

TURBULENCE Á LA HAAS, DISJOINTED INCREMENTALISM Á LA N.A.F.T.A.:
UTILITY OF TRANSATLANTIC COMPARISONS

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Abstract:

When NAFTA was not extended in December 2008, was it demonstrating the kind of interdependence, rather than integration, Ernst Haas was proposing for the European Community in the 1970s? How does NAFTA compare with the European Union today? What theoretical patterns have persisted, and what is new?

Addressing those questions, this study (a) applies Haas's 3 rationalities (disjointed incrementalism, rational analytical, and fragmented issue linkage), 3 cognitive-perceptual attributes (political objectives, knowledge used, and actor learning), and 3 behavioral-institutional attributes (tactical choices, bargaining styles, and institutions/mechanisms) to North America; and (b) compares NAFTA experiences with the European Union today.

Among the findings: (a) Though the institutionally more advanced EU still struggles to claim a supranational identity, NAFTA's ample institutional experiences may be too locked at an inter-governmental junction to proceed to the supranational. (b) A more compelling external environment constrains integrative outcomes in both, in turn refortifying domestic constraints. (c) Disjointed incrementalism is far more extensive and intensive across North America than in West Europe, even though North America seems less interested in its regional possibilities. (d) Whereas North American dynamics predicting mature interdependence appear more receptive to global integration, West European dynamics predicting adequate regional integration is more constrained against global integration. (e) Though Haas's rationalities and attributes explain the 1970s West European turbulence well, they fall increasingly short of accounting, not just the subsequent European evolution, but also the "new kid" in the regional bloc—North America.

Introduction:

“When the going gets tough,” as one cliché puts it, “the tough gets going!” No stranger to scholarly success, Ernst B. Haas became one of the most pre-eminent critics of neo-functionalism, the theory he himself had pioneered. Though neo-functionalism captured West European integrative dynamics more fully than any other paradigm in the 1950s, by the 1970s, Haas noted more constraints and almost grounded his theoretical propositions. He was far-sighted enough to claim that propositions “do not disappear overnight,” becoming obsolete; but that the “gradual process” of obsolescence was still underway.¹ While other scholars may debate how West European integration has fared in the forty-odd years since his reconsiderations, this work is more interested in examining the validity of those same constraints in a different setting—across North America (where the 1993 free-trade agreement opened up a parallel integrative case for comparative analysis) before returning to today’s West Europe for a brief comparison.

Haas’s Legacy: A North American Application

Three integrative assumptions, Haas had argued, were coming apart across West Europe in the 1970s: (a) integrative efforts were not producing well-defined institutional patterns; (b) trade-offs between conflicting interests of “regional partners” and “nonmembers” were not favoring the former over the latter; and (c) decision-making demonstrated fragmented issue linkage (FIL) rather than the postulated disjointed incrementalism (DI).² In the resultant turbulence, non-regional games, such as “sub-national, national[,] . . . inter-regional, and global,” competed with the regional.³ He noted how two contending decision-making rationalities—DI and rational analytical (RA)—were not explaining European integration. Whereas DI takes place “under

¹Ernst B. Haas, “Turbulent fields and the theory of regional integration,” *International Organization* 30, no. 2 (Spring 1976): 177.

²*Ibid.*, 173.

³*Ibid.*, 179.

uncertainty” (“in a setting of bargaining among sets of participant with partly convergent and partly opposing interests”), RA is “bent on reducing uncertainty and routinizing collective decision-making so as to optimize outcomes for all.”⁴ Haas proposed FIL “to capture the tension of the other two rationalities [when] sharp dissatisfaction procedures is manifest.”⁵ In other words, FIL “does not set in until there is a ‘crisis’.” In the process, he set the stage for comparing not just other regional integrative efforts with the European Union, but also each of those integrative experiences itself over time. His three assumptions, I argue, feed upon themselves, harden over time, and complicate integrative pursuits beyond a point-of-no-return, so that in the final analysis, other endogenous and exogenous factors either rescued regional integration (as the European Union demonstrated after the 1990s), or exposed a better integrative alternative (as I show with North American dynamics since the 1990s). While North America demonstrates how DI strains can coexist with FIL and West Europe the possibility of returning to DI from FIL, we also get exposed to how North American developmental differentials (an endogenous factor) and the West European shift from free-riding the political order to assuming political responsibilities (indicated by the 1986 Single European Act in response to the thawing of the Cold War—an exogenous factor) also catalyze regional economic integration.

Comparing regional blocs can be slippery and unenlightening unless the dimensions chosen are sufficiently neutral. Haas helps us again through his categorization of attributes. He constructed two of them: (a) the cognitive-perceptual attributes, such as the political objectives of actors, new knowledge being deployed, and how actors learn; and (b) institutional-behavioral attributes, such as tactical choices, collective bargaining styles, and the mechanisms utilized collectively for formulating

⁴Haas, *The Obsolescence of Regional Integration Theory* (Berkeley, CA: Institute of International Studies, 1976), 24.

⁵Ibid., 25.

and executing decisions. I turn to them after first depicting the assumptions just outlined in the case of North America. Table 1 guides this particular discussion.

TABLE 1:
HAAS'S INTEGRATIVE ASSUMPTIONS IN NORTH AMERICA

| <i>Integrative Assumptions:</i> | <i>Corresponding North American Dynamics:</i> |
|--|---|
| 1. Institutional patterns from integrative efforts: | *Several institutions built persist even as the future of NAFTA remains in limbo: CEC, CLC; dispute settlement mechanisms created by trade, investment, environmental, and labor provisions |
| 2. Trade-offs between members and non-members not helping members: | *Largely ignored by NAFTA: though Chile was actively considered as NAFTA partner, attention drifted to the more opaque Free Trade Area of the Americas (FTAA) |
| 3. Fragmented issue linkages displacing disjointed incrementalism: | *Arguably emerging: Not there as yet to displace disjointed incrementalism |

Integration from Institutional Patterns:

There is no question that the North American Free Trade Agreement (NAFTA) enhanced integration through institution-building: Institutions were formally created for behavior (policies, transactions) to fit in, rather than for behavior to assume a predictive pattern justifying the creation of institutions.

Not only did NAFTA institutions open up new arenas of interaction, but the types of engagements also multiplied, evident most conspicuously through the dispute settlement arrangements in chapters 11, 19, and 20, but also in the two side-agreements (on the environment and labor). Yet, even though they introduced and expanded new types of collaboration among the three North American countries over the fifteen-years of NAFTA, the dynamics clung to inter-governmental forms of exchanges more than supranational,⁶ that is, enhancing interaction *between* governments rather than going *beyond* the state level to supranational institutions. It is not that supranational institutions were not created, but the inherently asymmetrical playground prevented full maximization of the opportunity they offered: The historical apprehension of being a

⁶Andrew Moravcsik, "Negotiating the Single European Act: National interests and conventional statecraft in the European Community," *International Organization* 45, no. 1 (Winter 1991):19-56.

U.S. neighbor or the tendency of Canada and Mexico to promote bilateral U.S. deals nipped the growth of trilateralism, and thereby convey the supranational pursuit was irreversible; and both self-seeking behavior blocked the supranational gateways the dispute settlement mechanisms created, for example, Chapter 19's binational panel, and the creation of a secretariat by each of the two side-agreements.

