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Bundled transgovernmentalism: North American climate governance and the lessons learned from the Security and Prosperity Partnership

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Abstract

This paper takes stock of the current nature and form of climate governance (or its absence) with a view to considering the adequacy of current governance approaches to meet more rigorous greenhouse gas mitigation requirements. In recognition of the need to retain flexibility and informality while progressively integrating climate law and policy, the paper considers the potential lessons learned from the Security and Prosperity Partnership (SPP). The form of governance institutionalized in the SPP sought to impose greater coherence and stronger executive oversight across a sprawling integration agenda; a form of governance that can be described as “bundled transgovernmentalism”. The results of the SPP process were mixed at best, but the process has valuable lessons, both positive and negative, for the future of North American climate governance. The potential benefits of implementing a form of bundled transgovernmentalism are discussed, along with the requirements necessary to avoid the pervasive legitimacy concerns that characterized the SPP.

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1. Introduction

An increasingly important characteristic of governance activities relating to climate change is the multiple levels upon which governance activities are being initiated and implemented. It is, of course, a testament to the pervasiveness of climate change as a public policy challenge that it is being addressed at every level of government, and through a variety of private arrangements between firms. This characteristic is very much evident in North...
America where the absence of strong federal leadership on climate change (in Canada and the U.S.) has lead to several highly developed greenhouse gas mitigation initiatives at the sub-national level, as well as numerous local government initiatives. Notwithstanding the absence of comprehensive greenhouse gas mitigation policies at the national level, individual departments and agencies are also engaged in a broad array of cooperative activities aimed at reducing greenhouse gas emissions, including the promotion of clean energy technologies through research and development cooperation, the creation and harmonization of energy efficiency and fuel economy standards, and the development of emission reducing agricultural and forestry practices.

The proliferation of these individual mitigation activities has not, however, lead to the development of any significant climate governance activity on a regional (that is, continental) scale. At a regional level, North America stands in stark contrast to Europe, where the European Union has developed collective policies to reduce GHG emissions, including the creation of a region-wide emission trading system. (Brunée & Levin, 2008, p. 58). It is unlikely that North American countries are going to adopt a system of governance that delegates any appreciable degree of authority to a supranational institution. Historically, Canada, Mexico and the U.S. have not favoured strong international institutions at the regional level, preferring to retain sovereign authority over matters of common interest and cooperating on a case by case basis (Welsh, 2004, p. 76). The North American Free Trade Agreement is the most prominent example of the North American aversion for supranational institutions, preferring tariff reduction to the creation of a common market. In terms of environmental cooperation, the principal tri-lateral institution, the North American Commission on Environmental Cooperation, operates as a transgovernmental network under the authority of the respective environment ministers from each state, but grants very limited independent authority to the Commission or the secretariat. Bi-laterally, institutions, such as the International Joint Commission (governing boundary waters between the U.S. and Canada), have a degree of autonomy, such as a binding dispute settlement function and an inquiry procedure that can be initiated unilaterally, but the parties have historically preferred not to exercise these powers except on consent.

Climate change, as a collective action problem, requires deeper cooperation than the current patchwork of North American initiatives provides. To be sure, much of the required cooperation will need to be coordinated beyond a North American scale through the United Nations Framework Convention on Climate Change processes or alternatives such as the Major Economies Forum. This is particularly true for GHG emissions reduction commitments, which require a degree of reciprocity among the largest emitter states to ensure that free-riders do not undermine cooperative action. There is, however, recognition that the high degree of existing economic integration and energy co-reliance in North America provides opportunities for regional cooperation.

Canada, in particular, has been calling for the creation of a continental emissions trading scheme, partly in recognition that it can reduce its emission reduction costs by gaining access to a larger emissions trading market, and partly out of concern that the U.S. may impose trade measures against Canadian exports to the U.S., if those products do not bear a comparable carbon burden (Environment Canada [EC], 2010). The latter concern has been heightened by the inclusion of border adjustment measures in a number of U.S. climate bills before Congress (e.g. American Clean Energy and Security Act [ACESA], 2009). As a general matter, the free flow of goods and the high degree of capital mobility in North America create economic and environmental incentives for the three NAFTA countries to impose similar carbon prices across sectors, particularly those sectors identified as emission intensive and trade exposed. In addition, the shared energy market creates further environmental leakage concerns since energy is often created in one jurisdiction and consumed in another, (allowing a jurisdiction subject to GHG emission restrictions to import potentially cheaper energy from an under regulated jurisdiction).

