

**The Co- Management of North America: Canada-US Relations and the
Impermeable Border Post 911**

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Permeable Borders; Impermeable Needs

Until September 11, 2001, Canadians had not thought very much or very hard about the long border they share with the US. Nor had public authorities shown significant concern. There was no compelling imperative to contemplate it, particularly in this global age. Ideas passed through it, money poured over it and millions of people crossed it each year. Post-September 11, the border has changed beyond recognition. It is everywhere and everything. Issues now include enhanced security, protection of privacy rights, who we want as citizens, how cross-border traffic can be expedited and how open the border should be to political refugees.¹

In fact, the world's longest undefended border was never unimportant. It has always been at centre stage in North America in the exercise of power and international cooperation. For Americans it embodies the indivisibility of their national sovereignty and paramountcy of homeland security. It is symbolically as important as the constitution and the presidency. For Mexicans their frontier with the US is the most iconic of institutions, inescapable and insurmountable linking together two radically different societies, economies and cultures in a thousand different ways. It embodies all their ambitions, pride, fears and insecurities. What a contrast with the Canadian belief that its border is largely invisible and unchangeable!

Arguably, Mexicans, Canadians and Americans have come to understand each other less and less, and there are profound differences in how they think about the Great Border. The North American Free Trade Agreement (NAFTA) downsized the importance of national boundaries and minimized their importance as regulatory gates and commercial walls. Now Canada and Mexico find themselves in a new tense relationship with the US. The security wall is forbidding and its goals and aims controversial. Many of the old notions about a porous border no longer apply. The security needs of the US now reach into their domestic space and the effects are pronounced.

New Rules of the Game

Washington's Homeland Security Act has redefined and reconfigured the border in a way that is neither anti- or pro-border, but is totally different from what anyone had predicted

¹ This draw draws on material and argument from my book, *Borders Matters: Homeland Security and the Search for North America*, Fernwood: Halifax, NS., 2004.

when NAFTA was signed a decade ago. Well before 9/11 globalization has made the co-management of the Great Border more, not less, important for security and immigration for all countries. For citizenship purposes the border is the symbolic and real manifestation of national sovereignty. Your passport and landed resident status are your legal identity without which you are not free to travel as a citizen easily, vote and be an active member of the political community. For political refugees acquisition of citizenship is a primary means of reintegration and beginning a new life. Commerce cannot force a country and never has. Trade is only one part of the large picture of integration locally and globally. To flourish in a globalized world nation-states require a wholesale change in the mental equipment that people draw upon to adapt to a different fundamental—a planet where sovereignty and state power operate under radically different conditions.

The Argument in Brief

This chapter is going to argue that for no society are borders an anachronism, They protect a country's institutions, the behaviour of its people and the experiences of all kinds of groups in comparison to those of their neighbours. Every border is fixed by law and geography and changed by circumstance and need. It has four critical-public policy functions: as a security moat against military and criminal threats; a regulatory gate to protect the environment, health, food chain and cultural needs of a people. The border is also a commercial wall to be opened and shut in the national interest. Finally a border is a line in the sand for citizenship practice. One is a part of a political community with rights and obligations and a belief in common set of experiences.

The Great North American Border was constructed on real and imaginary symbols of nationhood. The North American idea has been a staple part of the policy arsenal of Washington and Ottawa since Fredrick Jackson Turner's seminal contribution in singling out the frontier as the defining characteristic in American individualism sovereignty and popular democracy. Conquest and an unending obsession to move the frontier in all directions made Americans see the continent as an extension of their values and culture. Americans read the geography of the continent in terms of their own interests and put the full force of their nationalism behind the creed of US expansion and open markets² The border is an iconic institution as important as the flag, the presidency and the constitution.