While these point to endogenous dynamics, there were also exogenous dynamics: Unlike any member of the European Union, one NAFTA member clearly had global leadership claims at stake. That the United States accepted Canada's a1985 proposal for a free-trade agreement and Mexico's 1990 proposal to extend the eventual Canadian-U.S. Free Trade Agreement into NAFTA was due more to the short-term frustration of the GATT's Uruguay Round stalemate rather than the long-term replacement of multilateralism. As the one country to push multilateralism from 1947, the United States had no desire to abandon it in 1985 or 1990 to Canada's or Mexico's proposal. Not surprisingly, even after NAFTA was implemented in 1994, the United States continued with its extra-regional pursuits—in the Western Hemisphere (the Free Trade Area of the Americas—FTAA); through competitive liberalism in Asia and Africa; and multilaterally (through the World Trade Organization—WTO).

China simultaneously gate-crashing into global markets complicated these (for NAFTA members): China targeted the largest actual market in human history (the United States), the United States also targeted the largest potential market in human history (China). This was asymmetry at play—enough to slow the Canadian and Mexican enthusiasm displayed after 1985 for the former and after 1990 for the latter. Yet, it was not sufficient enough for Canada and Mexico to seek alternatives: Even though they were concluding FTAs, trade and investment continued to concentrate on

the United States Shopping around would come after 9/11—a circumstance completely unimaginable in West Europe.

Two more relevant questions arise: (a) did NAFTA become top-heavy by 2008, that is, with more institutions than commensurate procedures to support them; and (b) why did the inter-governmental structure appeal to extra-regional opportunities? As the discussions below show, though there were ample procedural flows to strengthen the institutions, inadequate shifts in the supranational direction deprived NAFTA from comparative advantage claims. These discussions will also highlight the key constraints: political will; excessive asymmetry; non-zero sum extra-regional opportunities; and continued uncertainties reducing the DI-FIL gap.

Table 2 captures slices of NAFTA’s institutional evolution. It specifies a variety of institutions created through chapters 11, 19, and 20 provisions, as well as by the side-agreements. For instance, Chapter 11 created arbitral panels for investment disputes, Chapter 19 binational panels, and Chapter 20 the Free Trade Commission (FTC).

TABLE 2:

N.A.F.T.A.’S DISPUTE SETTLEMENT INSTITUTIONS

| <i>N.A.F.T.A.’s CHAPTERS:</i> | <i>INSTITUTIONS CREATED:</i> |
|--|--|
| <u>Dispute Settlement:</u> a. Chapter 11: b. Chapter 19: c. Chapter 20: | a. arbitral tribunals b. binational panels, extraordinary challenge committees c. Free Trade Commission |
| <u>Side-agreements:</u> a. Environment: b. Labor: | a. Commission for Environmental Cooperation (CEC); Council of Ministers (COM) b. Commission for Labor Cooperation (CLC); Council of Ministers (COM) |

Table 3 examines the new North American dispute settlement settings along thirteen dimensions, the first 7 addressing the various provisions, the last 6 exposing transnational and inter-governmental dynamics.

TABLE 3: NAFTA, DISPUTE SETTLEMENT, & INSTITUTIONAL DESIGNS

| <i>Parameters:</i> | <i>Environment</i> | <i>Labor</i> | <i>Trade</i> | <i>Investment</i> | <i>Chapter 20:</i> |
|--------------------|--------------------|--------------|--------------|-------------------|--------------------|
|--------------------|--------------------|--------------|--------------|-------------------|--------------------|

| | | | | | |
|---|--|--|--|---|--|
| 1. Subject of Adjudication | *Inconsistency in domestic laws | *Inconsistency in domestic laws | *ADDs/CVDs | *Discrimination portfolio/FDI | *Interpretation, treaty application |
| 2. Sources of Legitimacy: | *Stockholm Principles *Rio Declaration | *Domestic laws *ILO Convention | *Domestic laws *GATT/WTO | *Broader ICSID *UNCITRAL *Domestic laws | *NAFTA *WTO |
| 3. Relevant Institutions Created: | *COM/CEC *JPAC *Arbitral Panel | *COM/CLC *NAO/NAC *Arbitral Panel *ECE | *National administrative agencies *Binational panel. *ECC. | *Tribunal | *FTC *Arbitral panel *Scientific review board |
| 4. Key Provisions: | <u>Side Agreement:</u> *Article 22: Consultations (persistent flouting domestic laws) *23: Procedures *24-27: Arbitral panel formation, Roster, panelists *28: Rules of procedures *29: Third party participation *30: Role experts *31-34: Report and its implementation | <u>Side Agreement:</u> *Article 27: Probe failure by any party to enforce ECE report *28: Procedures *29: Arbitral panel created *30: Roster for panel *31-35: Procedures of panel, selection of panelists *41: Suspension of benefits | *Chapter 19: *Article 1901: scope: only goods, not services *1902: use of domestic relief laws *1903: partners may review of domestic rulings *1904: binational panel/ ECC appeal *1905: authority to review domestic legislation | *Chapter 11: *Articles 1116, 1117: eligibility to file claims *1120: supra-national sources *1121, 1122: waiver of right to domestic law *1123-25: constitution of tribunals *1134: nature of rulings, criteria to invoke Ch. 20 | *Chapter 20: *Article 2005: choice of fora *2007-2008: arbitral panel *2009-2111: on panelists *2014: seek information *2015: scientific review board *2019: suspension of benefits *Allows third parties |
| 5. Types of Rulings/ Determinations: | *Consultation, good offices, conciliation, mediation, recommendations, arbitral panels, mutual solution, monetary penalty, benefit suspension | Consultation, Good offices, conciliation, mediation, recommendations, arbitral panels, mutual solution, monetary penalty, benefit suspension | *Consultation, good offices, conciliation, mediation, recommendations, penalties, appeals | *Consultation, good offices, conciliation, mediation, recommendations, penalties, appeals *Confidential | *Consultation, good offices, conciliation, mediation *Arbitration *Confidential *No appeal |
| 6. Nature of Compliance: | *Non-binding, but with penalties | * Non-binding, but with penalties | *Binding | *Binding | *Non-binding but retaliation permitted |
| 7. Exit option: | *Yes, but costly | *Yes, but costly | *Yes, with 60-day notice | *Not addressed | *Not addressed |
| 8. Role of State: | *Two-way conduit | *Two-way conduit | *Two-way conduit | *Two-way conduit | *Determinant, two-way too |
| 9. Role of NGOs: | | | | | |
| 10. Hypothesized role of Supranat'l Actor: | *Process complaints | *Adjudicator | *Provide context for national laws | *Apply rules directly | *Provide context, alternative |
| 11. Relative Place of State: | *Executive arm | *Executive arm | *Executive arm | *Executive arm | *Executive arm |
| 12. Relative place of NGOs: | *Prosecutor | *Prosecutor | *Prosecutor | *Prosecutor | *Substantive engagements |
| 13. Relative Place of Supranat'l Actor: | *Facilitator: but subject to executive arm | *Facilitator: but subject to executive arm | *Facilitator: but subject to executive arm | *Facilitator: but subject to executive arm | *More inter-governmental than facilitator |

Cross-border complaints, raised particularly by non-government organizations (NGOs), are not only the hallmark of the five mechanisms, but also the tip of an influence iceberg. Table 3's first dimension specifies the subject of adjudication: Non-compliance with domestic legislations for environmental and labor issues;⁷ against governmental discrimination for investment; specific unfair duties imposed, subsidies adopted, or prohibitive actions/legislations of a foreign government under Chapter 19;⁸ or interpretational problems filed under Chapter 20. Inter-governmental/Supranational adjudication necessitated domestic legislative amendments. They had to become more transparent, parallel, and transnationally liable.⁹ As Stephen Zamora posits, this began the process of *americanizing* them.¹⁰ Legitimacy was derived from multilateral agreements for all arrangements, but domestic laws were pivotal in labor, trade, and investment dispute settlement considerations, while new collective institutions emerged, as recognized by the third dimension.

