



## Canada-United States Law Journal

---

Volume 27 | Issue

Article 37

---

January 2001

# A Canada-U.S. Border for the 21st Century

Demetrios Papademetriou

Follow this and additional works at: <https://scholarlycommons.law.case.edu/cuslj>

---

### Recommended Citation

Demetrios Papademetriou, *A Canada-U.S. Border for the 21st Century*, 27 *Can.-U.S. L.J.* 223 (2001)

Available at: <https://scholarlycommons.law.case.edu/cuslj/vol27/iss/37>

This Speech is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Canada-United States Law Journal by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

## A CANADA- U.S. BORDER FOR THE 21<sup>ST</sup> CENTURY

*Demetrios Papademetriou*<sup>\*</sup>

Thank you very much. I am delighted to be here.

I would like to share with you some of the findings and some of the recommendations from a project that a colleague of mine and I did in 1998 and 1999. This study will be published in a book available this summer.

It was an international comparative project, but I was smart enough to follow my colleague who chose the Canada/U.S. border as the specific component of the project that we were going to do, she and I.

Why did we engage this study? I worry a lot about how borders affect people. Our take was to try to find out how communities, particularly communities that straddle borders, fare under an international environment. In addition, we were concerned about the environment on both U.S. borders.

The situation on the U.S./Mexico was getting so bad that if nobody paid attention to the problem, other than the bureaucrats and the enforcers, then the entire relationship between the U.S. and Mexico would at some point suffer some possibly irreparable harm.

We also felt that the relationship between the U.S. and Canada was potentially threatened, some of the enforcement policies we had seen in the Mexico/U.S. border were appearing in the Canada/U.S. border. This was something we were worried about. This policy did not make sense. Washington chooses to highlight issues concerning matters that have high political content and in the 1990's borders and immigration had an extraordinarily high political "content."

So we were worried about it and since we had already invested quite a bit of time in thinking about how to better manage the Mexico/U.S. border, we thought that perhaps we could find a way to try to reverse this tendency at the Canada/U.S. border. We went to the border communities to try to figure out how those communities were affected by all of this.

Since the Carnegie Endowment is an international institution and we had the money to do it, we decided to go beyond the Canada/U.S. relationship and the Mexico/U.S. relationship for comparative purposes. We picked two areas to study.

---

<sup>\*</sup> Papademetriou bio.

One was in the former Soviet Union, between Russia and China and Russia and Kazakhstan. We picked these borders because we heard that some very unusual things were happening there. For instance, in the former the whole visa issue and the immigration function had been devolved totally to the local communities and the leaders of these communities, which had created all sorts of corruption. Regarding the latter there are some heavy duty, major natural resource issues between those two countries and the border that we chose. We thought this was going to be unlike everything else and we might learn something from it.

The second area was along the Germany. There we tried to look, not only at how Germany is handling border relations in those couple of border communities, but also how it does so in the context of the bigger animal, the European Union (EU); we also learned some interesting things over there.

So in the end we were hoping to understand a little better how these local communities are affected by decisions that are taken in national capitals and to get a sense as to whether national capitals actually pay particular attention to local communities or whether the local communities think that national capitals pay any attention to them. You can imagine what the answer is. We wanted to really do something that comparativists do, which is to take instances and understand them in the context in which they happened, then decontextualize them and then recontextualize them. In other words, to simply take best practices from one setting, say, "That is a good idea, let us bring it into the U.S./Canada border." We attempted to understand what was happening in one specific locality, take it out of that locality, see whether we can actually understand it and then use it in a different locality.

The localities are complaining all the time. Most of the complaints are legitimate though sometimes localities want to have it both ways; they complain about too much attention and at the same time, they complain about inadequate attention.