On the other hand, the political reality is that the prospects for a highly centralized governance structure that could forge a continental carbon market and a unified regulatory approach are slight. This reflects the historic concerns over sovereignty, but also the highly politicized nature of the climate change debate itself (MacDonald & VanNijnatten, 2010). Given the considerable economic consequences, including some very thorny distributive issues within each country, it is unlikely that any of the North American states will be agreeable to qualifying their capacity to exercise sovereign control over climate policy. The governance challenge then is finding an alternative to the creation and empowerment of formal international organizations that allows for greater policy coordination.
than the current system of ad hoc cooperation. This paper considers the potential of using a centrally coordinated form of transgovernmental networked governance that was evident North American Security and Prosperity Partnership (SPP), a regional integration strategy that was undertaken from 2005 to 2009. Specifically, the paper argues that the form of cooperation addressing climate change in North America is likely to be well suited to bundled transgovernmentalism for which the SPP provides an example. The governance lessons from the SPP are both positive and negative, but they point to a governance structure that recognizes and facilitates flexibility in policy choice and allows for the participation of a wide range of governmental and non-governmental actors, as well as providing a platform for the integration of climate regulation within the North American marketplace.

2. Climate Cooperation in North America: Activities and Characteristics

The best way to describe the current state of North American climate law and policy is wide and shallow. There are an increasing number of cooperative activities, involving actors at a variety of levels and across different issue areas and using a diverse set of policy tools and instruments. That said, most of the cooperation is non-binding, often vague, even hortatory, and, with a few important exceptions, unambitious in terms of the reductions of greenhouse gas emissions required and the investment required.

The approach to cooperation is eclectic with cooperative activities including the harmonization of regulatory standards, research and development cooperation, infrastructure cooperation, carbon pricing measures, trade-related measures, and financing. For example, harmonization efforts have focused on matters such as energy efficiency standards and labelling for appliances and fuel economy standards for vehicles. In 2007, the three North American governments signed a trilateral energy science and technology agreement, which is, in effect, a framework agreement that sets out the overall objectives and areas for research cooperation, but anticipates that specific initiatives, whether tri-lateral or bi-lateral, will require a further implementing agreement (see Agreement for Cooperation in Energy Science and Technology [ACESA], 2007, arts. 2&3). Under this framework, the US and Canada announced their intention to create a U.S. - Canada CCS Collaboration. The bilateral “Clean Energy Dialogue” between Canada and the US also supports research and development cooperation and specifically identifies cooperation in carbon capture and storage, electricity grid improvements, and clean energy. The U.S. and Mexico have announced the formation of a bilateral framework on clean energy and climate change, which will build on existing programs, such as the Border 2012 program, and provide a framework for capacity building and clean energy development (see The White House, Office of the Press Secretary, 2009, April). The emergence of sub-regional emission trading programs and the introduction of federal legislation in the U.S. Congress imposing national emission reduction targets and associated cap-and-trade programs (potentially pre-empting the sub-regional programs) has brought questions of a continental carbon market into the foreground, particularly at the national level. All three North American states have indicated a desire to cooperate on emissions trading (North American Leaders’ Declaration on Climate Change and Clean Energy, 2009).

The likely development of carbon markets in North America requires the development of measuring, reporting and verification processes and standards that are comparable between states and across sectors. Credible GHG accounting is essential to facilitate market linkages and provides a sound basis by which the respective GHG mitigation efforts can be compared. Private forms of standard creation, such as the ISO 14064 GHG accounting and reporting standards, will be significant focal points for cooperation, but will require state cooperation to address verification and compliance requirements.