One notices the multilateral institutions being inter-governmental or transnational, rather than supranational. These include the Stockholm Principles of 1972

⁷For environmental provisions, see Pierre Marc Johnson and André Beaulieu, *The Environment and NAFTA: Understanding and Implementing the New Continental Law* (Washington, DC: Island Press, 1996); and Stephen Mumme and Pamela Duncan, "The Commission for Environmental Cooperation and environmental management in the Americas," *Journal of Interamerican Studies & World Affairs* 39, no.1 (1997-8): 41-62. On labor, see Joaquim F. Otero, "The North American Agreement on Labor Cooperation: An assessment of its first year's implementation," *Columbia Journal of Transnational Law*, vol. 33 (1995): 637-62; U.S. Congress, Office of Technological Assessment, *U.S.-Mexico Trade: Pulling Together or Pulling Apart?* (Washington, DC: U.S. Government Printing Office, 1992) 77-96; and U.S.-Mexico Law Institute, Third Annual Conference, Proceedings in *U.S.-Mexico Law Journal*, vol. 3 (1995).

⁸ADDs=anti-dumping duties; CVDs: countervailing duties. On trade see Gilbert R. Winham and Heather Grant, Heather, "Antidumping and countervailing duties in regional trade agreements: Canada-U.S. FTA, NAFTA, and beyond," *Minnesota Journal of Global Trade* 3, no. 1 (Spring 1994):1-34; Huntington, David S. Huntington, "Settling disputes under the North American Free Trade Agreement," *Harvard International Law Journal* 34, no. 2 (Spring 1993):407-43; and Ralph H. Folsom, *NAFTA in a Nutshell* (St. Paul, MN: West Group, 1999), ch. 8 particularly, but broadly 6,9,11.

⁹Winham, "What Mexico can expect from NAFTA Chapter 19: Review and dispute settlement in antidumping and countervailing matters," Paper, *El Colegio de Mexico*, Mexico City, May 1994.

¹⁰Stephen. Zamora, "The americanization of Mexican laws: Non-trade issues in North American Free Trade Agreement," *Law & Politics In International Business* 24, no. 2 (1993):371-428.

(transnational-intergovernmental admixture),¹¹ proliferating into the 1992 Rio Summit's *Declaration on Environment and Development* (transnational-intergovernmental admixture); the ILO Convention (intergovernmental);¹² GATT/WTO anti-dumping and countervailing codes and procedures, GATT's Article XXIII and the WTO's Dispute Settlement Board (DSB);¹³ the ICSID Convention, ICSID Additional Facility Rules, and UNCITRAL Arbitration Rules for investment;¹⁴ and NAFTA's national, international, and multilateral agreements for Chapter 20.¹⁵

Taking the case of investment arrangements, they have tended to be more independent of state controls than the others. Article 1120 allows investors a choice of three multilateral types of arbitration: ICSID Convention, ICSID Additional Facility Rules of 1979, and UNCITRAL. Since Canada and Mexico are not ICSID contracting states, they can not use the ICSID Convention; ICSID Additional Facility Rules, adopted in 1979, can be used if, and only if, the dispute involves the United States; but in Canadian-Mexican disputes, or when several investment complaints are filed over a

¹¹Allen L. Springer, "United States environmental policy and international law: Stockholm Principle 21 revisited," in John E. Carroll (Ed.), *International Environmental Diplomacy* (London: Cambridge University Press, 1988).

¹²As ranked by NAALC, these are: (1) freedom of association and protection of the right to organize; (2) right to bargain collectively; (3) right to strike; (4) prohibition of forced labor; (5) labor protections for children and young persons; (6) minimum employment standards; (7) elimination of employment discrimination; (8) equal pay for women and men; (9) prevention of occupational injuries and illness; (10) compensation in cases of occupational injuries and illnesses; and (11) protection of migrant workers. From N.A.A.L.C. (n.d.).

¹³Ernst-Ulrich Petersmann, "The dispute settlement system of the World trade Organization and the evolution of the GATT dispute settlement system since 1947," *Common Market Law Review* 31, no. 6 (December 1994):1157-1244.

¹⁴ICSID: International Center for the Settlement of Investment Dispute; UNCITRAL: United Nations Conference on International Trade Law. Although ICSID was established in 1965 under auspices of the World Bank and remains a state-to-state arbitration forum, NAFTA, interestingly, enhanced NGO participation. See Part III of Bruno (1997); Ibrahim F.I. Shihata and Antonio R. Parra, "The experiences of the International Center for Settlement of Investment Disputes," *ICSID Review: Foreign Investment Law Journal* 14, no. 2 (Fall 1999):299-361; and Folsom, Michael Wallace Gordon, and John A. Spanogle, Jr., *International Trade and Investment* (St. Paul, MN: West Publishing, Co., 1996) chps. 4-6. On investment-environmental overlap, see Aaron Cosbey, "NAFTA's Chapter 11 and the environment: A briefing paper for the CEC's Joint Public Advisory Committee," from <http://www.iisd.org/trade>

¹⁵On Chapter 20, I relied on Frederick M. Abbott, "The North American integration regime and its implications for the world trading system" (1999), from: <http://www.jeanmonnetprogram.org/papers/99/990202.html>; David A. Gantz, "Dispute settlement under the NAFTA and the WTO: Choice of forum opportunities and risks for the NAFTA parties," *American University International Law Review* 14, no. 4 (1999):1025-1106.

single case, UNCITRAL alone provides the legal framework. Chapter Eleven promotes rule consolidation but prohibits delocalization,¹⁶ both arrangements having multilateral origins: Consolidation complaints can only be filed to the ICSID Secretary General, who may select arbitrators from the ICSID roster rather than NAFTA's; and delocalization is borrowed from ICSID Convention Article Twenty-six.

These arrangements cover a wide range of case specificity.¹⁷ Antidumping or countervailing cases are the most specific and direct, labor and environmental complaints the most open-ended, since principles or issues like gender discrimination or threats to migratory birds, are more broadly felt, cover wider territory regardless of boundaries, and involve a more disparate network of social groups. Investment disputes slide up and down the scale of specificity depending on the degree of issue-sensitivity, for example, NAFTA's time-frame for denationalizing industries, introducing labor competitiveness, and uplifting environmental standards prickle Mexico more than the United States or Canada. Chapter Twenty cases can be both specific and general since interpretations touch narrow or wide issues, nationalistic or collective.

One future source of legitimacy, precedential rulings, demonstrates the mutual respect for *stare decisis* in both civil and common law. A future implication of converging legal practices producing a unique legal personality is still debatable,¹⁸ even as nationalistic preferences or identities show signs of selective convergence already.

Transnationalism is enhanced by institutional innovations, which may be: (a) *intermediary institutions* funneling complaints from the state to the supranational level, such as the 15-member Joint Public Action Committee (JPAC) for the environment or

¹⁶Term theoretically elaborated and applied by Robert Bruno, "Access of private parties to international dispute settlement: A comparative analysis," Jean Monnet Working Paper 13/97 (1997), from www.jeanmonnetprogram.org/papers/papers/97/97-13.html;

¹⁷Gary S. Horlick, "The U.S.-Canada FTA and GATT dispute settlement provisions: The litigant's view," *Journal of World Trade* 26, no. 2 (April 1992):5-16.