There is very little capacity on the part of national governments to actually hear what local communities want. This may be an issue that is almost unique to the U.S. I do not want to generalize how Canada handles these matters. I do know how Mexico handles these matters. Mexico talks about devolution. There is not one iota of devolution that takes place. Mexico City is the still the only place where anything happens. The local communities have absolutely no capacity, whether it is institutional capacity or any other capacity, financial or otherwise, to do anything at all at the border. The local communities have absolutely no capacity to articulate their interests to Mexico City. In the case of the United States, Washington and the U.S. Congress make decisions and make decisions based on all sorts of different grounds,

none of which, in anything but a few instances, relate to what the local communities might really want.

We made seven general findings, which I will describe, and I will also give you some examples from different parts of the study.

I already suggested the first finding, which is that border regions and communities are always concerned about and complain about the fact that their viewpoint, their perspective either gets inadequate attention on the part of the national government or the attention that it gets is unwelcome. In other words, the federal government, in the case of the U.S. or in the case of Canada, usually gets it wrong.

For instance, a lot of the southern border communities along the Mexico/U.S. border had wanted much more order in what had become, by the early 1990s, a chaotic situation in that part of the border. This chaos was caused by illegal immigration, enormous failures of the physical infrastructure, inadequate water, inadequate housing and many other factors. There were powerful leaders from within these communities that were demanding that Washington bring some order to the area. Washington attempted, in a process that is still ongoing, to shut down that border while at the same time trying to increase the legal opening of the border. This process caused social problems and cultural problems in the border communities. This process caused border communities to lose income.

I like to think of it as, in a sense, the way that the West developed and created borders in Africa- arbitrarily. The borders in Africa were arbitrary lines. People simply ignored them; people simply crossed them regardless of the existence of the border. Well, on the United States southern border, there is no such thing as a Mexico and there is no such thing as a U.S. The line that separates the U.S. and Canada is not as artificial as the lines that create the borders of Africa, but it does not have more logic than that. It is the same people on both sides of the border.

The communities, over decades, have developed, below the political radar of Washington, practices that the new attention of Washington tried to stamp out. What we have is the federal government interfering with the capacity of communities to begin to work some of those problems out together. For instance, Mexican children who live on the border, simply across the border, are educated in Texas or in Arizona. This is a practice that goes back seventy years. It is a legitimate practice, because many of the children, in one way or another, are going to either live and work in the U.S. or actually immigrate to the U.S.

Environmental issues on the U.S. southern border, such as water, also are very significant. Small-time mayors on the U.S. side of the border actually share one of their greatest and most precious resources with their Mexican

friends across the border, the same way that some border communities on the Canada border share fire-fighting equipment with the U.S.

The second finding was that life at the border continues almost independently of what the national governments do, yet the life itself is very affected, often adversely, by the actions of the national government. It is not a win-win situation. It is a lose-lose situation, because, again, as I said, it is not clear what it is that border communities want. This lose-lose situation occurs because of the conflict that arises when the government tries to bring order and security to a community trying to have open access to people and products across the border.

Washington and Mexico City did something in 1999 that survives only because people have not paid particular attention to it. Immigration is not as big an issue now as it was in the middle of the 1990's. In 1999 Washington and Mexico City basically removed the border between part of Arizona and parts of the adjacent Mexican state, Sonora, and created a region of about sixty-five miles on either side in which people had freedom of movement. This action came as a result of people in Arizona saying, "We are dying. We have lost our client base. We need for the Mexicans to be able to come to the U.S., patronize our shops and keep us in business." So here the federal governments have actually accommodated a fairly conflicting situation seeing the border as a line that you have to defend and at the same time accommodating some interests along the line.

The third finding was that border communities have reacted in a very pragmatic way to their position on the border. There are many instances in which there is cooperation between the bordering nations.

For example, there are places on our northern border, the U.S./Canada border, where even education at the primary and secondary-school level actually are taking place on the other side of the border, when geography and topography actually demand this. On the southern border, you have the same thing happening all the way up to the university level. In some instances this occurs even though it is against U.S. legislation.

For instance, the University of Texas system offers in-state tuition to Mexican students, and it is doing so despite the fact that there is a U.S. law, going back to 1996, advising states not to do this because the educational function is primarily a state function.

Interesting enough, many of you may know that the University of Windsor allows students from the other two North American Free Trade (NAFTA) countries to attend at a similar rate to which Canadians pay to attend the university, rather than the international student rate.