For Canada the spatial dimension of the Great Border has always had a compelling quality much more civic than driven by strict national security needs. For much of the twentieth century Canadians have minimized its strategic dimensions. Hugh Keenleyside, one of Canada's senior officials, described the border in 1929 in deterministic terms, as "physically invisible, geographically illogical, militarily indefensible, and emotionally inescapable."³⁶ It is no wonder that, for all intents and purposes, the strategic need to

² For an examination of the impact of the Turner thesis in Canada, see Marlene Shore, "Remember the Future': The Canadian Historical Review and the Discipline of History, 1920–95," *Canadian Historical Review* 76, no. 3 (September 1995). Her thesis is compelling—as Canadian History evolves, so goes the nation!

manage the celebrated Canada-US border was not a priority for Ottawa's foreign policy elite for most of the twentieth-century US history. Yet the Pearsonian-Axworthy tradition of diplomacy deepened the human security side of the Great Border as a domestic priority, reflecting the things Canadians shared in common.³ For Canadians citizenship has been identified as one of their primary public goods, a foundation stone of Canadian constitutional culture, of "peace, order and good government." In terms of national sovereignty the Canadian border has never been a lightning rod of territorial ambition

Secondly, a decade of experiences with powerful integration pressures demonstrates that the world's longest undefined border was never unimportant. It has always been at the centre stage of North America in the exercise of power and international co-operation. Post 9/11 homeland security has put border politics at the epicenter of US public policy. NAFTA downsized the importance of national boundaries and minimized the importance of regulatory gates and commercial walls. Today the security wall is forbidding and many of the old notions about the porous border no longer apply. The security needs of the US reach into Canada's domestic space and the effects are pronounced.. Our theoretical toolkit needs upgrading to address the complex growing disconnect between the goals and objectives of integration and the governance challenge of cross border management.

In a security driven world the politics of the Canadian border require smart, independent thinking and nerves of steel. The important questions to answer are: how are Ottawa and Canadians planning to address these dramatically changed circumstances? Are we in charge of our side of the border longer? Can we be? What policies and models of the border are best suited to our needs? And the large and difficult theoretical question to address is, how is North America governed if there are few institutions other than NAFTA and the International Joint Commission each with little effective capacity and limited power to manage public policy convergence in a security age?

The End of the undefended Border and Continental Destiny

Post-September 11, the border is expected to operate like a Kevlar vest, stopping everything in its path, without hindering the free movement of goods and services. What an abrupt turnaround from an age of free trade when openness was everything and security only a secondary consideration. Of course, it can't be both, a security-tight border and a border geared for commerce with minimum restrictions at the same time. Eventually one must dominate the other. (See Figure 1.) Ottawa has yet to absorb the fact that the commerce-first border that every business leader worked so hard to achieve is yesterday's story. North America's elites believed that they had settled the management of the two borders for at least a generation and that the NAFTA consensus could not unravel. The commercial border was to be out of public sight and out of mind and they could get on with the business of business. A decade later how short-sighted they were. North America is not evolving towards a European style of arrangements. Relations between Canada and the US and Mexico and Washington are cooler than ever. The US is

³Jennifer Waesh, *At Home in the World: Canada's Global Vision for the 21st Century*, Toronto: Harper Collins, 2004.

pursuing a traditional policy of regional bi-lateralism striking deals with Canada and pressuring Mexico on immigration, the investment and border security.

The dilemma is that Americans also don't want a super-tight border economically. They don't want to be body-searched and, most emphatically, corporate USA doesn't want its Canadian production facilities to face delays when shipping goods back and forth across the border. It is in their interest to trade, and the US will do business wherever it can for oil, manufactured goods and services of every description.