The strong link between trade practices and rules and GHG mitigation has raised questions regarding the need for clarity in the application of trade rules to emissions reduction activities. Most prominently, the inclusion of border adjustment measures in U.S. federal climate legislation has raised concerns over protectionism in Canada and Mexico. GHG emission reduction measures such as low carbon fuel standards or renewable portfolio standards raise potential discriminatory practices claims (Raitt, 2009, April 21; Howse & Renewable Energy and International Law Project [REIL], 2006). The use of subsidies to promote clean energy alternatives or to ease transition costs for carbon intensive industries subject to carbon pricing measures (for example, free allocation of emission allowances) also raise trade concerns. There is even additional risk under NAFTA that domestic policies may be characterized as
a form of regulatory taking and trigger claims under Chapter 11. Some authors have suggested prophylactic measures be taken through the WTO (Hufbauer, Charnovitz, & Kim, 2009). Similar clarifications could be sought in relation to NAFTA (Schott & Fickling, 2009).

Taken collectively, the existing and projected cooperative activities suggest a governance structure with several defining characteristics. First, North American climate governance is implementation based, as opposed to being an obligation creation activity. This is a reflection of the basic global problem structure associated with climate change and the absence of formal rule creation institutions governing North America. North America, as a governance level does not directly implement commitments agreed to at the global level, but rather provides national and sub-national governments with an additional scale on which to implement their policies. There is no top down, rule creating activity at the regional scale. Formal authority to create obligations or formulate policies is retained by domestic governments.

Second, governance is multi-level and includes both public and private forms of social ordering. The multi-level structure of North American climate change governance has both vertical and horizontal dimensions; which to say that cooperative activities occur between actors at the same level, be it cities, states/provinces or national governments, as well as between different levels across borders. For example, the North American Energy Working Group, which has been centrally involved in coordinating energy policy matters among the three NAFTA countries, involves officials from both federal and sub-national agencies in its activities. The non-hierarchical structure of climate cooperation is influenced by the need to coordinate regulatory activities across different constitutional arrangements. For example, in the U.S. a national cap-and-trade program may potential pre-empt state activity in this field, but in Canada, provinces are likely to retain a strong regulatory role given their exclusive constitutional authority over property and civil rights (compare Kysar & Meyer, 2008 and Hsu & Elliot, 2009). In terms of private forms of ordering, sectoral approaches are likely to emerge in highly integrated markets, as exhibited in automotive sector with regard to fuel efficiency standards, and a number of existing domestic initiatives have a sectoral orientation (Center for Clean Air Policy [CCAP], 2008). In Canada, intensity targets for industry are identified on a sectoral basis. In the U.S., the Regional Greenhouse Gas Initiative focuses solely on emissions from the power generation sector. In Mexico, much of the early focus on GGH mitigation has been in relation to PEMEX, the state owned oil and gas enterprise. There is demand to treat emission intensive, trade exposed sectors differently due to competitiveness concerns (e.g. ACESA, 2007).

A further governance characteristic is the informality of cooperative arrangements. With the exception of the regional emissions trading programs, which are necessarily structured by precise rules, regional climate initiatives are voluntary, rarely involve the production of detailed prescriptive instruments and do not delegate authority to third party institutions, such as international organizations or dispute settlement bodies. This is consistent with the overall approach to North American integration, which has avoided supranational institution building. Informality is also a function of the multi-level structure of cooperation, since informal cooperative structures provide greater latitude for cooperation between actors that do not have formal status in international law. Given the constitutional uncertainty regarding the division of powers in relation to climate law and policy, informality allows for more creative and flexibility arrangements between public and private actors across borders. Much of the cooperative activity is directed towards sharing best practices or coordinating research activities. The hard edge to the cooperative processes comes from the fact that the participants are very often the regulators themselves and are able to implement agreed upon standards or provide resources to fund cooperative activities (Craik & DiMento, 2008, p. 486). That said, there are limitations to relying on informal networked forms of governance. Many of the emerging areas of climate change cooperation will require deeper levels of commitment requiring more formalized obligations and direct political involvement. Carbon market linkage rules, for example, will require a higher degree of certainty and stability than voluntary arrangements can provide. Moreover, as domestic carbon pricing requirements give rise to competitiveness concerns and different regional economic consequences, there will be pressures for increased level of political accountability.

