf. Ernest Thompson Seton and Grey Owl in their realistic animal stories, express a similar determination to “speak out” on behalf of animals. These stories were, and continue to be, a Canadian strength in terms of narratives seeking to protect wildlife and their homes in wilderness areas.<sup>2</sup>

In addition, there is also a vast amount of secondary scholarship that deals with the idea of wilderness, national nature, and rationales for the preservation of that nature. According to Joseph Sax, this stirring wilderness philosophy, along with periodic “defenses” of wilderness, often carry with them assumptions that the “values” associated with wilderness are “extremely widely shared by the American public” (Sax 1980:15). Steven Bocking concurs that Canadians also widely support “wilderness values” when he writes “we have traveled from the notion that all of nature exists for our benefit, to the more widely accepted view that, as wilderness or homeland, the environment is not solely ours to consume” (Bocking 2000:25).

### The Social Construction of Wilderness

The assumptions underpinning the arguments for wilderness protection have also been deeply scrutinized over the past two decades and found to be deeply flawed. Again, there seems to be a certain convergence on both sides of the border in terms of the disenchantment felt by both Americans and English Canadians over perceived failures in conservation issues. The Canadian ecologist John Livingston in his 1981 book *The Fallacy of Wildlife Conservation*, for example, concludes that “On a world basis, ‘wildlife conservation’ in its fullest and deepest meaning as ‘preservation’ simply does not exist...” because “*there is no rational argument for wildlife preservation*” (Livingston 1981:21, 102). The U.S. philosopher Thomas Birch in an influential 1985 essay, “Wilderness as Incarcerated Space” pointed out one of the most troubling aspects of wilderness protection when he wrote that it is merely a “cloaking story to cover and legitimate conquest and oppression” (Birch 1985:5). In actuality, the so-called “wild” nature

that is allowed to exist in parks in a supposed pristine condition is not permitted either “self-determination” or real wildness. Rather, according to Birch, wild nature is confined to official wilderness reserves—a potent symbol meant to serve imperial urban interests. If wilderness is to be preserved, according to Birch, it must be preserved for the “right reasons” and viewed in the future as “free spaces” or “liberated zones” (Birch 1985:25).

Taking another tack, the political scientists William Chaloupka and R. McGregor Cawley suggest that the environmental “rhetoric of wilderness,” by “elevating land over humans,” has in effect, diminished “several other histories, most notably histories in which naturalistic terms conspire with hegemonic power to deflate the hopes of women, blacks, Indians, and every group marginalized as the human Other” (Cawley and Chaloupka 1993:20). Gary Nabhan, an ethno-botanist, demonstrates in his account of two oases in Papago country that the rigid Park Service dictates that removed human habitation from one of the oases in order to establish a bird sanctuary actually resulted in the loss of heterogeneity of habitat. “Summer annual seed plants are conspicuously absent from the pond’s surroundings. Without the soil disturbance associated with plowing and floor irrigation ... natural foods for birds and rodents no longer germinate” (Nabhan 1987:96).

Feminists have also developed a diverse number of challenges to traditional wilderness ideals. In a recent article, Cate Sandilands, a sociologist working in the field of environmental studies, points out that not only was the history of Banff National park effected by clearly gendered and racialized dynamics, but that these dynamics “persist in the ongoing representation and experience of nature and nation in Canada’s national parks, and particularly the Rocky Mountain parks” (Sandilands 2004). As such, according to Sandilands, a tension remains in the parks between an “iconic national nature, coded as wild, empty, cold, white (except for a romanticized view of aboriginal peoples) and male-homosocial; and a domestic national nature, appearing civil, secure, warm infrastructurally complex, and feminine/family oriented” (Sandilands 2004). Renisa Mawani, a sociologist, has discovered that “although parks appear to be natural landscapes beyond the reaches of law and history, they too are ‘made up’ as wild and natural places constituted through juridical and disciplinary forms of power.” Thus, according to Mawani, Stanley Park, in Vancouver, is contingent upon the violent expulsion of populations deemed “undesirable.” Mawani further notes that:

The park has been shaped through a series of legally mandated displacements and evictions beginning with the removal of Aboriginal peoples. In their words the ‘natural’ and ‘empty’ wilderness of Stanley park was imposed upon a territory that was already claimed, inhabited, and defined by local coast Salish peoples who occupied the land for hundreds of years. More recently, processes of displacement have been aimed of ridding the park of homeless peoples and other ‘unwelcome’ populations whose presence disrupts the aesthetic and ‘appropriate’ consumption of the urban public green space.

