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North America and the “Three Noes”

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Since the terrorist attacks on the United States in September 2001, an awkward nexus of security and economics has been the primary driver of North American governance. This nexus emerged as a pragmatic response to the poisonous politics of economic integration that ensued after 1994 and the advent of the North American Free Trade Agreement (NAFTA). In 2005, the three NAFTA countries launched the Security and Prosperity Partnership (SPP), aimed at reinvigorating the North American agenda to reflect the realities of security and economics. Unfortunately, the U.S. Department of Homeland Security has become the main focal point for policies affecting America's borders as the department's mandate has overwhelmed economic considerations and the policy approach has converged around security and law enforcement. Prospects for a new integration project will remain dim for the foreseeable future. However, the paralysis generated by the security-economics nexus has created new governance space in North America that complements the broad evolution of federal politics in all three NAFTA countries, particularly where proposals for reform of the Department of Homeland Security are concerned.

Introduction

A major consequence of President Nixon's opening of U.S. relations with the People's Republic of China in the early 1970s was the shift in U.S. diplomatic relations away from Taipei and the Republic of China to Beijing and the People's Republic of China in 1979. Sensing that Beijing might seize the opportunity to pressure Taipei for reunification, Taiwanese president Chiang Ching-Kuo sought to reaffirm Taiwan's independence from Beijing with a strict policy of "three noes"; no contact, no compromise, and no negotiation. While not entirely responsible for entrenching the status quo across Taiwan Strait, the "three noes" had a chilling effect on prospects for closer ties between Taipei and Beijing that largely holds to this day.

North America represents a far different geopolitical space, but a similar set of "three noes" has been having a similarly chilling effect on closer ties among the "three amigos" for much of the past two decades. The late 1980s and early 1990s were a period of rapid change in North American economic relations. Two major trade agreements, the Canada–U.S. Free Trade Agreement (CUFTA) in 1989 and the North American Free Trade Agreement (NAFTA) in 1994, seemed to herald a new period of economic and political integration in a direction similar to that which had evolved in Europe during the postwar period. However, shortly after the NAFTA was concluded, "three noes" – no money, no disputes, and no legislation – effectively ended progress on issues left over from the NAFTA debate and stifled initiatives to build upon what the NAFTA had begun.

Part of the argument of this article is that the "three noes" are, in part, a pragmatic response to the poisonous trade politics that emerged out of the NAFTA debate in 1994. And while the U.S. trade agenda has experienced periods of activity, most notably under the administration of George W. Bush, the North American agenda has consistently suffered from the restrictions imposed by the "three noes." The completion of Barack Obama's first year in office is an obvious time to assess aspects of the North American agenda, especially North America's borders; such an assessment is the focus of this article.

Since the conclusion of the NAFTA in 1994, policy makers, academics, and policy wonks of all stripes have been engaged in the search for "next steps" in North American governance. That search is littered with the policy recommendation wreckage of numerous blue ribbon panels, "eminent persons groups," and government reports, all of which have recommended picking up where the NAFTA left off and moving towards deeper stages of economic integration and political coordination in North America.¹ Throughout the 1990s, initiatives were launched, shelved, and sometimes launched again in an effort to deal with the NAFTA's perceived

shortcomings; nearly all of these initiatives came to naught, in part because of the “three noes.”

Not until the terrorist attacks of September 11, 2001 on the United States did any of this activity generate movement toward more coordinated North American governance, nearly all of which was devoted to mitigating the negative trade effects of enhanced security. In the process, economic policy was wedded to security in North America but remained subject to, and ultimately limited by, the “three noes.” The 2005 Security and Prosperity Partnership (SPP) was designed to manage the new nexus but was, in effect, an imperfect byproduct of the many previously unsuccessful initiatives to deal with the lingering imperfections of the NAFTA.

One of the main challenges confronting North America in the management of borders actually concerns the SPP and its U.S. implementation by the Department of Homeland Security (the security agenda) and the Department of Commerce (the prosperity agenda). Since the creation of the Department of Homeland Security in 2003, management of policies concerning America’s two borders has converged around security and law enforcement. Moreover, ineffectual mechanisms for border management, such as the SPP, have actually served to bury large parts of the North American agenda within each country’s bureaucracies, making them more difficult to deal with. All of this has stimulated new rounds of initiatives and policy proposals designed to garner the attention of new leadership in Washington and Ottawa, as well as the Calderon government in Mexico City. Proposals and approaches have ranged from sweeping new integration projects, such as a customs union² or the creation of a binding joint commission to manage border issues,³ to the devolution of responsibility for border management to local and regional interests such as states and provinces or public-private partnerships.⁴

This article will make two claims about the governance of borders and economic policy in North America during the remainder of the Obama presidency. Firstly, and perhaps obviously to students of North American integration, the nexus of security and economics as shaped by the “three noes” will continue to hinder already murky prospects for new governance initiatives that could substantially alter dynamics entrenching themselves around North America’s borders. Secondly, and perhaps giving more cause for optimism, the additional paralysis generated by the security-economics nexus has created new governance space in North America that complements the broad evolution of federal politics in all three NAFTA countries. In short, the status quo paralysis on the North American agenda as driven by Ottawa, Washington, and Mexico City will continue; however, momentum toward greater shared governance and development of practical solutions to pressing problems will

increasingly be driven more by local and regional actors than by North America's national capitals.

In support of these two claims, I point to five broad streams of evidence that form the structure of this article. First, in the presence of a large U.S. agenda, North American issues have largely been delegated to the departments of Commerce (DOC) and Homeland Security (DHS). Second, recent and on the whole discouraging trends in U.S. trade policy-making are reflective of the absence of political support for a new liberalization project. Third, the absence of leadership from Ottawa and the presence of voices pushing to re-bilateralize North America further hinder already murky prospects for progress. Fourth, the U.S. immigration reform debate and prospects for enhanced labour mobility present complicated issues that affect the whole of North America. Fifth, and providing more cause for optimism, a strategy of regionalization in dealing with the North American agenda that leverages each country's shared experience with federalism represents a constructive path forward for overcoming the tyranny of the "three noes."