A final characteristic of regional climate governance is the fragmented but interdependent nature of climate solutions. Fragmentation arises because of the absence of a unified governance structure. Instead, North American
governments are undertaking multiple activities best suited to their own environmental and economic requirements. It is equally clear that many of these activities have cross-cutting implications in areas such as trade and emissions accounting and inventories. Take, for example, the development of carbon capture and storage facilities. The scale of research and development investment makes cooperation attractive and given the potential benefits to the energy sector (both coal and oil based), it is unsurprising that CCS has become an important area of North American climate cooperation. In Canada, it is proposed that an important source of research and development funding will be a “Technology Fund” to which companies subject to reduction targets may contribute to in return for emission reduction credits (EC, 2008, pp. 14-16). In essence, the Technology Fund functions as a carbon tax allowing emitters to purchase emissions reductions at a price between 15 to 20 dollars a tonne. The Technology Fund operates as a price ceiling since firms will be more willing to purchase Technology Fund credits that pay for more expensive mitigation activities. The presence of a price ceiling provides a significant obstacle to market linkage since the ceiling reduces the overall price of allowances within the system. From a trade perspective, a lower (below market) carbon price in one jurisdiction raises competitiveness concerns, particularly for emissions intensive, trade exposed sectors. On the infrastructure side, CCS development requires considerable inter-jurisdictional coordination, particularly if carbon is captured in one jurisdiction and stored somewhere else, including the development of a common accounting protocol and mutually acceptable monitoring and verification schemes. The key concern here is that because cooperative activities cut across sectoral, jurisdictional and regulatory boundaries, a high degree of integration of the various strands of cooperation is required.

3. Governance Challenges and Options

The central strength of the highly decentralized North American climate governance structure is the flexibility that it provides. Bodansky and Diringer note that flexibility allows countries to adopt mitigation approaches that suit domestic economic circumstances, as well as political limitations (Bodansky & Diringer, 2007). Flexibility does not preclude reciprocity in commitments, but recognizes that preferences for different approaches need to be accommodated; allowing, for example, one country to focus more on energy efficiency and fuel switching, while another may choose to place greater emphasis on technological solutions, such as CCS. In North America, existing and future climate policy pluralism needs to be accommodated. This is evident both between countries and between sub-regions within countries. The need for flexibility is essential for Mexico, which places a significant emphasis on reducing emissions from deforestation and forest degradation, and will likely impose carbon pricing measures on a more gradual (sectoral) basis. In Canada, there is increasing evidence that the economic effects of carbon pricing will differ significantly among provinces (Snodden & Wigle, 2009; Pembina Institute & David Suzuki Foundation, 2009), with strong regional support for particular policies approaches that reflect economic circumstances and natural attributes, be they ample hydro electricity sources or a carbon intensive oil and gas sector. Similarly, in the U.S., individual states have addressed climate change by drawing from wide range of policy instruments and the patch work of collaborative activities, while there are significant political and institutional obstacles to the acceptance of international agreements at the federal level. Given the range of actors involved in North American climate regulation and the uncertain and shifting authority over climate policy, a degree of flexibility is necessary.

The cost of flexibility is environmental effectiveness. Because many of the governance activities are voluntary, they involve low levels of commitment. Certainly at the national level, Canadian and U.S. emission reductions have fallen well short of international expectations. In the 2010 Climate Change Performance Index, the U.S. and Canada rank 53rd and 59th (out of 60), respectively; with each receiving a “very poor” rating (Burck, Bals, & Rossow, 2010). Mexico, on the other, was ranked 11th overall. The relationship between governance structure and effectiveness is, of course, exceedingly difficult to unravel. Certainly, the low levels of emission reductions and the anaemic policy environment are functions of the lack of national leadership on climate change, which has in turn led to a larger policy role at the sub-national level (Rabe, 2009). The resulting multi-level governance structure in its current non-integrated form presents further obstacles to improved effectiveness given the inability of individual sub-national entities to impose top down commitments on recalcitrant governments. This lack of reciprocity impedes the depth of commitments that otherwise might be agreed upon.
The decentralized structure of climate governance also inhibits the development of key regulatory instruments and policy tools. Most prominently, the development of carbon markets in North America has suffered from concerns regarding emissions leakage and impacts on competitiveness. The sub-regional schemes have had to grapple with how to address importation of energy from outside the scheme members since reliance on energy from unregulated emitters undermines the emission reduction targets (e.g. Regional Greenhouse Gas Initiative [RGGI], 2008). Canada has delayed implementing its own national climate change policies partly on the basis that Canadian climate policy must await the development of a U.S. federal scheme. The concern is that if the two national regimes are sufficiently incompatible, market linkage and trade flows are likely to be compromised (EC, 2010). The Canadian proposed Technology Fund, discussed above, is a good example of the potential problems associated with divergent approaches.