Canada's economic elites are not good readers of the mood of the US Congress. In an address to Canadian chief executives in Washington, James Carville, a former presidential advisor, described the fallout from Ottawa's decision not to send troops to Iraq as a "pothole." No one in Washington talks about retaliation. Canada's business leaders are gripped by a non-existent problem. Tom D'Acquino, head of the Canadian Council of Chief Executives, finally admitted that cross-border ties have not deteriorated, and was forced to retreat from his earlier warnings about the dire consequences facing Canadian exporters from Ottawa's decision not to back the Bush invasion of Iraq.⁴

US corporate heads have not pushed alarm buttons about the border closing down. They have not panicked the way corporate Canada has, and North American commerce has certainly not been endangered by the US security-first doctrine. The current priority of the Bush administration is to address long-term relations with its most important allies, as these require a lot of fixing because of the Iraqi war. The name of Canada appears a long way down the list after France, Germany, Russia, Turkey, Mexico, Brazil and China.

The Post-9/11 Security-First Border

Many things look different for Canada in this security-obsessed age of strategy, might and law. The Homeland Security Act of 2002, the Public Health and Bio-terrorism Preparedness Response Act of 2002 and the Patriot Act of 2001 have placed management of the Canada-US border directly under congressional and executive authority in ways that are unprecedented.⁵ All have had their authority renewed by the US Congress by 2005 and this revolution in security policy will outlast the Bush presidency. These along side other measures authorize police and intelligence authorities to expand electronic surveillance and detain and remove aliens suspected of engaging in "terrorist activity."

These landmark bills grant sweeping powers to law enforcement agencies and increase the extralegal powers of the executive arm of government by means of executive and other administrative orders that do not require public hearings or obligate the president to ask Congress for additional authority. They rely on secret warrants or compulsory disclosures that expand the capability of the Justice Department to obtain

⁴ Jeffrey Simpson, "Worried about US retribution? Don't be," Globe and Mail, April 9, 2003, B1.

⁵ Homeland Security Act of 2002. <http://news.findlaw.com/wp/docs/terrorism/hsa2002.pdf>; Public Health Security and Bioterrorism Preparedness and Response Act of 2002. www.aphis.usda.gov/vs/ncie/pdf/bioterrorism_final.pdf

warrants and conduct searches without publicly disclosing them immediately. Among other things, the new laws allow Internet monitoring, give police access to business records that include library and bookstore files, and authorize emergency searches and electronic surveillance. In the year after 9/11 the Department of Justice obtained 113 secret emergency search authorizations, compared to 47 in the twenty-three years prior to the attack.⁶ More than eight million FBI files were provided to the State Department and 85,000 records of suspected persons were turned over to the Immigration and Naturalization Service. These expanded powers of the central security state would seem to violate the Fourth Amendment's protection against "unreasonable searches and seizures." US courts have been acquiescent in defending civil rights in an era of security.

September 11 redefined not only the border but also North America as a geopolitical region. So far Ottawa and Mexico remain uncertain as to how they should define themselves on the US perimeter. They can play a symbolic "filler" role in the war against terrorism. When intervention requires a military presence as in Afghanistan, experts reckon that Canada can send up to 2,500 soldiers, although even that modest contribution stretches Canada's military to the limit. From a military point of view, Canada has little to offer the US war machine. Mexico is even more skeptical of formalized joint military co-operation with its neighbour. It never participated in any kind of NORAD arrangement with the US. It was not part of NATO. Given its size and policy of neutrality Mexico does not have a tradition of sending its military forces into joint operations. Mexico has had very limited participation in UN peace-keeping. Instead its security focus has been primarily domestically-oriented. No Mexican president is going to commit Mexican troops to a US-sponsored initiative post 9/11.

With the Canada-Mexico-US relationship no longer open-ended, Canada and Mexico must acquire a strategic culture for the twenty-first century. US diplomacy is under intense scrutiny as never before. The transformed border is dramatically more complex with all its four dimensions in play as a security moat, regulatory fence, identity line in the sand for citizenship and a commercial opportunity. The challenge is to make all the ducks line up.