¹⁸Not everyone believes so. For a dissenting environmentalist view, see Bradley J. Condon, "Constitutional law, trade policy, and the environment: Implications for North American environmental policy implementation in the 1990s," *Beyond NAFTA*, 222-30.

the National Administrative Office (NAO) for labor; (b) *rulings/determinations* by arbitral panels for environment, labor, and interpretational issues, binational panels for unfair trading practices, and tribunals for investment; (c) *administrative*, like the North American secretariats established for environment and labor in Montreal and Dallas, respectively; or (d) *inter-governmental*, such as the council of ministers (COMs) for environment and labor, and the Chapter Twenty Free Trade Commission (FTC). These could become the founding institutions of a North American region if permitted unfettered growth. They also have their counterparts in the European Union. Yet, political constraints, to which I will return, haunt their growth.

Institutions breed inclusiveness. Both the environmental JPAC and the labor NAO invite public participation, and collect and collate complaints, which not only open space for NGO engagement, but also transnationalize the policy-review process. The labor side-agreement also permits an Evaluation Committee of Experts (ECE) to clarify enforcement measures, as well as publish and circulate information on controversial issues to the public, hold seminars, conferences, or exchanges as part of environmental/labor remedies, and provide preliminary adjudications for the COM. NAFTA's Chapter Nineteen differs from the World Trade Organization (WTO) precisely on this point: Although simultaneous anti-dumping and countervailing complaints may be filed to both, the former invites NGOs, whereas WTO's Dispute Settlement Board (DSB) is only for governments.¹⁹

Panel constitution promotes professionalism over politics, collective rules over national, and societal representation over governmental, without entirely eliminating political, state, or governmental intervention. The Chapter Nineteen binational panel,

¹⁹More on this point in Frederick M. Abbott, "The North American integration regime and its implications for the world trading system" (1999, Section II); and <http://www.jeanmonnetprogram.org/papers/99/990202.html>; and David A. Gantz, "Dispute settlement under the NAFTA and the WTO: Choice of forum opportunities and risks for the NAFTA parties," *American University International Law Review* 14, no. 4 (1999):1025-1106.

Chapter Eleven tribunal, and arbitral panels for both environment and labor demonstrate these markedly. Being professional largely means experiences or training in related jobs, such as being a judge or lawyer. A noteworthy anti-dumping dispute innovation, Chapter Nineteen's binational panel consists of 5 members, 2 representing the country being hurt by discrimination, 2 from the country causing the discriminating case, and the fifth chosen by the two disputing countries together.²⁰ When NAFTA was implemented from January 1, 1994, each member country submitted a roster of 25 names to the NAFTA Secretariat; and likewise for the 3-member Extraordinary Challenge Committee (ECC), constituted from a roster of 10 submitted by each government. Investment tribunals also involve 3 members chosen from a 15-member roster which each country submits 5 names to; and labor/environmental arbitral panels similarly evolve from 15-members rosters producing 5-member panels. Chapter Twenty's 5-member arbitral panels utilize reverse selection: In the case of two countries being involved, 2 panelists are chosen from the complaining country by the country against which a complaint is made, 2 is similarly chosen by the country which files the complaint from the country it is complaining against, while both governments chose the fifth panelist, usually from the third country; if the complaint involves all three countries, the defendant country chooses 1 from each of the other two countries, the complaining country chooses 2 from the country it is complaining against, and a fifth is chosen collectively. All selections are made from the 30-strong Chapter 20 roster, to which each country contributes equally. Controlling nationalistic or patriotic loyalties of panelists, as too the tendency of governments to screen the selection list, is next to impossible, but the attempt to reduce politics is noteworthy. It places the NAFTA panels

²⁰United States Trade Representative, *Correcting the Record: Response of the Office of the U.S. Trade Representative to the Perot/Choate NAFTA Book* (Washington, DC: USTR, September 2, 1993), 59.

a cut above the WTO's DSB where consensus rather than majority voting, exclusive state engagement, and political interests remain prominently above rules.

Chapter Eleven not only provides a smaller roster than Chapter Nineteen, but in case of difficulty in forming a tribunal within ninety-days, the ICSID Secretary General intervenes. S/He may turn to the larger ICSID Panel of Arbitrators to which each World Bank member supplies at least three professionals, but if so, the presiding arbitrator cannot be chosen from the disputing NAFTA countries. Chapter Eleven is also the most secretive NAFTA dispute settlement mechanism. Deliberations need not be open, and information need not be publicized. It remains the NAFTA dispute settlement black sheep: Not only does it rely on multilateral sources of law, but it also places rules above state control, thus insulating itself from the domestic biases other NAFTA dispute settlement mechanisms must battle.

Key dispute settlement provisions, listed in the fourth dimension, stipulate the purposes, procedures for filing complaints and panel formation, rights and obligations, and other relevant information, such as the nature of recourse to other rules. They link the state, NGOs, and supranationalist interests without giving any one set an overriding capacity or veto power, yet at the same time encouraging the growth and participation of NGOs and supranational entities alike without significantly diminishing the salience of the states.

The fifth and sixth dimensions address the rulings/determinations and nature of compliance, respectively. In all 4 mechanisms cross-border complaints are initiated by private groups, usually against a specific discriminatory policy action, condition, or legislation of another country under chapters 11 and 19, while the labor and environmental side-agreements also allow citizens to challenge their own government.

Behind the considerable convergences is an unmistakable but unavoidable *americanization*: The onus of adjustments falls more heavily on Canada and Mexico, implying the capability of the United States to rock the integration boat more if Canada or Mexico falters. Key to understanding this unevenness is the relationship between regional integration and each state's constitution. NAFTA safeguards constitutional provisions and sensitive sectors in all 3 countries. These include culture in Canada, Mexican petroleum, or U.S. security industries,²¹ for example; on the other hand, certain constitutional provisions have been selectively modified to promote regional free trade, such as Mexico withdrawing Article Twenty-seven collective land-ownership in order to promote private enterprise. The United States has its own safeguards. If the integrative process proves damaging, at least two U.S. constitutional provisions offer exit options: The Appointments Clause of Article II, Section 2 of the U.S. Constitution, by which U.S. laws can only be examined by U.S. officials, and Article III, Section 1, which invests judicial authority in the U.S. judiciary, not the NAFTA panels. Ratification, one might argue, automatically converts an international agreement into domestic law; but this does not diminish constitutional controversies or roadblocks, and when it does not in actual cases, size could easily determine the outcome, with the more powerful country imposing its own domestic laws over collective compacts.

NAFTA's multifaceted settlement procedures reflect adjustments to the increasing complexity of issues, but state-to-state disputes continue to be negotiated privately, often excluding NGOs, and with more inflexible rules, as illustrated by the WTO's DSB. NGO engagement, by contrast, loosens the procedures. Only the Chapter Nineteen EEC offers the equivalence of an appeals court, but whose scope is

²¹Alan M. Rugman and Michael Gestrin, "NAFTA's treatment of foreign investment," in Rugman (Ed.), *Foreign Investment and NAFTA* (Columbia, SC: University of South Carolina Press, 1994), 46-79.

nevertheless severely restricted to procedural inconsistencies or unprofessionalism on the part of any participant, rather than appealing the ruling itself.

NAFTA's dispute settlement arrangements create lock-ins by increasing opportunity costs. These are evident in stipulations for non-compliance and penalties. Chapter Nineteen allows an aggrieved country to withdraw from NAFTA with a sixty-day notice—an option too costly to pursue in North America where Canada and Mexico remain two of the three largest U.S. trading partners; since investment is more job-creating than job-diverting, and is premised upon multilateral or international rules rather than regional, Chapter Eleven does not facilitate exit, given the size of multilateral membership; and both environmental and labor side-agreements are non-binding, even though non-compliance imposes escalating costs on trading within North America, with the ultimate sanction being wider NAFTA suspension of benefits.