Climate finance measures, upon which Mexican emission reduction commitments are premised, is also hindered by decentralization since long term financing commitments will realistically only come from national governments, and may be conditional upon meeting prescribed requirements (Davis & Dadush, 2009, p. 197). In many cases, the conditions, which may relate to emission reductions, infrastructure development or the implementation of certain policies, will be outside the mandate of the financing agency, requiring further inter-agency cooperation. Ngaire Woods makes the point that successful implementation of climate financing measures will likely involve considerable local governance and accountability, as well as alignment with local climate related and development goals; again indicating the financial measures will require integration with governance structures across multiple levels (Woods, 2009, p. 206).

Issue linkage also requires a degree of central coordination that is undercut by the absence of regional scale governance structures. The need and desirability of linking issues related to climate is well established in North America, in areas such as trade policy, energy security and development financing. The multi-level structure of North American climate governance impedes linking issues since sub-national actors are not able to provide important incentives, such as access to markets, and access to capital or technology. Even at the federal level, issue linkage requires considerable coordination across federal agencies since climate governance cuts across environment, natural resource, transportation, and international trade and international development agencies. As a consequence, optimal regional coordination cannot rely solely on networked forms of governance that tend to reflect bureaucratic divisions. Executive leadership can also more effectively prioritize governance activities and mobilize resources to ensure that cooperative activities not languish.

Integration of climate policy, then, is essential to the generation of deeper commitments. But integration efforts must accommodate the variable goals, economic conditions and regulatory preferences of governance units across multiple levels and across the public/private divide. Bodansky and Diringer identify the need to balance flexibility and integration as a key challenge arising in the post-Kyoto, multi-track (and multi-level) global climate governance structure (Bodansy & Diringer, 2007, pp. 3-5). The salience of this challenge in North America is particularly acute given the established pattern of decentralized, networked governance activities and the absence of strong coordinating regional institutions. In light of the scarcity of regional integration mechanism, it is worthwhile to give consideration to the potential application of the last conscious regional integration effort lead by the three national governments.

4. The North American Security and Prosperity Partnership

Initiated in 2005, the SPP was formulated in response to heightened security concerns in the North American border regions in the wake of the September 2001 terrorist attacks in the U.S. As the U.S. reacted to the attack with tighter border controls, the impacts on the free movement of people and goods across borders lead to concerns over the economic consequences of a “thicker” border between the U.S. and its immediate neighbours (Welsh, 2004, pp. 76-77). The immediate security concerns of the U.S. were addressed in bilateral border security agreements with Canada and Mexico, but there was recognition of the continuing need to address on an ongoing basis a broader range of North American security concerns. At the same time, it was apparent to many that the process of economic integration under NAFTA had not adequately addressed non-tariff trade barriers, such as regulatory divergence,
rules of origin requirements and trade dispute settlement mechanisms. In addition, it was felt that North America, as an economic region, was losing competitive ground to emerging markets (Council on Foreign Relations, 2005).

The response to these concerns was the development of an agenda of bilateral and trilateral regulatory cooperation initiatives that focused on the twin themes of security and prosperity. The initiatives themselves were wide ranging, covering policy areas such as trade, health, environment, energy, security, transportation and agriculture, and contemplated a variety of different cooperative activities. In an earlier paper, Joseph DiMento and I characterized the SPP as being a coordinated form of transgovernmentalism whereby the principal vehicle for cooperation was the creation of (or use of existing) networks of government officials to coordinate and harmonize regulatory activities between the three NAFTA partners (Craik & DiMento, 2008). Unlike the creation of more formal supranational institutions, the SPP has no foundational treaty, no permanent secretariat and, most significantly, each state retains its sovereign authority over regulatory matters. The instruments employed tend to be formally non-binding, often involving open-ended commitments to cooperate in areas such as transborder enforcement, or to harmonize standards for products or services that flow between the countries (see Agreement for Cooperation in Energy Science and Technology, 2007, July; Memorandum of Understanding on Cooperation for Wilderness Conservation, 2009, November 7).