Canada has to become assertive about its side of the border. As a first priority it must conduct a full-scale audit of the US Homeland Security and Patriot Acts to determine their impact on Canadian public policy and their cross-border effects. So far, no public hearings have been scheduled on this task. The Canadian government is handicapped because it has not consulted across government or with provinces about US homeland security and its extraterritorial consequences for immigration, refugee policy, intelligence, commerce and public regulation. The scope and speed of US legislative and legal change is dramatic and unprecedented in recent times, and the Canadian public has not been kept fully informed.

By 2008, it is expected that US border practices will have changed beyond recognition from what they were in 2003. The most telling is that Canadians will be required to have a passport to enter the US and rather than the old standbys of a health card or driver's license. The era of 'flash and dash' are over. The idea of automatic access, minimum bureaucracy, and an easy going custom's officer is now a thing of the

⁶ Frank J. Murray, "Patriot Act of 2001 casts wide net," Washington Times, June 16, 2003.

past. Every name on airline passenger lists will be checked and any that are questionable will be barred by US authorities. Naturalized Canadians, those born elsewhere but have taken out Canadian citizenship, will face intense scrutiny if they emigrated from so-called high risk regions of the Middle East or South Asia. Political refugees also face new hurdles; no longer can Ecuadorians and Colombians be able to come through the US and apply for refugee status in Canada. They now are required to apply in the US and if they are turned back, they cannot seek asylum in Canada.

In September 2006 Homeland Security announced that the US plans to set up 800 watchtowers along the northern border to block illicit migration and effectively intrude into Canadian sovereign space. This unilateral decision underlines once again that Washington does not trust Canada to screen people entering the country. Despite all the rhetoric from the Harper government about rebuilding the Canada-US relationship it is obvious that Washington does not have much confidence in all the effort and money Canada has spent on its security agenda. Harper's appeasement of the Bush administration is destined to fail.⁷

Mexico does not want to mix security with trade, but now the line between these daunting policy areas is blurred and uncertain. Eight hundred surveillance towers are to be built on the southern border with the first installations to be constructed on the Arizona frontier with Mexico. Having a green card no longer means quick and automatic entry to the US. Migration policy is cross-cutting – virtually touching on every aspect of Mexico-US relations. Immigration has become irreversibly linked to US Homeland Security. Mexico's southern border is more than ever seen as a danger zone by US security authorities. Gangs, narcotics and weapons move north through Mexico into the US. Border patrols, border police, customs' officers and US vigilante organizations guard the Mexico-US border up and down the line.

Many of these changes do not simply focus on the US border but on the processes behind and beyond the border. The globalization of US domestic policy is driven by a singular aim: to secure the future of "our nation," "American democracy" and "border security" anywhere Washington believes it is threatened.⁸ It will decide what the "security danger" is and how it should be "neutralized." The choices for Canada and Mexico are stark—to be a tactical sceptic or a trusting loyalist. Either way the answer to this fundamental quandary has to be found in Canada and Mexico, not Washington.⁹ Ottawa has not thought through its strategic response to maximize its foreign policy assets. Belatedly it still needs to.

Asymmetry, Political Will and Destiny

For the United States the northern border with Canada has historically been low maintenance. For much of the twentieth century, State Department officials saw no

⁷ Alan Freeman, US to unveil plan to set up watchtowers along the border, *Globe & Mail*, September 21, 2006.

⁸ Executive summary of HR 5710, Homeland Security Act of 2002. <http://www.whitehouse.gov/homeland/book/index.html>

⁹ Andrew Cooper, "Waiting at the Perimeter: Making US Policy in Canada," in Maureen Appel Molot and Fen Osler Hampson, eds., *Canada among Nations, 2000: Vanishing Borders* (Don Mills: Oxford University Press, 2000).

reason to have a Canadian desk for addressing relations with Canada in a systematic fashion. In Washington's eyes the US-Canada relationship fell into a grey zone, neither totally foreign nor domestic; it belonged somewhere in between.