Turning to penalties, investment arrangements cannot award punitive damages like the other three, only material damages. Since investment determinations and consolidation rulings involve two quite distinctive, though cumulative procedures, Chapter Eleven decisions become paradoxically secretive, inhibitive, and specific. Chapter Nineteen has its own self-inflicted limitation. Although the only antidumping or countervailing claim acceptable is against the exporting country, the binational panel ruling may still apply to more than one exporting firm; yet, if two countries have an identical complaint, they must file separate cases, rather than join forces. Chapter Nineteen does not have any consolidation or delocalization rules.

The last six dimensions convey the interactive role of states, societal groups, and supranational arrangements in the policy-making transmission belt. Whereas the first three focus on the roles of each type of actor, the second three comment on the relative place of each under the specific mechanism. All three actors perform complementary

roles: NGOs bring the complaints, states coordinate them, intergovernmental/supranational arrangements serve as a jury. In general legal parlance, NGOs prosecute, states largely defend, while intergovernmental/supranational institutions judge or facilitate.²² This division of labor is crucial to balancing the dispute settlement mechanisms.

We note how each mechanism (a) proceeded from, and was largely dominated by, an inter-governmental premise; (b) sowed the seeds of supranational outgrowths without any significant outgrowth; (c) adjudicated enough cases as to acquire the needed experiences in collective action against nationalistic constraints; and (d) softened the more acrimonious prior approaches to dispute settlement. They were not picture-perfect and could not overcome two North American constraints: (a) the overpowering role of national interests; and (b) the inherent asymmetry favoring the United States. In spite of these two political constraints, they explored spaces “beyond the nation-state”, and that they have not been fully abandoned suggests how they could play a role as pillars of future institution-building.

NAFTA’s institutions expose a pertinent integrative dilemma: Institutions need political will to generate forward integrative linkages. In other words, although modest bureaucracies have evolved around each of these mechanisms, without a distinctive political drive to sustain the various chapter-specific procedures/provisions, the strength of self-serving national interests could undermine collective action; and it is not necessarily the dispute settlement rulings but rather the economic and political value of North American integration, that could determine their future.

Member-Non-Member Trade-offs:

²²*Facilitator* refers to a third-party with fewer vested interests in the dispute than an arbitrator or mediator would have, and usually drawn from scholarly circles or along professional lines rather than the political or economic domains. See A.J. Groom, “Problem solving in international relations,” In Edward E. Azar and John W. Burton (Eds.), *International Conflict Resolution: Theory and Practice* (Boulder, Co: Lynne Rienner, 1986), 85-91.

By and large, this Haas assumption has been ignored by NAFTA, with especially its largest member, the United States, believing extra-regional arrangements represent non-zero-sum opportunities (and clearly a step towards multilateralism). On the one hand, the degrees of commitment to a regional trading bloc by Canada, Mexico, and the United States vary too much to say with certainty what the final outcome must be: Canada was reluctant in 1990-1 to let Mexico into the bilateral trade agreement it had chalked out with the United States in 1989;²³ Mexico's blind placement of all its eggs into the North American baskets after 1994 led to foot-dragging on admitting Chile as a *fourth amigo*;²⁴ and while the United States merrily forged several other FTAs, suggesting a plurilateral or multilateral final goal,²⁵ Mexico did the same without reducing its North American (of U.S.) priority.²⁶ In short, NAFTA thus far has not necessarily been diminished when multiple other commitments grow: This is evident in intra-NAFTA and extra-NAFTA trade expansion between 1994 and 2008, and in the reduction of tariffs and other barriers.

On the other hand, the record of handling would-be members has been discouraging for a regional identity. As just observed, Canada was initially reluctant to admit Mexico, but Mexico itself was reluctant to promote Chile's membership. Of course, Mexico's reluctance did not kill Chile's chances: fears of the U.S. fast-track authority did, indicating unilateral action to be an even more formidable barrier to North

²³This was the Canada-U.S. Free Trade Agreement (CUFTA). Maxwell A. Cameron elaborates Canada's concerns in "North American free trade, public goods, and asymmetrical bargaining: The strategic choices for Canada," *Frontera Norte* 3, no. 6 (July-December 1991): 57-9.

²⁴Barbara Franklin, Stephen Lande, Jerry Haar, and William Lane, "Expanding NAFTA to include Chile: The next steps for free trade," Lectures on "Trade and Economic Freedom," *The Heritage Foundation*, December 15, 1995, from: <http://www.heritage.org/research/lecture/hl555nbsp-expanding-nafta-to-include-chile>

²⁵On this point, see Vinod K. Aggarwal, "Look west: The evolution of U.S. trade policy toward Asia in the context of the Asian financial crisis," Presentation, August 10, 2009, Asian Development Bank Institute, Tokyo.

²⁶M. Angeles Villareal, *Mexico's Free Trade Agreements*, #7-5700, R40784 (Washington, DC: Congressional Research Service, July 2010).

American bilateralism.²⁷ It was more prudent for the United States to pursue the FTAA from the various Summit of the America (SOA) gatherings than to selectively seek Chile's NAFTA admission. Keeping Chile out, in turn, could have strengthened or deepened NAFTA, but the time and effort put into FTAA shifted attention from NAFTA.

In the final analysis, relations with non-NAFTA members were pursued very unevenly: Canada never abandoned its desire to diversify trading/investment partners, even though trade relations with the United States and Mexico expanded; Mexico did not want to diversify partners during the NAFTA years, even after concluding more free trade agreements than any other countries in the world; and the United States, like Canada, sought partner diversification with non-zero-sum expectations—clearly a step towards the multilateralism the European Union has wanted to side-step.

Fragmented Linkages over Disjointed Incrementalism:

That the political will to develop and deepen a distinctive North American regional identity is either absent or weak was vividly exposed by the inability of the three NAFTA members to prepare a sequel to NAFTA. When the 15-year NAFTA lapsed in December 2008, Canada was busy evaluating a trade agreement with the European Union, Mexico just started to explore the rest of the world as possible partners, and the United States had already walled off one-third of its border with Mexico (for security and cultural reasons rather than economic). There had been, though currently there are no, discussions for a customs union or a common currency. In other words, though incrementalism stopped being a North American priority, even in disjointed form, evolving linkages, in fragmented form, could eventually bridge the gap (between the presence of multiple institutions based on certainty, as the RA paradigm

²⁷Mark Falcoff, "Missing in action: Latin American and the U.S. elections," American Enterprise Institute Outlook Series, July 1996, from: <http://www.aei.org/outlook/6802>

postulates, and the indifference towards institutions based on uncertainty, as FIL predicts).

Some of these linkages existed before NAFTA, others emerged in its aftermath; some of them contribute positively to North American economic integration, others obstruct that goal. One positive pre-NAFTA linkage includes the *maquiladora* form of industrial integration. Created by the 1965 Border Industrialization Program (BIP), *maquila* plants in Mexico served two broad purposes: reduce production costs of U.S. manufacturers, thus keeping them competitive against particularly Japanese automobile firms; and mitigate illegal Mexican emigration to the United States. Exploiting Mexican low wages, many U.S. factories were shifted south, with the automobile corporations leading the way—a development consistent with Charles Pentland’s proposition that the first stage of regional economic integration ought to be, not free trade agreements, but sectoral integration.²⁸ This was arguably true of the European Community’s evolution from the European Coal and Steel Community (ECSC), then making the Common Agricultural Policy (CAP) pivotal to integrating West European countries, just as NAFTA’s origin may be traced unevenly to BIP or CUFTA’s origin to the 1965 Canada-U.S. Auto Pact. The long-term hope of incremental wage increases in Mexico eventually standardizing production prices across the two countries did not become reality as successive *sexenio* crises prevented Mexico from significantly crossing any developmental thresholds.²⁹ Nevertheless, the *maquila* industry graduated from its low-wage origin towards hi-tech manufacture, and shifted its fulcrum from the border towards Guadalajara, then the Puebla area, and ultimately, through the Plan Puebla

²⁸Charles Pentland, *International Theory and European Integration* (London: Faber and Faber, 1973).