Large U.S. Agenda

A major problem confronting North American leadership is the lack of high-level profile for shared problems. Except for periods in which there have been serious bilateral conflicts or common problems needing resolution (acid rain, drug violence, or illegal immigration), Ottawa and Mexico City have often found it difficult to get on the American agenda. Since September 11, 2001, this has only become more difficult. Only those matters needing immediate attention, such as border security, have been placed at the top of the U.S. agenda. The United States always has a full agenda, but with two wars and a financial crisis to dig itself out of, that agenda is especially full. All of this leaves limited space for North America, and the Obama Administration's focus on these issues and on healthcare reform in the second half of 2009 has consumed most of the available policy oxygen in Washington. Hence, North America will continue being a tough sell.

In the past eight years, North America has actually ranked high on the U.S. agenda. The "shotgun marriage" of economics and security brought on by September 11 generated a rapid response in the form of the Smart Border Accords in late 2001 (Canada-U.S.)⁵ and early 2002 (U.S.-Mexico).⁶ The accords were byproducts of older, unfinished initiatives from the 1990s, each of which was hobbled by the "three noes." The tyranny of the "three noes" in turn formed an underlying set of strictures on the 2005 Security and Prosperity Partnership into which the Smart Border Accords

were folded.⁷ The SPP was designed to help manage a large number of agenda items, many of which were highly technocratic in nature. It was also a pragmatic response to the imperatives of the “three noes.” By limiting SPP work to low-hanging, mildly controversial work, such as changes to NAFTA rules of origin, the SPP required no new funding, would generate no new trilateral disputes, and did not require new legislative grants of authority. As a result, tangible deliverables from the SPP have been few and far between. Apart from institutionalizing annual leaders’ summits, the SPP has essentially buried North American issues within each country’s bureaucratic apparatus. Moreover, we have now created a kind of “alphabet soup” of programs for preferred travelers, advance cargo screening, and reporting.⁸ Each of these new programs is intended to mitigate the economic effects of enhanced security measures. Yet, with each new layer of security, each new measure to smooth its effects, many worry that we are adding to the “thickening” of North America’s borders. The direct evidence of “thickening” uncovered by researchers has thus far been mixed, but growing,⁹ with a potential impact much greater than waiting times at border crossings.

DHS: Getting there ... sort of ...

This thickening is especially problematic in the United States, where the Department of Homeland Security has been charged with management of the security agenda. The growing pains of DHS since its creation in 2003 are well known.¹⁰ Recent assessments of DHS have offered higher marks for the agency, but with much work to be done in areas of risk management and consolidated Congressional oversight.¹¹ In 2007, for example, DHS officials appeared more than 200 times before 86 committees and subcommittees, attended 2,242 briefings for Members of Congress, wrote 460 mandated reports, and answered thousands of queries from individual members.^{12,13}

As importantly, the reorganization of the American bureaucracy, driven as it is by security, has transformed the management of America’s borders into a matter of law enforcement. The security agenda has increasingly overshadowed the prosperity agenda as managed by the Department of Commerce. As such, the Department of Homeland Security has increasingly become *the* frontline agency handling most Mexican and Canadian affairs.

Although the NAFTA famously contained “too few institutions”¹⁴ of a supranational variety (none in fact) it did institutionalize many aspects of North American relations by depoliticizing them in legalistic dispute settlement mechanisms and clarifying lines of responsibility within each bureaucracy. In other words, the NAFTA actually made it more difficult to get most Mexican and Canadian issues on the White House agenda. The litany of the post-9/11 alphabet soup, reaffirmed and

entrenched by events and processes culminating in the SPP, only exacerbated this by creating little or no political momentum, incorporating little new legislative oversight, and by pushing North America deeper into a bureaucracy dominated by the law enforcement culture of DHS.¹⁵

The Obama Administration has distanced itself from the SPP label by focusing on the North American Leaders Summit (NALS), but the SPP agenda within remains, and has merit.¹⁶ In addition to institutionalizing the annual summits (NALS), the SPP agenda usefully placed responsibility for resolving the “tyranny of small differences” that complicate North American integration in the hands of technocratic experts, thereby shielding difficult work from the complications of politics.

However, in turning much of the management of the border over to DHS, the SPP has not served the North American agenda well precisely because border management has been depoliticized. North America has been transformed into a series of law enforcement measures driven by the U.S. Congress or by the rule-making capacity of DHS. The Department of Homeland Security increasingly applies symmetrical approaches to both the U.S.–Mexican and Canada–U.S. borders. The application of uniform policy applied to very different borders, coupled with the burying of the North American agenda in a technocratic and law enforcement mentality, undermines the ability to push North America up the U.S. list of priorities.

The early and near-unanimous confirmation of Arizona Governor Janet Napolitano to be Secretary of Homeland Security was a potentially a welcome shift. Unlike Secretary Chertoff, whose background moved DHS more firmly toward being a law enforcement body, Governor Napolitano appears positioned to better appreciate and balance the complicated politics of the many issues on the North American agenda DHS will continue to deal with. Like Secretary Chertoff, Secretary Napolitano also has a federal law enforcement background (former U.S. Attorney) and a reputation as governor for being tough on security issues. In fact, she stunned fellow Democrats by declaring a state of emergency with respect to illegal immigration so that more resources could be directed at the U.S.–Mexican border to help stem the tide.¹⁷ However, Secretary Napolitano has also been sharply critical of federal inaction with respect to border issues, especially funding to the states, and has been a long-time supporter of U.S. immigration reform as a means of dealing with illegal crossings.¹⁸

In her confirmation hearings, Secretary Napolitano acknowledged that her understanding of the northern border was limited, but implicitly seemed to understand fundamental differences between it and the southern border.¹⁹ However, following confirmation, Secretary Napolitano’s first act was to order a review of the northern

border, sending a chill through those who hoped for increased differentiation between it and the southern border.²⁰ Both the review and Secretary Napolitano's subsequent statements during the course of the past year have dashed those hopes, reaffirmed the symmetrical approach DHS is taking with both borders, and re-kindled worries over "thickening" by identifying the need for additional security measures along the northern border.²¹ At a March 2009 borders conference hosted by the Brookings Institution in Washington, D.C., Napolitano was explicit:

One of the things that we need to be sensitive to is the very real feelings among southern border states and in Mexico that if things are being done on the Mexican border, they should also be done on the Canadian border... we shouldn't go light on one and heavy on the other.²²

The balance between law enforcement and political pragmatism Secretary Napolitano is able to entrench in the culture of DHS may determine the parameters of progress on the North American agenda. Unless, and until, Secretary Napolitano can instill the kind of pragmatism in DHS that seems to be characteristic of the President himself, it will remain very difficult for Canada and Mexico to pull border issues out of DHS and onto the White House agenda where many of them need to be if action is to be taken.