The anthropologist Joanne Fiske, writing from Prince George, suggests that on the “cultural edge of the ‘northern’ frontier the urban hero emulates ... paperback heroes and embraces their symbols of exaggerated individualism” (Fiske 2004). Fiske points out that conceptualizing the “north” is usually accompanied by an embrace of individualism that “vehemently defends a sense of purpose as being against the metropolis” and ignores the reality and diversity of life in the north (Fiske 2004).

Wilderness and wildness have, thus, all been examined by theorists from a wide variety of disciplines over the past two decades. What these critiques reveal—on both sides of the border—is an agreed-upon understanding that nature, wilderness, wildness, parks, wilderness experiences, and northern-ness, are all “socially constructed.”<sup>3</sup>

This emphasis on the “social construction” of natural areas, in effect, however, reverses a central tenant of earlier wilderness discourse. The idea that nature is socially constructed emphasizes our impositions and projections upon nature; those who defend the wilderness tend to believe that the relationship between nature and culture is more of a two-way street. Thoreau, for example, believed that “in wildness is the preservation of the world,” and by wildness he meant both figurative and literal swamps, woods, and other natural features (Thoreau 1980:112). “The civilized nations—Greece, Rome, England—have been sustained by the primitive forests which anciently rotted where they stand. They survive as long as the soil is not exhausted” (Thoreau 1980:117). According to Thoreau, even our thoughts are in some subtle way shaped by the natural features that confront us. Here he writes about the effects of the decline of the passenger pigeon:

We are accustomed to say in New England that few and fewer pigeons visit us every year. Our forests furnish no mast for them. So it would seem, few and fewer thoughts visit each growing man from year to

year, for the grove in our minds is laid waste,—sold to feed unnecessary fires of ambition, or sent to mill,—and there is scarcely a twig left for them to perch on. They no longer build nor breed with us. In some more genial season, perchance, a faint shadow flits across the landscape of the mind, cast by the wings of some thought in its vernal or autumnal migration, but, looking up, we are unable to detect the substance of the thought itself. Our winged thoughts are turned to poultry. They no longer soar, and they attain only to Shanghai and Cochin-China grandeur. Those *gra-a-ate thoughts*, those *gra-a-ate men* you hear of (Thoreau 1980:132).

The intense scrutiny of wilderness preservation as a social construction has value in revealing some of the social, political, and historical underpinnings of wilderness park creation; but ultimately it does little in the way of offering a *rationale* for continued protection of these areas, nor is such an insight effective in challenging a powerful economic status quo which seeks to exploit intensely all natural areas in an effort to find the commodities to fulfill an ever expanding repertoire of human needs. And, at the far end of “social construction” spectrum, sits postmodernism which holds that language itself separates humankind utterly from nature:

We are incapable of saying anything true about nature because we must use words to say anything at all. How can we act on the assertion that “humankind is destroying the environment” if every term in this assertion is not only culturally relative (*destruction* depends upon one’s point of view; *the environment* is a different concept for different cultures) but semantically relative? Nature cannot intercede in human thought because “nature” has no meaning outside of verbal categories. At its extreme end, postmodernism leads to helplessness or, worse, complacency. In other words, insofar as postmodernism proper divests language of the power to refer to nature and nature’s creatures, or even to human relations with nature, it protects the status quo (Raglon and Schoeltmeijer 1996:36).

There seems to be little opportunity now to experience firsthand Muir’s fundamental idea that “animal, plant and crystal” in their essence controvert human assumptions that nature is somehow made for “us.” Yet it is precisely this important—this indispensable—insight which is lost in the various discussions of the “social construction” of

wilderness and nature. The borders drawn around Stanley Park are certainly socially constructed; within the park, however, un-constructed animals and plants do reside and go about their lives. Other subjects besides humans do exist. Somehow, when wilderness is viewed as “socially constructed” the knowledge that parks and wilderness areas also function as homes for other species is lost or muted. And yet central to most nineteenth and much of twentieth century wilderness philosophy was the idea of being a witness to an unmediated, or wild, nature. Even if such a nature cannot be fully articulated or understood it can nevertheless be approached; all nature writing gestures in that direction. Here is Thoreau on Mt. Ktaadn facing unmediated nature and finding himself almost—but not quite—at a loss of words and coherency: “Think of our life in nature,—daily to be shown matter, to come in contact with it,—rocks, trees, wind on our cheeks! The *solid* earth! the *actual* world! the *common sense*! *Contact!* *Contact!* *Who* are we? *Where* are we?” (Thoreau 95).