The innovation introduced in the SPP was to provide a higher degree of executive control over disparate cooperative initiatives by bundling the initiatives together under the banner of the SPP, which provided more visibility of these normally submerged forms of cooperation, facilitated the mobilization of bureaucratic resources and formalized higher level attention to the initiatives through annual leaders summits. Substantively, the structure of the SPP allowed for the deliberate linkage of the security and prosperity concerns, a linkage that was acknowledged in the Joint Leaders Statement announcing the SPP, which noted that the SPP initiatives “will be based on the principle that our security and prosperity are mutually dependent and complementary, and will reflect our shared belief in freedom, economic opportunity, and strong democratic values and institutions” (Leaders' Statement: Security and Prosperity Partnership of North America Established, 2005).

The SPP was deliberately designed to work within existing legislative mandates and thus avoiding the need for initiatives to be subject to political scrutiny and domestic political calculations. On the one hand, the depoliticized nature of the SPP matched the intent of the parties, which was to create a process to address technical issues. On the other hand, the opaque and club-like structure of the SPP fuelled concerns that the SPP concealed a broader, hidden integration agenda that would threaten national sovereignty. The privileged access granted to large corporate actors through the creation of a formal advisory body, the North American Competitiveness Council, made up of business leaders exacerbated the democratic concerns of the SPP. The framers of the SPP, fearing the kind of costly political debate that accompanied the negotiation of NAFTA, deliberately avoided the “big idea” of increased North American integration, but the result was to create “a gaping political vacuum in which partisans can only see what they want to see” (Golob, 2008, p. 2). The result was a form of non-debate between the SPP’s critics who saw the process as a platform by which a “deep integration” agenda could be implemented by stealth and the SPP’s supporters who viewed the process as a collection of distinct technical problems with no grander ambitions. Part of the difficulty with the SPP process was that it had no broader normative vision by which supporters and critics alike could identify its purpose and boundaries.

In 2009, under the new leadership of Barack Obama, the SPP was quietly abandoned. Given its short life, it is difficult to assess the substantive achievements of the SPP. It did result in a number of important outputs including the conclusion of a North American Regulatory Cooperation Framework, enhanced cooperation between national laboratories to address pandemics, liberalized rules of origins and “open skies” air transport cooperation (see Security and Prosperity Partnership of North America (SPP) Accomplishments, 2006; Joint Statement North American Leaders' Summit, 2007, August 21). Its principal failure was an inability to legitimize the broader, more deliberate form of bundled transgovernmentalism that characterized the SPP. In many cases, the activities of working groups continue, but with less visibility and less momentum.

5. The SPP’s Lessons for Climate Governance
As a model for North American climate change governance, the SPP provides an alternative to the current patchwork structure of transgovernmentalism, without impinging on the sovereignty concerns that more structured forms of cooperation may raise. As described above, the current structure of North American scale climate governance is an *ad hoc* mix of initiatives operating across multiple levels and multiple tracks. While many of these activities have been generated independently from one another, they are nevertheless inter-connected. If deeper cooperation is to arise, then there is a requirement for greater centralized control to integrate and coordinate these activities.

The principal benefit of bundled transgovernmentalism is that it provides a measure of joint executive oversight over an identified set of cooperative activities. In the case of the SPP, the institutional vehicle used was the creation of working groups made up of bureaucrats whose activities were directed by a jointly determined agenda. Unlike traditional networked forms of governance, where the networks themselves determine their own cooperative activities, the SPP structure allows the executive branches of each federal government to determine priorities and to allocate internal resources. The creation of a public agenda provides both transparency and political impetus to network activities. The SPP, for example, included in its two agendas expected time frames for the completion of activities. The annual leaders’ summit provided an opportunity to sustain cooperative activities and prevented working groups from straying from identified tasks and time frames.