U.S. Trade Policy

Recent scholarship on U.S. trade policy has offered countless insights and analyses that are beyond the scope of this article.²³ However, the contemporary nexus of security and economics in North America necessitates addressing this nexus as set against trade policy. Moreover, in spite of the marginalization of the NAFTA itself in the context of the SPP or NALS,²⁴ the U.S. trade agenda is synonymous with North American integration. Moreover, any action on security that affects North American integration will necessarily involve trade and finance. Thus, while the process of liberalization appears to have stalled over the 1994-2009 period since the completion of the Uruguay Round, in fact a great deal of liberalization has been taking place. More than 75 countries, including China, have joined the WTO over the period. Each has liberalized its trade regime to some extent as a result of the accession negotiations. The cumulative liberalization is extensive.

The U.S. trade policy agenda is wrecked. Eight years of Bush Administration activism on international trade issues have given way to populist acrimony over the direction and posture of U.S. leadership on trade liberalization.²⁵ After a first term in office that included the launch of the Doha Round of the WTO, successfully reviving fast-track negotiating authority, and the launch of a slew of bilateral and regional trade

initiatives, the Bush Administration lost nearly all of that momentum, and few public officials are willing to defend trade liberalization.²⁶ The Doha Round has descended into stalemate over rich-country agricultural subsidies, several bilateral trade agreements have stalled (Peru, Colombia, South Korea), and fast-track negotiating authority has been allowed to expire.

The broad malaise that has seized the American trade agenda is arguably part of the ebb and flow of the politics of protectionism that often coincides with deteriorating economic conditions (i.e., “buy America” provisions of the Obama stimulus). However, the expiration of fast track portends a difficult period for U.S. leadership in the international economy because the demise of fast track has involved more than the lapse of timetables. On April 10, 2008, the Speaker of the House of Representatives, Nancy Pelosi, and the House Democratic leadership approved a change to House rules governing the legislative time-table by which trade agreements negotiated by the president had to be brought to a vote. The trade agreement in question was the U.S.–Colombia Free Trade Agreement, completed in November 2006, and now effectively in legislative limbo because of the rule change.

For most of the postwar period, Congress has delegated its constitutional authority to “regulate Commerce with foreign Nations...” to the president. Since 1974 and the creation of so-called fast-track authority, that basic delegation has involved increased consultation between the White House and Congress, a 90-day legislative time table to bring agreements to a vote, and a congressional promise that deals will not be amended. The U.S. commitment to foreign nations that agreements will not be amended is effectively dead.

While fast track is not an absolute necessity for tackling the North American agenda, its demise is a significant sign of the lack of enthusiasm for a new integration project on the scale of a customs union, which would certainly require a fast-track mechanism of some kind. Hence, the no-new-legislation element of the “three noes” takes on even greater salience since a major new North American integration project would likely entail the political battle for a fast-track replacement as well as any agreement itself. More narrowly, concerns among North American business leaders about the “thickening” of borders due to a range of security measures and the need to deal with a range of non-tariff barriers will undoubtedly require new legislation.²⁷ In the presence of a trade agenda in desperate need of repair, and given the bitterness and populism concerning trade policy exhibited during the U.S. presidential campaign, it is hard to foresee significant momentum being generated in favour of a new integration project.

A related problem concerns the role of the Department of Commerce in managing the prosperity agenda of the SPP. Like DHS, the Department of Commerce is a leviathan agency whose economic divisions are engaged in export promotion for American business. Unfortunately, it is also the main U.S. agency responsible for defending American business from foreign competition. It is the responsibility of the International Trade Administration, and the Import Administration in particular, to implement U.S. trade remedy laws; in other words, the Department of Commerce is defensive and inward looking. While DOC is part of the inter-agency team working on new liberalization initiatives, the more outward looking United States Trade Representative (USTR) leads these initiatives. Notably, USTR has not been an important part of the SPP even though the left-over NAFTA agenda forms the core of the prosperity agenda of the SPP.

Absence of Leadership from Ottawa, and the Voices of “Re-bilateralization”

Ottawa’s leadership on North America has been suspect for many years, and contemporary voices calling for a “re-bilateralization” of North America are complicating matters further.

The federal budget cuts of the early 1990s severely curtailed Canada’s policy capacity in international affairs, and with respect to the United States in particular. A string of diplomatic miscues in the 1990s and an inability to interpret shifts in the American polity left Ottawa scrambling for solutions after 9/11 brought about significant changes to the U.S. security posture. While dusting off the Smart Border process of the late 1990s and pushing for its implementation as the Smart Border Accords of 2001 and 2002 was constructive, these were also inherently defensive measures, designed to mitigate the economic effects of American security imperatives. Since then, Canada has also pursued a defensive posture with respect to the implementation of U.S. legislation dealing with cargo reporting (2002 Bioterrorism Act), immigration (US-VISIT, WHTI), security at borders (“thickening”), the “buy America” provisions of the U.S. stimulus bill, as well as provisions of U.S. climate change legislation.

Whereas a consistent vision of North America, and Mexico’s place in it, has emanated from Mexico City since President Carlos Salinas de Gortari proposed free trade with George H.W. Bush in 1990, the same cannot be said for Ottawa. Salinas’ bold proposal was met in Ottawa with a defensive request to join the discussions, mainly to preserve hard-won access to the American market negotiated under the Canada–U.S. agreement just two years earlier. Since then, Ottawa has largely been

preoccupied with defending existing preferences without articulating what a North American community should look like. For a country so heavily dependent on open markets for its standard of living (roughly 40 percent of GDP is derived from exports, and more than 80 percent of those are destined for the United States), Ottawa has been as complicit as any party in failing to articulate or lead a push for a comprehensive approach to North America. Getting Canadian issues put high on the American agenda is going to continue to be difficult.