A feature of the most effective wilderness writing is its ability to incorporate this idea of unmediated nature—and its resistance to our impositions—into their narratives as Thoreau has done here.<sup>4</sup> It is the idea of *nature’s resistance* to our social constructions that seems to be missing in many accounts of wilderness in the late twentieth and early twenty-first centuries. In the over-emphasis on the “social construction” of wilderness, “animal, plant and mineral” are overlooked. Humans, rather than being “uncentered” as so many wilderness philosophers were—remain firmly focused on themselves.

Twenty-three percent of the remaining wilderness areas in the world are within Canada’s borders. That fact certainly suggests the place where Canadian wilderness theories and American ones begin to diverge. Wilderness in Canada, unlike that in the United States, is not yet completely “incarcerated.” It is still possible to confront the presence of something larger than human preoccupations. Human settlement does not inject itself into all quarters of the Canadian map. The presence of other lives is also still found within this land mass. There is still a lingering sense of an all-powerful nature that can swallow human pretensions and make mince-meat out of our claims that “animal, plant, and crystal” were made for “us.” There is still room and opportunity for humans to be shaken from a fatal solipsism and self-complacency. But the chance to be “uncentered” is dependent on the continued existence of wilderness—of earth that is not utterly subjected, “kneaded with human flesh ... humbled and changed” (Jeffers 373). Such a place, for better or worse, still exists in Canada.

## New Readings of Old Stories

One winter evening in 1914, the young Wallace Stegner was sledding on a snowy hill near the family homestead on Frenchman River in Saskatchewan. It was a cold night filled with northern lights. At some point he found himself alone, and as he remembered that moment in *One Way to Spell Man* (1982), he writes “I stood there by myself, my hands numb, my face stiff with cold, my nose running, and I felt small and insignificant and quelled, but at the same time exalted. Greenland’s icy mountains, and myself at their center, one little spark of suffering warmth in the midst of all that inhuman clarity” (Stegner 1982:175).

This moment of recognition that human life is a “little spark of suffering warmth” in the midst of inhuman clarity is often claimed as a peculiarly Canadian insight, formed from the specifics of the Canadian landscape: the country’s odd settlement patterns, its relatively small population, its huge land mass and large remaining wilderness areas. The late literary critic Northrop Frye produced what may be the most well known assessment of Canadian literary responses to this landscape when he wrote of the “garrison mentality” and the “tone of deep terror in regard to nature” which he discerned in Canadian literature (Frye 225). Others, most notably the novelist Margaret Atwood, have followed Frye’s lead, writing about the deep ambivalence, even terror, Canadian writers have shown to the northern landscape. In *Strange Things* she speculates (tongue-in-cheek one hopes) that Canadians are so in love with disaster stories that the Canadian flag might really be viewed, not as a benign maple leaf, but as the place where someone got axed in the snow (Atwood 12). Winters are long and tough in most of the northern country, and there is no telling what might happen when someone gets really bushed.

All this terror and malevolency, all this myth-making, is deeply resented, of course. It is *embarrassing*. It makes Canadians look as though they are emerging from an environmental dark age—fearful of their land, building high walls to protect themselves from it, going crazy in the dark, getting bushed, axing each other in the snow. Who needs this kind of nonsense any more?

Before dismissing these ideas as utterly passé, it is instructive, however, to look at a nature writing practitioner who still, nevertheless, evokes some of these ideas as he travels the Great Canadian Wilderness. Michael Poole, journeying by canoe through the inside passage, describes in his 1991 book *Ragged Island* a deserted camping spot he is forced to use one night. All along the coast he has found former sites where people once lived—Indian vil-

lages, logging camps, fishing ports—deserted, and being reclaimed by nature. Poole finds something ominous in this disappearance of settled human life (although there is no lack of yachtsmen cruising up and down, filling their freezers full of illegally caught shrimp). “At high tide I had to retreat to the woods to find room to sleep. There was neither water nor driftwood for a fire. Yet none of these things could account for the dark malevolence that seemed to hover about the place, especially in the forest above the beach, where a populous village once stood. The site had once been open to sun and wind; but now closely crowned cedars shut out the sky and most of the light. Dead limbs cascaded like lianas down the trunks and snaked over a forest floor so deep in needles that nothing green could grow” (Poole 1991:115). In this place he also feels that he is being watched by something, an experience that leaves him feeling that he is “an intruder on alien ground” (Poole 1991:115).