There is a proliferation of those kinds of initiatives, where people at the local level take initiatives that respond to the realities on the ground but are not particularly well understood or even known in the capital city.

The fourth finding is that, essentially, economic interests, businesses drive most of the initiatives that take place across borders.

I do not need to tell you how effective large businesses have been. We have heard about the border not being a problem for Goodyear. A lot of effort has been put into basically removing the border as an obstacle in the movement of goods. However, you constantly come across instances in which the border does interfere.

There, again, you have a conflict between the demand and the needs of the business community on the one hand and what the federal government may think its responsibilities are with regard to really trying to control the border and prevent goods that are not wanted or individuals who are not wanted from entering each other's country.

The fifth finding is that very often in communities, particularly communities that are isolated in all of the borders that we studied, where there is a sense of common destiny or ethnic solidarity, you have a much greater cooperation across borders than you do if neither of those things exist.

The sixth finding is that there are all sort of different modes of investing in the economic and social development of the border regions from the most systematic to the least systematic.

For example, in the EU some sort of supranational institution makes all the investments. The EU has created something that they call Euroregions that have an institutional voice in the deliberations of both the commission and also the European Parliament. They get about three hundred million Euros that are invested with the following goal in mind: to try, over the long-term, to equalize a little bit the infrastructure and living conditions between two neighbors with the objective that when that new country enters the EU, in this case Poland and Germany, or the Czech Republic and Germany, the disparity will be much lower than it would have been otherwise. It is very systematic. It is a specific budget item, as it were, and, as a result, you have all sorts of interesting things happening in those kinds of borders.

Even between the U.S. and Canada and the U.S. and Mexico, there are all sorts of interesting things that are happening with regard to transportation corridors. U.S. funds can be spent along the borders of the other countries in order to facilitate certain trade corridors, traffic patterns, and infrastructure investments that are very essential for the conduct of trade.

At the Mexico/U.S. border we have created as a result of NAFTA, something called the North American Development Bank (NADBank). NADBank is a development bank that is funded by the U.S. and Canada and had

responsibility, initially, to try to deal with some of the environmental problems at certain parts of that border, but has become a development bank for the entire border region. Here you have an example of an institution already in existence that perhaps if funded at a higher level could make a difference in the lives of the communities, at least parts of border communities.

In places like the border between Russia and Kazakhstan or the border between Russia and China, no one is making any investments for obvious reasons.

The final finding is that there are a lot of extra territorial arrangements. You do not need to travel too far from Cleveland to find some of them. I am sure that all of you who travel to Canada have traveled in places where there is a pre clearance system. This is something that has been going on for about fifty years and has increased quite significantly over the past few years. One could think that this may indeed be a first step toward doing some of the activities that each country currently continues to insist that they should do on their own, to actually either do them jointly or defer to the other country doing that particular function.

In the U.S., Christmas traffic of Mexicans going back to Mexico for the holidays is so intense at the boarder that the U.S., basically, allows Mexico to have inspection stations as far in the U.S. as seventy- five miles.

Again, this becomes an opportunity get to understand that maybe you can work with the other side. In other words, if you try something like that and nobody gets bent out of shape, the sky does not fall, terrible things do not happen and Mexico, Canada and the U.S. can do a job equally well, then maybe the next step may be collaboration.

I mentioned the example from Arizona. There is a lot of the sharing of inspection facilities around the world. We are trying some of that very, very slowly, with Canada. If you take a trip along the border and see how each country is trying to squeeze things into that small area, it may force you to wonder whether it is really necessary for both countries to build their own facilities in order to do some of the inspection functions that they feel that they have to do.

Of course, the perfect example is the removal of internal borders from within the EU. Each member of the EU has the ability to accept the customs and immigration decisions of the others. Then when you are flying to Europe, you will be checked the first time that you enter European space. If once inspected upon entry into one EU nation, then you can travel to any nation in the EU without having to go through inspections attain. There is a problem with this. I will not tell you how often I have flown from the U.S. to Portugal and there is no one there at inspections. There is no one there. You just walk through. I do not know where everyone went. Maybe they went

out for coffee. Who knows? However, Canada and the U.S. would not have this problem.