Although Ottawa has yet to realize it, the road to a higher place on the U.S. agenda runs through Mexico City.

Had Ottawa been able to articulate a bold North American agenda with the United States, it may not have been enough to overcome the “three noes.” However, Ottawa’s frustration with the lack of progress on the twin SPP agendas is, in part, the product of its own inability to articulate a North American vision beyond its relationship with Washington. That frustration has led to heightened discussion in Ottawa and elsewhere of re-bilateralizing the entire North American agenda.²⁸ From Ottawa’s perspective, re-bilateralization makes considerable sense. There appear to be many North American agenda items that could be more rapidly and comprehensively dealt with in a Canada–U.S. context. The argument is that North America’s two borders are quite different, and Canada’s relationship with Washington is very different from Washington’s with Mexico City. Trilateralizing such disparate sets of needs unnecessarily complicates and limits what can be accomplished.

Yet, talk of re-bilateralization of North America is virtually a non-starter where the United States is concerned, a stance partly reflected in Secretary Napolitano’s March 2009 comments noted above. The NAFTA, and now the SPP process, have entrenched U.S. policy making, especially where borders are concerned, in a trilateral framework that will be difficult to undo. Desk officers at the Department of State and DHS will still be dedicated to bilateral issues; however, Washington invested heavily in political and economic reform in Mexico City when it supported the NAFTA, and a new administration is not going to allow this investment to be eroded through re-bilateralization. North America has been characterized anecdotally as the sum of two bilateral relationships rather than a truly trilateral one. Yet such characterizations understate the degree to which the American bureaucratic and policy mind-set has shifted toward trilateral thinking in the aftermath of the NAFTA.

Moreover, the pendulum of political power in the United States has swung decisively toward the desert southwest, a swing brought about in part by migration (internal and external) and the omnipresence of Latin America. Latino-Americans now comprise the largest minority group in the United States. They are a growing,

increasingly well-organized, yet highly diverse subset of the American electorate. Both political parties have set their sights on winning their support, and U.S. relations with Latin American countries, Mexico most important among them, are high on their agendas. Yet it is not just the desert southwest where Latin America and American politics combine. Canada would do well to gain a greater appreciation of how powerfully Latin America looms throughout the United States, in its politics, culture, and policies. To put it bluntly, Canadians' appreciation for Mexico does not extend much further than the beaches of Cancun or Puerto Vallarta.

While there are obvious differences between Canada and Mexico, trilateral forums have become accepted mechanisms in Washington for dealing with its NAFTA partners. There are undoubtedly policy areas in which Ottawa and Washington could move with greater speed than can be attained trilaterally. But as Robert Pastor has argued, re-bilateralization would merely reinforce the huge asymmetries of power among the three countries – something Ottawa cannot possibly want.²⁹ In addition, the pull of Latin America in Washington is far too strong to allow even unofficial re-bilateralization to marginalize Mexico City given the joint challenges along the U.S.–Mexican border. To Canadians, the Merida Initiative, designed to combat the drug-fueled violence all along the U.S.–Mexican border, is none of Ottawa's business.³⁰ However, the challenges of development and drug violence are not simply bilateral; they concern Canada as well because they seriously complicate Washington's ability to move trilaterally on border security and immigration reform.

Hence, expect U.S. border policy (immigration and security) to continue converging on both borders.

Labour Mobility

Many Canadians look at labour mobility as principally a bilateral problem between the United States and Mexico. This is a mistake, since the U.S. immigration debate complicates the entire North American agenda. As the failure of comprehensive immigration reform legislation in the United States in 2007 demonstrated, labour mobility in North America will be a significant barrier to any North American agenda. Yet addressing immigration/labour mobility is part of any obvious set of “next steps” in revitalizing that agenda. Although the NAFTA never contemplated comprehensive labour mobility, the NAFTA did create an entirely new category of work visa, the TN visa for professionals (NAFTA Chapter 16, Temporary Entry). However, the list of eligible professionals is limited, has proven challenging to amend, and has lacked the flexibility to incorporate entirely new categories of professionals, such as IT workers,

that hardly existed in 1994. Moreover, access to TN visas has not exactly been equitable. While Canadians can apply for TN visas at U.S. ports of entry, Mexicans have had to apply through U.S. consular offices in Mexico, significantly complicating the process. As a result, Canadian professionals have made full use of TN visas while Mexico has never maximized its allotted quota. Moreover, the list of professionals qualifying under the TN visa has never been amended and does not reflect the emergence of new professions such as IT workers.

While the Bush Administration's efforts to win immigration reform in 2007 failed, they are likely to be revived by the Obama Administration in early 2010. Interestingly, immigration reform in 2010 will likely take a form similar to that proposed in 2007 and involve a mix of toughened enforcement, some form of amnesty or path to legalization for those already in the United States, and ultimately a path to full naturalization.³¹ According to Secretary Napolitano, the conditions on the ground have changed significantly since 2007, laying the foundation for much-needed reform.³² In large part, the changes on the ground have involved significantly enhanced security along the southern border. If the Obama Administration does renew U.S. efforts to regularize labour flows across the southern frontier, it will be a discussion that Canada ought to want a piece of. Liberalization of labour flows in any part of North America will have spillover effects throughout the continent. Yet, for some reason, Ottawa has been little more than a passive observer.

Finally, the alphabet soup of new procedures in North America has applied as much to the movement of people as to cargo. Entry-exit provisions of the Patriot Act now enshrined in the U.S.-VISIT program have had additional layers of security applied with implementation of the Western Hemisphere Travel Initiative (WHTI), the Real ID Act for enhanced driver's licenses, and most recently the Electronic System for Travel Authorization (ESTA).³³

Immigration is not just about setting new rules for guest workers or relaxing visa requirements. A major source of immigration pressures between the United States and Mexico revolves around the disparities of wealth on either side of the U.S.–Mexican border. Moreover, scholars point to immigration reform as a major component of any poverty reduction strategy.³⁴ A major challenge in North America concerns the disparities in development that remain in Mexico, particularly in the South, that are placing increasing pressure on the U.S.–Mexican border in the form of illegal immigration as Mexicans seek to emigrate in search of a better standard of living.