²⁹On the crisis pattern, see Jonathan Heath, *Mexico and the Sexenio Curses: Presidential Succession and Economic Crises in Modern Mexico* (Washington, DC: Center for Strategic and International Studies, 1999).

Panama and the Central American Free Trade Agreement (CAFTA), towards Mexico's south, en route to Central America.³⁰

Among the positive post-NAFTA linkages, dispute settlement arrangements rank high, as discussed previously. So too trade and investment flows: both show enormous increases between 1994 and 2008, as well as diversification into new arenas. While these strengthen the economic foundations of integration, they obviously did not serve as the necessary conditions of economic integration.

One negative pre-NAFTA linkage, and probably the ghost haunting NAFTA the most today, is illegal Mexican migration. Keeping human flows across national boundaries out of NAFTA may have stumped NAFTA from the start. At any rate, NAFTA would probably never have been ratified in the U.S. Congress had human flows been permitted as they were in West Europe almost from the start. Although *maquila* plants multiplied over time, they never really touched more than the tip of the emigration iceberg. In fact, one of the most voluminous waves of illegal Mexican emigration hugged NAFTA—not only throughout the 1990s when the United States registered its longest period of economic growth in the entire twentieth century, but also against the formidable barriers established by the United States after 9/11. To the U.S. public, this perceptual correlation was all that was needed to block any NAFTA development.

Finally, one negative post-NAFTA linkage has been U.S. assertiveness. While North American asymmetry had always bothered Canada and Mexico from at least World War II, the post-9/11 U.S. philosophical orientation added more salt to the wound. Ingratiating policy preferences (“with us or against us,” for instance) not only replaced the amity evident since George H. W. Bush's desire to integrate the

³⁰See my *Globalization, Indigenous Groups, and Mexico's Panama-Puebla Plan: Marriage or Miscarriage?* (New York, NY: Edwin Mellen Press, 2006); and *Running on Empty in Central America: Canadian, Mexican, and U.S. Integrative Efforts* (Lanham, MD: University Press of America, 2006).

hemisphere from “Alaska to Tierra del Fuego,” but also climaxed with the building of border walls much to Mexico’s displeasure. With this changed outlook, the trilateralism NAFTA earnestly sought to cultivate gave way to an even more strident form of North American bilateralism: both Canada and Mexico have sought this version of relations with the United States.

In summary, then, North American incrementalism is more in substance (the 1965 sectoral integration incrementally culminating in spiraling trade and investment flows under NAFTA) than in spirit. As such, though NAFTA satisfies key the characteristics of regional integration, its sticky feet to evolve beyond the free-trade stage and inter-governmental structures is more political and structural (irremediable asymmetry) than economic; and even when it is economic, at least Canada and the United States have shown extra-regional pursuits do not have to be zero-sum, thus, are strongly encouraged. Political decisions not only keep integrative efforts more fragmented than disjointed, but also increasingly so. The alternate preference, particularly in the United States, need not be nationalism but multilateralism (though after the recession, it is very hard to discount nationalism), that is, piece all the isolated free-trade agreements into one comprehensive arrangement. Both Canada and the United States have frequently toyed with the two options, again isolating Mexico whose deep history of nationalism does not match its relatively weak multilateral history.

Against that backdrop, it is useful to evaluate North American integrative efforts against Haas’s cognitive-perceptual and institutional-behavioral attributes. Table 4 summarizes the discussions..

TABLE 4:
HAAS’S TWO COMPARATIVE SETS OF ATTRIBUTES

| <i>Comparative Attributes:</i> | <i>Corresponding North American Dynamics:</i> |
|--|--|
| <u>Cognitive-Perceptual:</u> a. political objectives of | a. more convergent than divergent until 9/11, more divergent |

| | |
|--|---|
| actors: b. new knowledge emerging: c. how actors learn: | than convergent thereafter b. true until 9/11, after which Cold War perceptions, instruments, and expectations were revived c. new learning until 9/11, stalemate thereafter |
| <u>Institutional-behavioral:</u> a. tactical choices: b. collective bargaining styles: c. mechanisms collectively utilized: | a. unable/unwilling to go beyond to strategic thinking b. embedded bilateralism infrequently explaining trilateralism: more DI than RA or FIL c. in principle, yet; but subject to state gate-keeping (inter-governmentalism again) |

Cognitive-perceptual attributes boil down to the political objectives actors seek, the new knowledge emerging from integrative efforts, and how actors learn. With 9/11 as the NAFTA dividing line, political objectives of the three actors have not only emerged from the shadows, but have also sharpened and diverged, with the United States setting the pace: Its full commitment to the Bush Doctrine tenets just when NAFTA had reached some sort of a regional take-off stage diverted attention and resources away from NAFTA. There was a feeble attempt to resuscitate the FTAA movement, but military security rather than economic integration stole the show. Canada adjusted to it selectively (deploying combat troops to Afghanistan but not Iraq), Mexico did not—and would not when a border-wall was in the works.

In turn, the new knowledge emerging took a different course: Before 9/11 emerging NAFTA institutions supplied lots of new behavioral patterns to absorb or adjust to, for example, fulfilling the requirements to prevent trade, investment, labor, or environmental disputes. Just when these were beginning to mature (and thereby become more permanently institutionalized), 9/11 intervened, imposing a different set of behavioral patterns and circumstances. This was more than an agenda shift: Trade and economic matters were thrust into a dispensable category, while military security interests assumed a permanent trajectory. In other words, Cold War perceptions, instruments, and expectations were not only revived, but they also displaced economic counterparts.

Against these developments, digesting NAFTA slipped down the priority list. If new learning did occur, it was more prominent in the negative sense: what to avoid rather than what to promote. The United States specifically disentangled human flows from economic (evident in constructing border walls to keep illegal immigrants out, creating a slippery slope to retaliatory gestures with Mexico), thus crippling regional economic integration, and Mexico's desire to see them together as part of a single package was disrupted by its war on drugs from December 2006 (which is commanding too many resources and inflicting too high casualties to make regional economic integration viable). Since this war exposed the role of money-laundering and weapons smuggling, even routine NAFTA flows (trade and investment) had to be subordinated to new concerns (which had no relations with NAFTA).

Institutional-behavioral attributes boil down to tactical choices, collective bargaining style, and mechanisms collectively utilized. Here the story is more promising but still subjected to the subjective political will to make these attributes meaningful.

Resolving disputes through NAFTA's mechanisms involve tactical choices: pooling evidences against benchmarks even though disparately interpreted. This behavioral pattern was put into motion by NAFTA mechanisms, as just discussed, but overtaken by other 9/11-related subsequent priorities. Institutions were created to anchor such behavior, but their strength remains subject to the political will of whether they are important to larger goals or not: Canadian lumbermen, Mexican maize growers, and U.S. citrus fruit producers can (a) exert a lot of political pressures in elections for their interests; (b) extract a lot of concessions against cheaper imports; and (c) emasculate NAFTA thread by thread. No Political gesture has convincingly eliminated these sectional interests to predict NAFTA will smoothly flow into the next regional integration phase.