In a book which revisits these types of themes, *A Border Within: National Identity, Cultural Plurality, and Wilderness* (1997), Ian Angus seeks to re-evaluate the idea of the “garrison mentality” to see if he can find there a metaphor less apparently hostile to wild nature and more in line with contemporary environmental sensibilities. Angus believes that value remains in this ongoing meditation of place, but only if the “garrison” walls can be reconfigured into the more fluid concept of a “border.” In Frye’s original conception, the garrison community is a closely knit but beleaguered society, one with the need for unquestionable shared values. The result is a lack of “communication and dialogue”—and ultimately, intellectual sterility (Angus 1997:226). In the era of globalization and new social movements, Angus argues, the debate about Canadian identity needs to take a dramatic turn “outward” and be conducted along borders. These borders include obvious ones such as exist between Canada and the United States, but the most significant border according to Angus—in terms of English Canadian identity—is the one existing between civilization and wilderness. “There is a deep ambivalence in the English Canadian psyche. Fear of the wilderness, scarcity, leads us to despoil and take without thought of yesterday or tomorrow, but at the same time produces a staggering awe.... These two views which tear at each other in our society and coexist within most minds—are based on the same experience: Awe of unlimited and purposeless wilderness leads us to use it like a paper cup; and also to pause, take in the snow-blind, and create limits and goals without denying the wild—to draw a border, a limit” (Angus 1997:125-126).

In order to clarify his concept of wilderness, Angus contrasts the Canadian experience with that of the American frontier. He identifies the outward rush of American frontier experience as revealing itself in everything from the name “America” (which essentially claims a continent) to the last frontier of space. The American experience devours wilderness, transgresses and challenges borders, and moves on from frontier to frontier, always needing something to rush into and subdue, if only in imagination, in order to reassure the self. In contrast, the Canadian experience looks at the border as a way to *protect* itself from the Other (i.e. American versus Canadian). The importance of what he wants to say *vis a vis* the natural world comes in the form of a question: *Can we discover in the border a conception of civilization that is not in opposition to wilderness?* (Angus 1997:130)

Clearly Angus thinks that is at least a possibility, in part because the “border” does not only “separate two distinct spaces” but actually describes a tension between two existing things—whether it is American or Canadian, or wilderness and civilization. However, Canadians, because of a number of historical, geographical, cultural, and political factors, are not interested in necessarily “breaking down borders”—but in preserving them. What Angus is probing, is the possibility that the border is the site where many different realities actually confront one another. Maintaining the border thus becomes less a fearful, defensive reaction, than an outward-reaching meditation upon the one’s identity.

“With the concept of borders” Angus writes, “wilderness is not experienced as something to be transformed into civilization, but as a *limit* to the civilizing project” (Angus 1997). Understood this way, guarding borders is less a defensive, reactive gesture than one that allows for respect of the other—an idea clearly relevant to other environmental issues such as genetic engineering. In the metaphor of the border Angus believes we can discover a concept of “civilization” that is more worthy of the natural landscape we inhabit.

### The Meaning of Wilderness in a Global Era

I am sympathetic to Angus’ reworking of Canadian wilderness theories, primarily because it signals a reluctance to abandon entirely the idea of a powerful, numinous natural world. To even have the opportunity to be “terrified” of wild nature in a global era is not entirely a bad thing. To be out in a wilderness setting with a cell phone turns the experience into a stroll in the park; to be out there on your own, in a place where a mistake could be fatal,

makes it a more profound experience altogether. Terror, at the very least, reminds us that “we” are not in control, that “we” do not manage the entire globe, that there are yet things for us to learn because there are things which remain unknown. Fear can make humans lash out—but it can also counsel a certain type of humbleness. It reminds us to treat our neighbors properly. It opens the door for respect; it reacquaints us with the fundamental awesomeness of the world. Nor should we forget that many U.S. writers also witnessed the awesomeness (and terror) of the world *but only when there was still an opportunity to experience a wider, wilder nature than what now exists in the United States*. John Muir, riding out a storm in the branches of a Douglas fir, Thoreau on Mt. Ktadaan, Robinson Jeffers standing with his back to a continent while he stared out at the still wild Pacific Ocean at Carmel, California—these are indeed witnesses to the “shocks and flashes” of a wild reality (Jeffers 147)—who may even be said to have a certain “Canadian” sensibility discernable in their own work.