The North American Development Bank was established in 1994 as a means of addressing some of these issues with development projects and environmental clean-up. The effectiveness of the NADBank has been hamstrung by a lack of full

capitalization and the limitation that funds be directed narrowly at projects with a major environmental component rather than at, for instance, general infrastructure projects that may have positive effects on the environment.

These efforts have been further hamstrung by Canada's refusal to join the NADBank's governance structure or contribute to its capital fund. If Canada really wanted to advance its North American agenda with Washington, it would invest more political and economic resources engaging Mexico City. The challenges of development for Mexico are of critical importance to North America if the continent is to function effectively as an engine of economic growth for everyone. Labour mobility and immigration issues are not just American or Mexican problems. They are also Canadian since they complicate and slow the pursuit of Ottawa's interests in North America.

Regionalization/Localization

One potential bright spot for revitalizing the North American agenda actually resides outside the national capitals, in the states and provinces. The North American agenda is packed full of pressing issues, but it is questionable whether they should be dealt with in a single undertaking like the NAFTA negotiations. Packaged together, outstanding issues in North America are impressive. If we add to the SPP agenda issues such as climate change, development, migration, or energy security, the North American agenda gets larger still. The lack of consensus on how to deal with all of it was underscored by the anti-trade rhetoric of the 2008 presidential campaign. Moreover, the debate is seldom about pieces of the North American agenda and is rather depressingly focused on the very merits of economic openness. There have been numerous efforts to outline the major issues on the North American security and economic agenda. There has also been no shortage of possible solutions and processes to get there, some of which have included the revitalization of old agendas or commissions of one kind or another to redefine a new agenda. There have been proposals for moving North America close to the EU in terms of formal institutionalization, and others focusing on augmenting existing processes. North America is emphatically not the EU. North America has a unique history and a complex, contemporary agenda that demands a shift away from application of cookie-cutter rules to regions of the continent where they do not work.

The Decentralization of North America

Another model for the future of North American governance is much more decentralized than most analysts have proposed. It would reduce the pre-eminence of Ottawa, Washington, and Mexico City within, but not cut them out of, discussions of next steps in North America. Canada, the United States, and Mexico are all federal systems with a range of both statutory and evolutionary patterns of exclusive and shared federal and subfederal powers. Federalism in Canada, in particular, has evolved strongly in the direction of increasing devolution of authority from Ottawa to the provinces. Federalism in the United States has evolved in a slightly different direction, but still involves significant delegation of federal responsibility to the states. Even in areas where federal primacy has a long history, such as national security, the implementation phase of many federal spending initiatives has often been left to the states. This has been especially true in terms of U.S. homeland security since the creation of the Department of Homeland Security in March 2003.³⁵

Shared North American governance could build upon these patterns of shared responsibility to engage local and regional stakeholders in the search for solutions to shared problems in security, the environment, development, or border facilitation. Indeed, proposals for further reform of DHS have strongly argued in favour of regionalization of the agency's approach to many issues.³⁶ These proposals have included giving U.S. port directors significantly more responsibility for engaging local, state, and regional stakeholders and the authority to make substantive changes to meet local needs. More importantly, DHS needs to more robustly engage state-level homeland security officials reporting to governors, mayors, and first responders, possibly through a network of DHS regional offices based on a model similar to the Federal Reserve District system. None of North America's borders is identical to another in terms of infrastructure, security risk, migratory pressures, or economic importance.³⁷ So why treat them as such from a policy perspective? The two countries are already working together on a range of cooperative security measures, including the Container Security Initiative (CSI) that places CBP inspectors in Canadian ports and CBSA inspectors in U.S. ports. Moreover, that same program places inspectors from both countries alongside each other in more than forty overseas ports.³⁸

The Container Security Initiative is an obvious example of federal cooperation in moving the front lines of security for both Canada and the United States further away from the shared border. The fact that CBP/CBSA inspectors work alongside one another in overseas ports may represent the beginnings of a "perimeter strategy" advocated by many as a means of both securing and liberalizing the North American economic space.³⁹

We also see a varied structure to securing borderlands in the use of Integrated Border Enforcement Teams (IBETs) along vast stretches of open, undefended border between the two countries. If we view the CSI program as inching North America toward a broader “perimeter strategy” that is responsive to the imperatives of both security and economics, we can also view IBETs as responding similarly to the considerable variability of the Canada–U.S. land border. Even at relatively fortified border crossings between Canada and the United States, the physical geography, type of user, and critical nature of the crossing for commerce vary significantly.⁴⁰ Resolving bottlenecks, in infrastructure for example, will necessarily entail greater cooperation among federal, state, and local officials for things like permitting and procurement. Equally, IBETs are also part of the variable response to a diverse border in that they use methods for border monitoring that begin at information sharing between law enforcement bodies and run all the way to the use of sophisticated technology, such as surveillance drones, to monitor sparsely populated and thinly guarded border regions.⁴¹

These kinds of activities already involve significant cooperation among federal, state/provincial, and local authorities. A more decentralized governance structure to North America would require significant deference from each national capital to regional initiatives in cases where federal-provincial/state jurisdiction clashed or overlapped. However, it would all build upon long-standing traditions in federalism in each country where competition between jurisdictions and between federal and subfederal entities has generated creative solutions to local problems that were then adapted elsewhere. For example, the long-running Canada–U.S. softwood lumber dispute might best be resolved through a regionalized mechanism of problem solving that minimizes the role of Ottawa and Washington. Since natural resources fall under provincial jurisdiction in Canada, and because the market conditions in Canada’s four main timber producing provinces are so different, why not allow the provinces slightly more autonomy in the search for a solution?