Those same dispute settlement mechanisms also created space for collective bargaining, the styles emerging wherefrom also became stillborn. By and large, the bilateral basis of NAFTA (three bilateral agreements rather than one trilateral) continued to define interaction (in large part because many of the disputes were themselves bilateral), but the occasion for trilateral experimentation was not ignored, and with it went hopes (not institutions) of supranationalism. Without those supranational hopes (as was so evident in West Europe owing to the works of Haas—exposing one North American missing link), supranational institutions do not stand a chance.

These collective bargaining forms depicted DI (atmosphere of uncertainty) rather than RA (atmosphere of certainty and routine) or FIL (mixed atmosphere), more so before 9/11 than after. Yet, this gets to the heart of the NAFTA problem as a regional trading bloc: 9/11 introduced the kind of “crisis” fitting Haas’s bill, but the response to it was unilateral (by the United States, rather than bilaterally or trilaterally—even though bilateral security arrangements made by the United States with its two land neighbors, they were unilaterally determined: Mexico refused to join the war on terror, and both Canada and Mexico opposed the 2003 war in Iraq).

Finally, these mechanisms were being collectively utilized before and after 9/11, the key difference being that the expectations were higher before 9/11 than after. They remained operational even after NAFTA lapsed in December 2008. Leaving them operational instead of strengthening them not only weakens any supranational expectation, but also opens the door for a stagnation crisis over time.

Just as the European Community’s 1965 empty-chair crisis was a game-changer for West European integration, so too has 9/11 been a game-changer for North American integration. Unlike West Europe, which had a coal and steel community

functioning adequately, North America did not have sufficiently functional collective organizations by the time 9/11 descended; and with a steeper form of asymmetry among members, North American had a harder time adjusting to the changes.

Transatlantic Comparisons:

What light can be squeezed from Haas’s integrative assumptions and attributes? Tables 5 and 6 superficially compare and contrast the West European and North American experiences along these lines, while Table 7 does likewise in terms of the “new knowledge” this study generated.

Haas’s Assumptions:

As a backdrop to Table 5, West European integrative efforts show greater accomplishments in the early 21st Century than in the 1970s when Haas’s disillusionment overcame his early expectations. The Community he found, bounded by fragmented links, is now an Economic Union with at least three times as many members and a largely subscribed currency. On the other hand, NAFTA might be facing the same “crisis” constraints now that Haas observed in the European Community of the early 1970s. One of the key difference might be the presence/absence of a superpower member: West Europe did not have one, was less asymmetrically inclined, and therefore found regionalism being constrained largely by nationalistic preferences; yet, contrariwise, North America with a superpower, and therefore, interests that went beyond the region and economic integration, found regionalism being constrained not only by nationalistic preferences but extra-regional as well, such as hemispheric (U.S. anti-Cuba stance), transatlantic (NATO), global (U.S. anti-terror war), and so forth.

TABLE 5:

HAAS’S INTEGRATIVE ASSUMPTIONS IN COMPARATIVE CONTEXTS

| <i>Integrative Assumptions:</i> | <i>West European Dynamics:</i> | <i>North American Dynamics:</i> |
|---------------------------------|--------------------------------|----------------------------------|
| 1. Institutional patterns | Blossoming and fortifying | At a post-9/11 stalemate: but at |

| | | |
|--|--|---|
| from integrative efforts: | | higher threshold than before NAFTA |
| 2. Trade-offs between members and non-members not helping members: | Not the case | Reality |
| 3. Fragmented issue linkages displacing disjointed incrementalism: | DI prevalent and strengthening over time | DI prevalent but stalemate encourages future FIL takeover |

Yet, North America might not be bailed out of its “turbulence” the way the EC/EU was after its 1970 “turbulence”. On the one hand, that might not be a collective goal. On the other, security considerations impose direct engagements and costs in North America than they did in the West Europe of the 1950s, 1960s, 1970s, and part of the 1980s, when the North Atlantic Treaty Organization (NATO), more precisely, the United States, picked up the tab. Thirdly, other extra-regional and sub-regional (nationalist) forces may be more attractive. Finally, regional integration would have to be reconstructed to replace economic symmetry for asymmetry, an unlikely present expectation.

In terms of institutional patterns, the EU is far more advanced today, without becoming the poster-card for regional economic integration, while North American institutions, remain uncomfortably stranded at some plateau since 9/11, though this level is higher than where it was before NAFTA. For example, the EU can now shift priorities from economic institutions to Common Security and Foreign Policy institutions and a chief executive, not to mention the currency alluded to previously. North American countries might find regionalism second-best to extra-regional arrangements, which was not a West European consideration of the 1970s: Not only U.S. global interests triggered by 9/11, but also technological development, and China’s entry into global trading/investing networks, might make going “beyond regional integration” more feasible than remaining with or consolidating NAFTA.

Trade-offs between members and non-members not helping members, as in the second dimension, have become a North American reality, but not necessarily so across West Europe. Mexico displaced Japan as the second largest U.S. trading partner after NAFTA was implemented only to be displaced from that coveted spot by a non-NAFTA member, China, in 2003. Though Mexico’s trade with the United States was not disrupted by this, clearly the United States is open to look beyond NAFTA, as too Canada with its transatlantic pursuits—forcing Mexico to put more beef into its multiple FTAs concluded since becoming a NAFTA member but left to simply languish during the NAFTA honeymoon years. Though isolated EU members do look beyond West Europe, such as Britain, by and large EU members have a lot at stake within West Europe to want to subordinate these to extra-regional interests.

Finally, arguably West Europe may have more DI than FIL dynamics today than in the 1970s—and North American today. Fragmenting issues in a regional organization with only three members could lead to irreparably weakening it; and with U.S. preferences demanding more Canadian and Mexican attention, FIL might not become an issue, at least strategically, in the near future. Besides, DI appeals to a regional bloc consisting of high-wage and low-wage members: disparities of the kind lubricate DI. As such, both regions might find a rare similarity.

Attributes Compared:

Pitting the two blocs against each other over attributes, Table 6 shows greater cognitive-perceptual dissimilarities, and modified institutional-behavioral variances with similar collective bargaining styles.

TABLE 6:
HAAS’S TWO COMPARATIVE SETS OF ATTRIBUTES

| <i>Comparative Attributes:</i> | <i>21st Century West European Dynamics:</i> | <i>NAFTA-based North American Dynamics:</i> |
|--------------------------------|--|---|
| <u>Cognitive-Perceptual:</u> | | |

| | | |
|---|---|--|
| <ul style="list-style-type: none"> a. political objectives of actors: b. new knowledge emerging: c. how actors learn: | <ul style="list-style-type: none"> a. more convergent than divergent b. yes, through DI c. constant factor with new and wait-listed members | <ul style="list-style-type: none"> a. more post-9/11 divergences than convergences b. not necessarily: revived knowledge at the expense of new knowledge c. individually more than collectively |
| <u>Institutional-behavioral:</u> <ul style="list-style-type: none"> a. tactical choices: b. collective bargaining styles: c. mechanisms collectively utilized: | <ul style="list-style-type: none"> a. always there, but also influencing strategic outcomes b. more DI than FIL c. increasing and diversifying | <ul style="list-style-type: none"> a. increasingly there but not converting into strategic outcomes b. more DI than for now: but unilateralism may reverse situation c. minimal, and no growth |

Converging political objectives pushed West European countries from the Community form of integration towards the Union counterpart; and yet, though NAFTA promised a similar movement towards converging political objectives in the 1990s, 9/11 set into motion serious divergences across North America. Among the consequences, new knowledge had to be constantly generated in the EC/EU to back up this shift (such as the Maastricht Treaty's Euro provisions), while expanding membership, including those on the waiting-list, had to learn EU rules, regulations, principles, and decision-making authorities, and, in short, its culture. The atmosphere to do so across North America was just not there convincingly: Just as the initial years expanded hopes of new knowledge, 9/11 and the entry of China into global markets constrained them, the former severely by reviving the security-based combat instincts, institutions, and expectations of the Cold War era, the latter by suggesting a promising type of integration beyond the region.