Canada was assumed to be part of the US homeland perimeter in North America for American security, energy and investment purposes since Mackenzie King signed the Ogdensburg Treaty in 1940 and formalized in the Hyde Park Declaration a year later. Here for some experts is the rather "unalarmed" beginning of US Homeland Defence for the continent. Still, Canadian anxieties around sovereignty required that it be treated as a separate country for commerce, social policy, migration and trade. Integration accelerated the separation between the political and economic realms. This uncoupling has left Canada more exposed to Washington's aggressive unilateralism in setting North America's agenda post-September 11.

The American notion of national security is US-centred and requires only limited cooperation from Canada and Mexico in tightening, monitoring and implementing its border security practices. The notion of Homeland Security in the US has five domains: the global, hemispheric, North American, bi-national and national.¹⁰ In theory, US security doctrine is seamless and flexible; in practice, it is tightly managed and singularly focused at the border. The Bush security doctrine has evolved on the traditional axis of bi-lateral intergovernmental co-operation. In the past Canada's promotion of international security has shown a large commitment to 'human security' and used its military extensively for humanitarian intervention. During the Cold War Mexico did not allow its armed forces to participate in foreign conflicts. Now the Bush revolution in foreign policy respects less these strategic foreign policy goals. Increasingly US national security has been extended into Canada's and Mexico's national sphere and security policy needs are increasingly addressed on the bi-lateral level. NAFTA's commercial model has not been generalized to security. This marks a new phase in North American relations where there is much more security co-operation beyond public scrutiny.

The Bush Security Doctrine and Diplomacy: The US Shield of the Twenty-first Century

The Bush security doctrine was inspired in no small way by George Schultz, Secretary of State in the early 1980s. Schultz framed the fundamentals of US foreign policy in terms of realism and preparedness. National security required in-depth strategic analyses of all locations where US interests were threatened. Military force would be used pre-emptively to attack any nation judged to pose a significant threat. The overwhelming military power of the US afforded it the means to enforce this agenda. The readiness of US forces to respond globally to all threats, including regime change, reflected the new moral certitude of the US administration. It is only in the final instance that diplomacy and coalition-building is relied upon in the pursuit of this unilateral agenda. US policy is being driven by the real and symbolic significance of the border as a forbidding security moat.

The task of developing cooperative practices in an international environment that is increasingly unstable and unpredictable requires, according to the Schultz canon, the ability to make threat-based assessments backed up by military might. Diplomacy by

¹⁰ . Raul Benitez-Manaut, *Mexico and the New Challenges of Hemispheric Security*, Woodrow Wilson Centre, Washington D.C. 2004, p.39

conventional means is secondary. From the US homeland security perspective, the old distinctions between foreign and domestic, or between state and territory do not hold as they did during the Cold War. The operative principle of “for the good of wider security” requires that the US expand its military presence around the globe in numbers unseen since the Cold War. The expanded military footprint has begun both at home and in other countries as far-flung as the Philippines, Brazil, Uruguay, Argentina, Colombia, Bosnia and Kosovo—all have US special forces or regular troops stationed there.

At the same time, the US has embarked on establishing, with its own citizens and closest collaborators, an enforceable constitutional order of rules and strategic interests anchored in US law and national sovereignty.¹¹ The fundamental principle is that US interests are paramount and when there is a conflict US security needs override all other international agreements. In practice this radical course correction has many consequences in the trade and security realm which are now seen as interdependent spheres rather than as previously parallel and autonomous domains. For North Americans the most important change with respect to NAFTA and economic integration is that the common condition sought by Bush’s US security doctrine is one where corporate USA enlarges its freedom through investment rights while the world is policed by its armies. The WTO is a key institution in the US foreign policy arsenal. The Doha Round was to be the next step in broadening investment rights in such targeted areas as medicine and intellectual property rights with respect to anti-viral and other modern drugs, the provision of water as a privatized good, and the marketing and production of Western kinds of agricultural products grown with chemicals and patented seeds.¹² The Cancun meeting collapsed when Southern nations refused to accept the US sponsored agenda.