There are numerous regional bodies and consultative mechanisms that ought to be given increased deference and responsibility for initiating and testing solutions to bilateral or trilateral problems. Provincial premiers and state governors are powerful voices within each country’s federal system. In many instances, agenda setting and initiation already take place within regular bilateral meetings of a plethora of groupings and organizations:

Western Governors and Western Canadian Premiers

Council of State Governments and its regional bodies

Great Lakes Legislative Caucus

Conference of New England Governors and Eastern Canadian Premiers

Border Legislative Conference (U.S.–Mexico)

Ten States Retreat (U.S.–Mexico)

Arizona-Mexico Commission

Border Governors Conference

CANAMEX Corridor Coalition

Center for Research on North America, UNAM

Center for North American Studies, American University

Consortium for North American Higher Education Collaboration

North American Forum on Integration

Transborder Institute, University of San Diego

North American Center for Transborder Studies, Arizona State University

Also influential are non-governmental organizations such as the members of the Pacific Northwest Economic Region (PNWER). PNWER has been an important backer of government-led initiatives such as the enhanced driver's license programs piloted in Washington State and British Columbia. Their initiation was in part a response to the inaction by the federal government in implementing standards and directives for secure forms of identification acceptable for transiting borders under the Western Hemisphere Travel Initiative (Intelligence Reform and Terrorism Prevention Act of 2004) and the Real ID Act (2005). The Department of Homeland Security gave this program its blessing in 2007 with reluctance, but this is precisely the kind of initiative that North America's federal governments should be encouraging. Not every subfederal initiative will be successful, nor should it be. However, increasing the input of local officials and regional experts on the unique problems each region confronts in numerous issue domains is eminently sensible. Where local initiatives seriously infringe upon federal prerogatives, a simple test of "reasonableness" ought to be applied in determining whether initiatives ought to be applied nationally or trilaterally. Some have called for moving in this direction on the basis of "North America, Two

Speeds,” wherein initiatives would be implemented along both borders where feasible.⁴² All of this would help reconcile the inherent clash in approaches to border management between those in Ottawa favouring “re-bilateralization” and those in DHS moving increasingly toward symmetrical treatment of inherently asymmetric borders.

Federal deference to subfederal and non-governmental bodies will be a challenge in the context of each country’s respective federal dynamics. However, many of the issues these subfederal or non-governmental organizations could facilitate seldom rise to the level of high politics that require the direct attention of North America’s leaders. A host of issues related to infrastructure, security, immigration, or the environment may be technically federal in jurisdiction; however, a strong preference on the part of each federal government for best practices and regional solutions could be encouraged.

There would inevitably be clashes over federalism depending on the issue. Yet, a decentralized approach to North American governance might also facilitate additional progress on the unruly, though still pressing, agendas set out by the SPP in 2005. The Washington State–British Columbia enhanced driver’s license project is only the most salient example of where subfederal initiatives could be responsive to broader SPP and North American integration objectives.

Canada–U.S. Shared Border Facilities

In many ways, the alphabet soup of security initiatives employed at North America’s borders pales in comparison to the problems generated by antiquated infrastructure. Delays at border crossings were already significant prior to the imposition of post-9/11 security measures. The NAFTA stimulated an explosion of cross-border trade that was forced onto a transportation network and through ports of entry designed for the traffic of the 1950s.⁴³

President Obama and Prime Minister Harper each pledged to direct stimulus package money to border infrastructure; this is also an area in which a decentralized approach to infrastructure and security could be highly effective.⁴⁴ To some degree we have seen this happen with respect to the much needed and much delayed construction of a new bridge at Detroit-Windsor. Yet this has not been without significant wrangling between levels of government in each country and private sector interests in control of the Ambassador Bridge.⁴⁵

As part of the 1995 Canada–United States Accord on Our Shared Border, the Coutts-Sweetgrass border crossing was among three sites selected for redesign and construction as a wholly shared facility.⁴⁶ The initiation of these projects had a three-

fold purpose. First, they were designed to reduce existing duplication of space and increase the use of areas not being used to their maximum capacity. Second, the new buildings would accommodate border services agencies of both countries under one roof or in closer proximity, thereby increasing security for the personnel and the traveling public. And third, the shared facilities were designed to strengthen the partnership and foster additional cooperation between Canada and the United States. These shared facilities represent one possible model for streamlining a host of issues confronting both countries in security, economics, and infrastructure along the Canada–U.S. border. Each of the shared facilities is different, reflecting the particular dynamics of those crossings. The same model would undoubtedly need to be adapted to suit busier crossings, and might be inapplicable along the U.S.–Mexican frontier. However, more localized input into border management would facilitate the design and effective operation of such facilities.

A decentralized approach to borders is inherently limited in grand scope (much like the SPP itself), and will therefore be much less likely to raise the kinds of sovereignty concerns that typically attend large integration projects. More importantly, a decentralized approach to North America goes a considerable distance toward overcoming the limitations imposed by the “three noes.” Local control over local solutions to shared problems is likely to be more politically palatable in the long term than anything directed centrally out of national capitals and builds upon the foundations of limited government inherent in federal systems. Infrastructure can be built, information shared, and borders managed out of existing funding; such an approach need not generate disputes since local needs will be met; and it will not require scarce political capital for a large legislative initiative. Progress could be made on a range of pressing issues without requiring significant political capital expenditures on a major new integration project in the midst of an unusually full U.S. agenda.

Conclusions

North American integration has been hamstrung by the tyranny of the “three noes” for much of the period after 1994 and the conclusion of the NAFTA. The restrictions of “no money, no disputes,” and particularly “no legislation” have limited North American initiatives to measures implementable under existing grants of legislative authority and appropriation. 9/11 and the marriage of security and economics have resulted in considerable attention being paid to North American integration over the

past decade. However, the Security and Prosperity Partnership is almost entirely a byproduct of the “three noes.”

The outlines of the North American agenda are relatively clear, but the politics are complicated by both a deteriorating economy and the dominance of security. Unfortunately, security will continue to “trump” trade as the Department of Homeland Security solidifies its role as the primary agency responsible for North America. A new U.S. administration always brings with it the hope of renewed attention to North American issues. However, the full U.S. agenda and the anti-trade rhetoric of the 2008 campaign are powerful signs that no new integration initiative to remedy the problems with the marriage of security and economics is in the offing for the foreseeable future. In many ways, the tyranny of the “three noes” seems set to endure with no significant shift away from the “alphabet soup” approach to increasingly symmetrical border management.

More promising may be an approach to North America that advances proposals for border management centred on more localized initiative and control that goes some distance toward circumventing the “three noes.” More localized control and coordination can facilitate a form of border management in many areas that is as variable as the border itself. Such an approach builds upon the experience of federalism in all three countries and avoids raising the hackles of sovereignty a major undertaking would engender, while it nevertheless constructively advances the North American agenda.