Turning to the institutional-behavioral dimension, though the resort to tactical choices remains constant to both arenas (containing single-country defection, for example), only in West Europe have these choices built into strategic outcomes (the Euro being a clear example, since opt-out provisions permitted members to refrain from

adopting it). Across North America, in turn, the opportunities evaporated, leaving countries to make nationalistic or retaliatory decisions (Mexico imposing tariffs on U.S. farm products to retaliate the U.S. restrictions on Mexican trucks plying on U.S. highways), while not only do they not add up to any strategic outcome but they also throttle the very possibility of collective strategic choices.

Yet, in both arenas, DI seems to be prevailing over FIL. A string of common West European policies indicate the FIL reversal very robustly from the “turbulent” 1970s, even though the 2007-9 recession threatened to push many EU members back to FIL type of bargaining. This may be more difficult now precisely because more common institutions anchor EU dynamics than ever before, even though their emergence was not as linear as RA proponents would have liked. EU’s opt-out provision exemplifies the concessions and compromises made between an increasing number of members to get to the expected goal. Across North America, DI was the catalytic integrative force, only to be checked by 9/11. Since then, it has mixed and mingled with U.S. unilateralism and FIL in determining outcomes.

Finally for Table 6, the mechanisms collectively utilized have been expanding across West Europe without really getting to first-base convincingly in North America. This may be a tipping-point consideration: The more common policies and institutions, the stronger DI possibilities, as in West Europe; but, contrariwise, stalled or stunted growth, as in North America, may result in atrophied policies and institutions, pushing DI towards fragmentation.

Learning From North American Experiences:

What lessons can be learned from the North American experiment with regional integration, just as we learned plenty from the now weak Haas assumptions and attributes from West Europe?

Table 7 presents a suggestive list of North American constraints of possible relevance elsewhere in comparative perspectives. Four North American constraints, drawn from the above discussions, are discussed below.

TABLE 7:
NORTH AMERICAN CONSTRAINTS TO REGIONALISM

| <i>Constraints:</i> | <i>West Europe:</i> | <i>North America:</i> |
|--|---|--|
| <i>1. Political will (relative of economic will):</i> | More convergences than divergences | More divergences than convergences |
| <i>2. Asymmetry driven too far:</i> | Difficult to attempt with membership expanding: coalitions appealing | Very much reality: hegemony suggested |
| <i>3. Non-zero-sum extra-regional opportunities:</i> | Strong enough to resist this, but with technological growth, future contestation expected | Very attractive option, with U.S. fully open to explore them |
| <i>4. Trade-off between increased uncertainties (DI) and attenuating institutions (FIL):</i> | With robust common institutions, EU more likely to strengthen DI | With common institutions in a stalemate, NAFTA more likely to drift to FIL from DI |

The first is political will, not in its absolute sense, but relative to economic will (to integrate fully from a free-trade premise). Since it is a variable, much depends on the progress made with the economic will; and since economic will is more linear and specific, the variability of political will also increases. Nevertheless, whereas the EU has shown the capacity to streamline its political will with its economic counterpart, we see more common policies and institutions, as well as the attainment of higher integrative thresholds. On the other hand, since North America remains divided over political will (or at least Canada and Mexico being suspicious of their relatively stronger partner's preferences), even if the economic will was there, turbulence may constantly lurk around the corner. Since the economic will is itself shaky (allowing NAFTA to lapse, for example, after fulfilling its term), political will is harder to develop. One consequence might be, just as the EU reached the final integrative post theoretically, North America may simply opt out of integrating at the free-trade level. This may be less disruptive than expected, since extant forms of regional integration will only be joined, rather than replaced, by newer, broader forms.

Asymmetry, the second constraint, is of diminishing apprehension in WE but an increasing NA force—another reason to strengthen integration in the former while reducing possibilities in the latter. The more the EU members, the less likely a German (or French, or Franco-German) axis will pin EU's future. We have noticed increasing strains in the Franco-German axis, while the 2006-9 recession exposed the weakness of relying on the heavy-weights. Furthermore, the more the members, the more the chances for coalition build-up within the EU, mollifying existing asymmetrical pressures and preferences.

The same cannot be said of North America: With its three members, one coalition may be theoretically possible (Canada-Mexico), but practically meaningless against the United States; in turn, strengthening U.S. asymmetrical pressures and preferences, evident more vividly after 9/11. Rather than coalition-building, North American patterns could easily promote hegemonic structuring. Collective bargaining differs significantly between coalitions and hegemony.

Third, non-zero-sum extra-regional attractions are likely to become a North American threat than West European, at least for the near future. In part, this is due to membership: the more the members, the less the attraction to conclude extra-regional arrangements, even though for export purposes, extra-regional markets will continue to be sought. In part this is due to the degree of asymmetry: the more asymmetrical the region and the member benefiting from that asymmetry prefers extra-regional arrangements, the more the possibility of the regional bloc shifting in that direction. How the China-U.S. economic relation plays out could prove critical to the future of NAFTA: Will the United States retreat from that relationship because of China's currency manipulation, and strengthen (or broaden) NAFTA? Or will the United States seek other global partners to nullify China's growing presence, at the expense of

NAFTA? Or will the United States go in all directions simultaneously, as George W. Bush's competitive liberalism policy approach sought to do?

Finally, the inevitability of a trade-off between DI and institutional health suggests future NA problems but WE promises. That trade-off is likely to favor DI over FIA in Europe because uncertainties are likely to continue, even multiply, but unlikely to overpower the EU owing to its several common policies and institutions. On the other hand, the trade-off is likely to introduce FIA dynamics across NA in the near future if extant institutions are not strengthened and new ones put into place. In this sense, and this sense only, NA today resembles the WE Haas lamented about forty-years ago. Nevertheless, NA regionalism carries fewer future projects than WE regionalism forty-years ago. The critical factor may just be how these four constraints played out in WE then and NA now.

Conclusions:

The weakness of Haas's assumptions and attributes to West European and North American today reveals why they are so crucial tools to scholars today: Like the children of Hamelin, we would continue humming until we also run out of a voice, in our case, to the regional integration rhythm. As we, stop and reflect, a few arguments stand out from the realities before us.

First, regional economic integration worked, and worked very well, despite Haas's second thoughts, in that one part of the world where he had given up hope: West Europe. It might work elsewhere, but in small communities involving insignificant population, trade, and investment levels relative of global counterparts.

Second, It is very unlikely to work in a starkly uneven region, such as North America, for reasons of that asymmetry: Asymmetry in West Europe assumes a bottom-

line all members have satisfied, which has not evolved over 15 years in North America—and unlikely elsewhere.

Third, other options have become more attractive in a world and era ignited by the communication revolution, instant globalization patterns, and an urgency for markets, because of the technological developments, demanding countries to go “beyond the regional level”.

Fourth, the necessary relationship with a political order must not only be worked out mechanically and empirically, rather than through assumptions, but also be capable of explaining why it permitted West European integration amid the Cold War yet failing to enhance North American integration amid the war on terror: What security considerations are helpful and un-conducive?

Fifth, the sufficient condition of going “beyond the state” (or nationalism) also needs reconsideration, since the retreat to nationalism has not been adequately severed as to permit regionalism: Not just a terror attack, but also escaping a recession, drawing the immigration limit, and most of all, blunting self-seeking opportunities at the most materialistic moment in human history.