The insight, which accompanies an experience of a vast, or otherwise “inhuman,” landscape is one that is now in itself endangered. The result is that it has led to an overabundance of elegiac responses to landscape and to nature’s processes. A literary exploration of a vast natural world, fundamentally indifferent to humans—is now a heretical, almost embarrassing position to strike in an age when environmental discourse speaks most strongly of “saving” or “protecting” nature. We know there is a need to save the whales, the trees, the California condors. Hidden in such discourse is concern, love, anger, anguish, certainly, but, also, ironically, there is a shared presumption with the busiest urban developer that humans are now somehow in charge of or responsible for nature. Furthermore, there is something vaguely “suspect” about a position like Frye’s which continues to insist that nature is powerful and awesome—and perhaps because of its indifference to us—still to be respected.<sup>5</sup>

These contemporary developments—the elegiac response to the “loss” of nature and the desire to “save” what remains—appears to leave more traditional Canadian wilderness writing out of step with an environmental age. Nevertheless, I would like to argue that this writing still offers a much needed antidote to a discourse which tends to domesticate nature. In the tighter confines of human settlement in which we now find ourselves, nature itself seems to have shrunk, become beaten, domesticated, needing to be protected, and, in the final act of diminishment, is declared to be “socially constructed.” In contrast, something that is awesome is not something which is

likely to be trivialized, and a reminder of this, I believe, is the greatest value of Canadian wilderness and Canadian wilderness writing to any emerging environmental discourse.

Much current writing about wilderness suggests that nature is a social creation. Correlated with this insight is the knowledge that we can never be “sure” that any single presentation of nature is true. Fair enough, though we should also be willing to acknowledge if our constructions stray too far from a *fundamental* reality, nature will eventually “correct” us. For example, once we believed that nature was unendingly bountiful; the silence of extinction has sternly corrected that premise. Once we set annual allowable catches for cod; their “disappearance” corrected our economic assumptions about the natural world and its resilience and ability to “recover.” These shocks and corrections tell us that nature will find a way to make itself known when our social constructions are not in line with the reality of the world. Furthermore, our conversation with nature does not occur in one direction only. Nature, perhaps, does resist our constructions, and if we listen carefully enough we may even be able to sense the presence of something other than our own thoughts. If a writer is talented enough, he or she will even find a way to gesture toward the presence of the nonhuman other and incorporate the insight that nature resists our impositions and constructions into his or her work. The silence Stegner perceived one winter night; the sense that humanity itself is only a small thing that nevertheless has a place under heaven, these are insights intertwined with the land from which they emerge. They are also insights as endangered as the land they depend upon—and perhaps that is why we need them now more than ever.

## Notes

- 1 “I wish to speak a word for Nature ...” (Thoreau 1980:94).
- 2 For example see Barbara Gowdy’s *White Bone* as a contemporary example of the “animal story.” This one, however, clearly was written for adults. For a comparison between Canadian, U.S. and British animal stories—focused on dog stories—see Michele Warry’s study, “The Role of Dogs in Children’s Literature; A study of 140 years of Dog Stories in Canada, America and Britain” (unpublished).

- 3 Though Roderick Nash's book *Wilderness and the American Mind* made the point that "Civilization Created Wilderness" in 1967.
  - 4 For a fuller discussion of this idea see Rebecca Raglon and Marion Scholtmeijer. 2001. "Heading off the Trail: Language, Literature, and Nature's Resistance to Narrative." In *Beyond Nature Writing: Expanding the Boundaries of Ecocriticism*. Edited by Karla Armbruster and Kathleen Wallace. Charlottesville: University Press of Virginia.
  - 5 Post-colonialists could well claim that there is a faint whiff of the Victorian in this emphasis on Nature's power. After all, such a vision of the natural world is a wonderful counterpoint to colonial expansion, providing a necessary backdrop to highlight the intrepidity of nineteenth century explorers, offering a ready-made rationale for beating back the wilderness in the name of civilization
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# CONVERGENCE and DIVERGENCE in NORTH AMERICA

## Canada and The United States

**T**HIS BOOK includes Canadian, U.S., and international perspectives. Rather than addressing continental convergence and divergence from a single academic point of view, these sixty-one papers contain a variety of interdisciplinary perspectives. Contributors' conceptual re-assessments and scholarly debates reveal how Canada and the U.S. can take various paths to improve their societies, hold dissimilar ideas about policy, and interrelate unilaterally or multilaterally. Here, international Canadianists emphasize that an examination of convergence and divergence needs to advance, for example, a conceptual complexity beyond national comparison (e.g., multiformity in borderlands, the Arctic North), an assessment of free trade relations, an examination of emergent cross-border asymmetries (e.g., in cultural identities, environmental regulations), a review of cross-border (in)securities, an understanding of Aboriginal concerns (e.g., repatriation, self-government), an examination of recent societal developments (e.g., in immigration, social policy, youth participation, union membership), and a recognition of Canadian uniqueness.

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