Endnotes

1. John Manley, Pedro Aspe, and William Weld, Chairs, *Building a North American Community* (New York: Council on Foreign Relations, 2005); Canada, House of Commons, Standing Committee on Foreign Affairs and International Trade, *Partners in North America: Advancing Canada's Relations with the United States and Mexico* (Ottawa: Supply Services, December 2005); Wendy Dobson, “Shaping the Future of the North American Economic Space,” C.D. Howe Institute Commentary 162 (Toronto: C.D. Howe Institute, 2002). Dobson's piece in particular was perhaps the most prominent of a series of “border papers” published by C.D. Howe, 2002-2005.
2. See Robert Pastor, “The Future of North America,” *Foreign Affairs* 87(4) (July/August 2008). See also Manley, Aspe, and Weld, *Building a North American Community* (New York: Council on Foreign Relations, 2005).
3. Michael Kergin and Birgit Matthiesen, “A New Bridge for Old Allies,” *Border Issues Report* (Toronto: Canadian International Council, 2008).

4. See for example, Pacific North West Economic Region (www.pnwer.org). See also David Heyman and James Jaw Carafano, *Homeland Security 3.0: Building a National Enterprise to Keep America Free, Safe, and Prosperous* (Washington, D.C.: Heritage Foundation and Center for Strategic and International Studies, 2008).
5. Formally the U.S.–Canada Smart Border Action Plan, December 2001.
6. Formally the U.S.–Mexico Border Partnership Action Plan, March 2002.
7. See Greg Anderson and Christopher Sands, “Negotiating North America: The Security and Prosperity Partnership,” *Hudson Institute White Paper* (Washington, D.C.: Hudson Institute, 2007).
8. See Greg Anderson, “North American Economic Integration and the Challenges Wrought by 9/11,” *Journal of Homeland Security and Emergency Management* Vol. 3(2) (2006), Article 2.
9. *Ibid.*; Alan S. Alexandroff, Gary C. Hufbauer, and Krista Lucienti, “Still Amigos: A Fresh Canada–US Approach to Reviving NAFTA,” *C.D. Howe Commentary No. 274* (Toronto: C.D. Howe Institute, 2008); Edward Chambers and Williams Shaw, “Reaching Out: Exploring SME Exporting Opportunities and Challenges,” *Information Bulletin* 109 (Western Centre for Economic Research, April 2008); Joel Webber, *Network-Centric Security for Canada–U.S. Supply Chains* (Vancouver and Washington: Fraser Institute and Center for Strategic and International Studies, May 2005); Danielle Goldfarb, *Reaching a Tipping Point: Effects of Post-9/11 Border Security on Canada’s Trade and Investment* (Toronto: Conference Board of Canada, June 2007).
10. Donald Kettl, *System Under Stress: Homeland Security and American Politics* (Washington, D.C.: Congressional Quarterly Press, 2004); *Washington Post*, “Mission Was Undermined From the Start,” December 22, 2005, A1.
11. David Heyman and James Jaw Carafano, *Homeland Security 3.0: Building a National Enterprise to Keep America Free, Safe, and Prosperous* (Washington, D.C.: Heritage Foundation and Center for Strategic and International Studies, 2008).
12. *Ibid.*, 18.
13. Thomas Foley and Warren Rudman, co-chairs, *Untangling the Web: Congressional Oversight and the Department of Homeland Security* (Washington, D.C.: Center for Strategic and International Studies, December 2004).
14. Robert Pastor, *Toward A North American Community* (Washington, D.C.: Institute for International Economics, 2001).
15. See Anderson and Sands, *Negotiating North America*, 17-19.
16. Notably, the Joint Statement from the 2009 NALS in Guadalajara, Mexico makes no mention of either the NAFTA or the SPP. http://www.whitehouse.gov/the_press_office/Joint-statement-by-North-American-leaders, accessed November 17, 2009.
17. Janet Napolitano, “The Border Emergencies,” *Los Angeles Times*, August 20, 2005.

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18. Testimony of Janet Napolitano, Governor of Arizona, delivered before the Committee on Homeland Security, United States House of Representatives, October 19, 2005; Janet Napolitano, "Don't Forget the Border," *New York Times*, June 1, 2007; Janet Napolitano, "The Myth of Amnesty: The Senate Immigration Bill vs. a Disastrous Status Quo," *The Washington Post*, June 10, 2007.
 19. See Testimony of Secretary-Designate Janet Napolitano before the Senate Homeland Security and Governmental Affairs Committee, January 15, 2009.
 20. See DHS press release, "Secretary Napolitano Issues Additional Action Directives on Cyber Security and Northern Border Strategy," January 23, 2009. The impetus for this northern border report is unclear. Secretary Napolitano's confirmation hearings featured a number of questions, particularly from Senator John Tester (R-MT), on the northern border that may have prompted the report's initiation. However, the report may also be the product of the House Appropriations process from 2008. See <http://appropriations.house.gov/pdf/HomelandHP.pdf>. See also text of S.1644, Department of Homeland Security Appropriations Act, 2008, Title II, sec. 10, U.S. Senate, 110th Congress.
 21. See Customs and Border Protection press release, "CBP Unmanned Aircraft Begins Operations in North Dakota," February 19, 2009.
 22. See Janet Napolitano, remarks at Brookings Institution border conference, March 25, 2009; The Canadian Press, Canada-U.S. Border Should Remain Tight: Homeland Security Chief, March 25, 2009.
 23. C. Fred Bergsten, "A Renaissance for U.S. Trade Policy?" *Foreign Affairs*, November/December 2002; Bernard K. Gordon, "A High-Risk Trade Policy," *Foreign Affairs*, July/August 2003; C. Fred Bergsten, "Foreign Economic Policy for the Next President," *Foreign Affairs*, March/April 2004; Jagdish Bhagwati, "The Muddles Over Outsourcing," *Journal of Economic Perspectives*, 18(4) (Fall 2004): 93-114; Robert Pastor, "The Future of North America," *Foreign Affairs* 87(4) July/August 2008.
 24. See footnote 16.
 25. Greg Anderson, "End of the Renaissance?: U.S. Trade Policy and the Second Term of George W. Bush," in George A. MacLean, ed., *Canada and the United States: A Relationship at a Crossroads*, Bison Paper 7 (Winnipeg: Centre for Defense and Security Studies, 2005), 79-93.
 26. One exception is Pascal Lamy, Director General of the WTO, who has been sounding the alarm bells over global protectionism as a means of restarting the stalled Doha Round of multilateral talks. See Pascal Lamy, "Keeping trade open: Resisting isolationism," speech given in Seoul, South Korea, February 23, 2009.
 27. Edward Chambers and Williams Shaw, "Reaching Out: Exploring SME Exporting Opportunities and Challenges," Information Bulletin 109 (Western Centre for Economic Research, April 2008); Joel Webber, *Network-Centric Security for Canada-U.S. Supply Chains* (Vancouver and Washington: Fraser Institute and Center for Strategic and International Studies, May 2005); Danielle Goldfarb, *Reaching a Tipping Point: Effects of Post-9/11 Border Security on Canada's Trade and Investment* (Toronto: Conference Board of Canada, June 2007).