What about some recommendations? The central recommendation is that you cannot really come up with a single approach that will fit every possible situation. What the U.S. does with Canada cannot simply be copied and replicated in what the U.S. does with Mexico and what the U.S. does with Mexico may not be a good idea for the Russians to adopt with China or with Kazakhstan, although there are lessons to be learned from each locality.

We cannot simply copy what is done at one border and transplant it to another border because of the unique history of each border relationship; whether the two countries are roughly at the same level of development, whether there are specific issues the two countries have to handle and how dependent one country is on its neighbor for economic growth and prosperity. All of those things actually invite you to be thoughtful about how you go about removing barriers to movement of goods and people. In other words, having suggested that you should always try to break things into their component parts; let me break the rule and aggregate rather than disaggregate so I can give you two or three general findings.

We think that borders should stop being seen as policy ends. Instead they should be seen as a means to accomplish legitimate, public-policy goals. If you do that, then you are asking questions that may allow you to do things that you do not do today. What might those things be in the case of U.S. and Canada? Well, we think that Canada and the U.S. should work together and there should be more cooperation, including joint management of the border. It may not be possible today, but it is certainly something that we should aspire to for ten, fifteen or twenty years down the road. Maybe in ten, fifteen or twenty years, the border will disappear, at least as we know it and recognize it today, even though we do not expect a politician, a Canadian or U.S. politician, to take an active step to do away with it. In other words, it will have fundamentally disappeared, although some of the physical manifestations may remain.

We also suggest that there should always be extreme efforts, high-level effort, as well as efforts on the ground, to try to understand and deal with differences. Two countries, any two countries, are going to have differences on a large number of issues. The U.S. and Canada have very similar views concerning some cultural issues and social issues and have very different views concerning other cultural issues and social issues. If you talk with people at the border, there are concerns about gun policy in the U.S. and concerns about drug policy in Canada. Both Canada and the U.S. are concerned about terrorism. However, I have some concern about how dissimilar the Canadian and U.S. immigration and immigrant selection systems are.



Another way we might really create a more organic relationship is if we test ideas for strengthening the Canada/U.S. relationship. The U.S. does not like to test ideas, thankfully Canada does. Usually what I tell my Canadian friends is to do some unilateral tests, to have the methodology pass muster upon inspection and then to present those results to a reluctant U.S. This is another way of possibly making progress.

For the U.S. and Mexico situation we recommend nothing less than a complete recasting of the relationship. Cleveland is very far from Mexico, but you may have heard that that relationship is in the process of being recast. Much to everyone's amazement, when the two presidents met in February, they agreed to a high-level panel that is going to review the entire relationship with regard to drugs, the border, migration, corruption and to actually put on the table, on the negotiating table, all the things that neither side thought that it was possible for the other side to do. And it is happening in earnest. There is an expectation that by September the two presidents will agree on a blueprint and then, of course, it will be up to how effective the President can be with the U.S. Congress.

We would like to see much more adaptation of national practices to local circumstances. Now, this is something that could carry its own problems, because there is a fine line between responding to things on the ground and empowering people on the ground to make decisions and arbitrariness. I certainly do not trust some of the U.S. government agencies to be able to do that well.

The last recommendation that I would like to share with you today is to really start thinking hard about where it is that we want to be ten or fifteen years from now.

The title of this effort here is called "Of Poetry and Plumbing." I think it is a phrase that is fairly common. I actually took this from a friend of mine who was a former Minister of Immigration and Citizenship in Canada. He used something like that in a conference in Milan, and it is supposed to tell you that in order to make real progress, you need both poets, who can create ideas and plumbers, who can implement them. We are convinced that unless there is some sort of a vision, some sort of an image that we can agree on and start aiming for, we cannot bring about the kind of change that I think is required in our relationships both with Canada and Mexico. Thank you very much.