The informal structure of transgovernmental networks ought to be able to facilitate the multi-level character of North American climate governance. Canada and the United States have had some experience in creating multi-level environmental networks. For example, the Canada-U.S. Air Quality Committee, which was created under the bi-lateral *Canada – U.S. Air Quality Agreement*, is made up of both federal and state/provincial regulators of air quality. Within the SPP structure, there are numerous examples of sub-state government and private sector involvement in working group activities. The flexibility of bundled transgovernmentalism also allows the parties to configure their specific activities on both a bi-lateral and tri-lateral basis. This will accommodate both exclusively bi-lateral arrangements, such as trans-border infrastructure agreements, and allows for staging of involvement between the three countries. For example, it is likely that the U.S. and Canada will proceed to develop more comprehensive carbon markets ahead of Mexico. Networked governance regarding market linkage issues can facilitate the different timing and sectoral requirements of Mexico, while still including Mexico in informal planning and coordination activities, which is critical from a capacity development standpoint.

The technical orientation of the SPP structure also fits well with the greater focus on implementation at the regional level. Much of the high level politics inherent to climate change governance will necessarily occur at either the international level or at the national level. National targets, for example, require reciprocity at a global level; while the distributive issues, such as allocation of allowances or sector based emissions levels, will be determined by national and sub-national governments. Regional cooperation, on the other hand, has largely been focused on implementing climate change commitments and policies, and often involves issues, such as efficiency standards or inventory and accounting methodologies, that require technical expertise. Having cooperative activities negotiated by regulatory officials, not foreign affairs or trade representatives, is intended to promote discussions that are based on technical evidence and best practices, and de-emphasize relative power (Anderson & Sands, 2008, p. 8). Given the substantial power asymmetry between the U.S., on the one hand, and Canada and Mexico, on the other, an administrative approach should hold considerable attraction for Canada and Mexico.

Executive oversight of the collectivity of trilateral and bilateral climate change activities allows for the imposition of greater coherence across activities. Given the cross-cutting nature of climate change, there will be a need to ensure that divergent standards or activities are not creating barriers to greater cooperation. A commonly cited example would be the need for greater coordination of renewable energy portfolio standards across different jurisdictions to ensure that the definition of what is considered renewable (and therefore eligible for higher pricing) does not interrupt the efficient flow of electricity in an increasingly inter-connected grid. As the standards imposed have an impact on the generation and delivery of renewable energy, these discussions also implicate the development of shared transmission infrastructure (smart grid). Renewable portfolio standards also have potential
trade law implications and requiring coordination not only across borders, but between regulators in various domestic agencies.

The SPP was conceived of as a process of continuous negotiation, as opposed to being oriented towards achieving a specific outcome (Anderson & Sands, 2008, p. 8). The approach was incremental not seismic. Incrementalism may turn out to be a sound regional strategy for climate change, where the issues addressed may require ongoing management and adjustment. Postponing cooperation for breakthroughs in targets and timetables at the international level or national cap-and-trade at the domestic level has resulted in minimal progress on a wider range of climate issues at national levels. Sub-state jurisdictions in North America pursued a more successful strategy of unilateral measures and cooperation with willing partners across multiple areas. A similar, albeit unstructured, form of incrementalism is developing at the national level. By allowing individual working groups a significance measure of independence allows for incremental progress to occur even in the face of delays on larger issues.

The lack of transparency and accountability was a central critique of the SPP process. But, as noted, the SPP did provide a greater measure of transparency than was available under the pre-existing system of unbundled transgovernmentalism. By bundling the separate SPP initiatives into a single process and conferring an executive imprimatur on the process served to both raise the profile of otherwise submerged transborder negotiations and to signal that the executive branch of each state would be accountable for the outcomes. However, the framers of the SPP, in an effort to avoid debate over the broader policy implications of integration, provided little or no substantive direction to the various working groups beyond the identification of the agenda itself. Instead the framers of SPP choose to present the SPP process in wholly administrative terms. Given the breadth of the SPP process, framing the process in more normative terms would have been difficult. But the absence of a clearly defined vision detrimentally impacted its perceived legitimacy (Craik & DiMento, 2008, pp. 508-511).