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28. See Alan Alexandroff, Gary Clyde Hufbauer, and Krista Lucenti, "Still Amigos: A Fresh Canada–US Approach to Reviving NAFTA," C.D. Howe Institute Commentary No. 274 (Toronto: C.D. Howe Institute, September 2008); Michael Kergin and Birgit Matthiesen, "A New Bridge for Old Allies," *Border Issues Report* (Toronto: Canadian International Council, 2008). See also Christopher Sands, *Toward a New Frontier: Improving the U.S.–Canadian Border*, Brookings Institution, Metropolitan Policy Program (Washington, D.C.: Brookings Institution, 2009), 37. Sands stops short of calling for outright "re-bilateralization" and instead reaffirms a long standing argument in favour of publicly declaring a two-speed, differential approach to each border. See Christopher Sands, "North America Two Speeds," *North American Integration Monitor* 1(2) November 2002.
 29. Pastor, "The Future of North America," 93.
 30. See "North America Next: A Report to President Obama on Building Sustainable Security and Competitiveness" (Tempe, Arizona: North American Center for Transborder Studies, Arizona State University), 11.
 31. See "Prepared Remarks by Secretary Napolitano on Immigration Reform at the Center for American Progress," Washington, D.C., November 13, 2009.
 32. *Ibid.*
 33. Technically Section 110 of *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001*, (PL 107-56), WHTI found in *Intelligence Reform and Terrorism Prevention Act of 2004 (PL 108-458)*, *Real ID Act of 2005 (PL 109-13)*. The ESTA requires travelers to the United States to submit personal information online, after which they will receive a travel authorization number via e-mail. However, none of this replaces existing immigration and customs inspection procedures at ports of entry.
 34. See Bruce R. Scott, "The Great Divide in the Global Village," *Foreign Affairs* 80 (January/February 2001): 160-177.
 35. See Christopher Sands and Greg Anderson, "The Fragmegration of Canada–U.S. Relations," in Geoffrey Hale and Monica Gattiner, eds., *Borders and Bridges* (Toronto: Oxford University Press, 2010).
 36. See David Heyman and James Jaw Carafano, *Homeland Security 3.0: Building a National Enterprise to Keep America Free, Safe, and Prosperous* (Washington, D.C.: Heritage Foundation and Center for Strategic and International Studies, 2008), 7.
 37. See "Diversity of Ports-of-Entry along the 49th Parallel," Border Policy Brief, Border Policy Research Institute, Western Washington University, September 2007; Peter Andreas, "A Tale of Two Borders: The U.S.–Mexico and U.S.–Canada Lines After 9/11," Working Paper 77 (San Diego, California: Center for Comparative Immigration Studies, 2003). See also Christopher Sands, *Toward a New Frontier: Improving the U.S.–Canadian Border* (Washington, D.C.: Brookings Institution, 2009).
 38. See Greg Anderson, "North American Economic Integration and the Challenges Wrought by 9/11," *Journal of Homeland Security and Emergency Management, Estey Centre Journal of International Law and Trade Policy* _____ 301

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- 3(2) (2006). See also Jon D. Haveman, Howard J. Shatz, and Ernesto A. Vilchis, "U.S. Port Security Policy after 9/11: Overview and Evaluation," *Journal of Homeland Security and Emergency Management* 2(4) (2005).
39. Robert Pastor, "The Future of North America," *Foreign Affairs*, 87(4) (July/August 2008): 84-98; Wendy Dobson, "Shaping the Future of the North American Economic Space," C.D. Howe Institute, Border Papers No. 162 (Toronto: C.D. Howe Institute, April 2002).
40. See "Diversity of Ports-of-Entry Along the 49th Parallel," Border Policy Brief, Border Policy Research Institute, Western Washington University, September 2007; Christopher Sands, *Toward a New Frontier: Improving the U.S.–Canadian Border* (Washington, D.C.: Brookings Institution, 2009).
41. Greg Anderson and Christopher Sands, "Negotiating North America: The Security and Prosperity Partnership," Hudson Institute White Paper (Washington, D.C.: Hudson Institute, 2007), 13. See also U.S.–Canada Smart Border Action Plan, December 12, 2001.
42. Christopher Sands, *Toward a New Frontier: Improving the U.S.–Canadian Border*, Brookings Institution, Metropolitan Policy Program (Washington, D.C.: Brookings Institution, 2009), 37; Christopher Sands, "North America Two Speeds," *North American Integration Monitor* 1(2) November 2002.
43. See "North America Next: A Report to President Obama on Building Sustainable Security and Competitiveness" (Tempe, Arizona: North American Center for Transborder Studies, Arizona State University), 16-20; CANAMEX Corridor Plan Working Paper, Task I: Existing Infrastructure, August 3, 2001.
44. Canada's Economic Action Plan: Budget 2009 already provides \$14.5 million for new bridges at Sarnia and Fort Erie, but President Obama and Prime Minister Harper agreed at their February 19 meeting to direct more federal dollars from their respective stimulus packages toward border infrastructure.
45. In 2008, construction on a new span across the Detroit River began, as did a major redesign of inspection facilities on both sides of the Ambassador Bridge, in an effort to relieve congestion.
46. The other two were Poker Creek, Alaska/Little Gold Creek, Yukon and Oroville, Washington/Osoyoos, British Columbia.

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