Climate change as a subject of bundled transgovernmentalism may overcome that shortcoming by identifying with clarity the particular cooperative objectives sought. In this regard, it is noteworthy that at a political level there is widespread agreement among North American leaders on the importance and direction of climate change policy. Indeed, at the 2009 Leaders Summit, the three North American Leaders issued a Declaration on Climate Change and Clean Energy that could easily form the foundation of a North American climate cooperation framework. Defining the goals of climate cooperation provides assurances to various stakeholder groups of the boundaries of the negotiations. Joseph DiMento and I argued in an earlier paper that the absence of a shared substantive vision in the SPP process required greater transparency and inclusivity to generate legitimacy (Craik & DiMento, 2008, pp. 508-511). The exclusion of civil society groups from the SPP process, while providing a formal avenue of consultation for corporate interests severely undercut the popular legitimacy of the SPP and opened the process up to charges that there was a hidden supra-nationalist agenda behind the SPP.

Addressing this shortcoming in the context of climate change requires opportunities for civil society groups to be consulted on activities at both the executive and working group level. The SPP’s centralizing function actually made tracking the working group processes simpler. Each government made the principle SPP documents available and outcomes were reported through the annual leaders’ summits. However, information on individual working groups and their activities was largely inaccessible and were conducted without consultation. Instead, each government relied on existing administrative protections available in their respective domestic legal systems to satisfy process requirements. These measures were insufficient because the authority was actually being exercised at the transnational level, and many of the outcomes involved few domestic procedural protections in any event given their informality. Extending procedural protections to transgovernmental networks does not require extensive reformation. Participatory mechanisms are common place in international environmental law and there are existing examples under the North American Agreement on Environmental Cooperation and the sub-regional greenhouse gas initiatives.

The more complex difficulty with bundled transgovernmentalism is balancing the benefits of administrative efficiency and depoliticization against the need for legislative scrutiny. Avoiding the legislative branch was a
deliberative strategy of the SPP, but it came at a significant cost. Greater legislative involvement will be necessary to address areas of higher political saliency such as trade measures and financing, which are already subject to strong Congressional oversight. In the climate change area it is not likely that a transgovernmental framework would be subject to direct legislative approval in Canada, Mexico or the U.S. Such an approach, given the antipathy of many U.S. legislators to the Kyoto Protocol, would be politically difficult in the U.S. in any event. The executive’s foreign affairs power and the ability for the executive branches to enter into executive agreements will be sufficient for the implementation oriented focus of North American climate cooperation. Nevertheless, it may be desirable to develop reporting mechanisms to the legislative branches and provide avenues for legislative branch input into cooperative activities.

6. Conclusion

Bundled transgovernmentalism offers a middle ground between political unachievable supranational institutions and inadequate ad hoc cooperation. As an approach to transnational governance, bundled transgovernmentalism is not without its limitations and it ought not to be viewed as an alternative to formal international cooperation. The advantage that bundled transgovernmentalism offers is in coordinating the implementation of national policies across borders, where there is a need to balance decentralization and oversight. The central limitation inherent to this form of governance is its inability to generate significant binding commitments among nations. Transgovernmentalism tends to operates at the level of implementation. However, this matches the predominant focus of North American climate change cooperate and thus may hold some promise as an architecture for regional cooperation. Much of the existing and forthcoming cooperative activity in North American climate change requires a framework for integrating multiple activities and accommodating the different geometries of actors involved. The cross-cutting nature of greenhouse gas mitigation measures also requires a degree of central oversight that will be necessary to generate deeper forms of cooperation.

The SPP process offers some important lessons in how a regional climate change cooperation framework may be structured. The identification of a common agenda for cooperation with clearly defined objectives and timetables, as well as a high profile attention to the agenda through annual leaders meeting, generated some positive results, notwithstanding the SPP’s sprawling agenda. Unlike the SPP, which had no clearly defined set of purposes, climate change cooperation occurs within a more definite normative framework. All three North American leaders have expressed their commitment to regional climate change cooperation, and have articulated quite specific objectives that may be achieved on a regional scale. The identification of clear goals and a more inclusive framework ought to allay some of the more serious legitimacy concerns that hampered the SPP process.

References