In this new security age, every country is a potential partner (or enemy) for the US. Washington can pick and choose partners, recruiting them by offering large trade, military or development subsidies. It can also discard partners as easily as it builds alliances. It will increasingly try to divide “doubters from loyalists,” in Quentin Peel’s poignant turn of phrase. Certainly it no longer looks to the Atlantic Alliance to partner and police the world’s trouble spots as it once did. As the world’s uni-power, it has the military might of its armies and the motivation to wage warfare around the planet without need of many allies or partners. What is in question in many national capitals of the world is the US’s moral and political authority. The wider dilemma for Canada is to define the “Canadian path” now that its “close neighbour” status has been downgraded by the Bush security doctrine.

It Is Not a Question of Liking Us

For much of the recent period, Canadians have largely viewed border issues in commercial terms and relied on the narrow-gauged 1994 Free Trade Agreement. This commerce-first perspective obscures the significance of the border by focusing one dimension at the expense of others. The even larger error is the collective failure to

¹¹ Philip Bobbitt, *The Shield of Achilles: War, Peace and the Course of History* (New York: Alfred Knopf, 2002).

¹² Drache and Marc Froese, “Poverty Eradication and the WTO,” Robarts Centre for Canadian Studies, September 2003. <www.robarts.yorku.ca>

recognize that Canadians and Americans do not inhabit the same security universe. We used to think that as countries entered the post-national era, that border management would be a back burner issue. Not so.

All entrants to the US are now subject to invasive control and tracking procedures. The Immigration and Naturalization Service (INS), which once controlled border entry, no longer exists. It has become part of the Department of Homeland Security, a single department responsible for the interior enforcement of the new rules and procedures, application and surveillance at the border and overseeing immigration services. The tough new rules present line officers with a powerful directive to exercise their discretionary authority and refuse admission to the US where necessary. Heather Segal, the former chair of the Canadian chapter of the American Immigration Lawyers Association, sees in these changes a shift from a service mentality to an enforcement mindset.¹³

The passport, once primarily a police document to control the movement of people, is again being used as a high-powered security screen. High-tech options are also being looked at because of the incidence of passport identity fraud. Indeed, to counter travel document fraud the Canadian government is looking at computer-encoded, biometric identity cards. A biometric card holder would have their iris photocopied. US authorities are also very interested in this high security device, but the cost of this kind of identity document is prohibitively high. Many Canadian legal authorities believe that mandatory identity cards violates the Charter of Rights and Freedoms. Public opinion is strongly opposed to any government-sponsored identity card.

US Customs and Immigration has announced that it will begin profiling individuals from over twenty countries deemed to be “high risk.” Thousands of immigrants who did not register with the INS, now the BCIS, by March 2003 will be expelled or imprisoned. Muslims in particular are being targeted, but many groups from South Asia and Africa will also find their immigration status under review. Arab and Muslim men are required to register with the BCIS. Any individual whose papers are not in order or whom US authorities decide is a security risk will be expelled for “the good of wider security.”

Many immigrants from Muslim countries are trying to escape to Canada to begin a new life. In 2001, 3,884 Pakistanis claimed refugee status and more than half were successful.¹⁴ In the first half of 2003, more than a thousand Pakistanis crossed the Canadian border when the US Department of Citizenship and Immigration started its controversial system of turning away anyone who did not have full documentation. With an estimated nine million illegal immigrants in the US, the number of removals and deportations is reaching record highs.

Entry-Exit Regulations at the Border

The intent of the US Homeland Security Act is to track, control and monitor the 150 million plus annual visitors to the US, including Canadians and Mexicans. This will require a vast collection of information. A crucial part of the new initiative is the adoption of “meta-data” standards for electronic information, and a core innovation of

¹³ Heather Segal, “Welcome to the Border,” *Globe and Mail*, March 7, 2003.

¹⁴ Canadian Immigration and Refugee Board (CIRB), 2002. Also see Margaret Philp, “Pakistanis flocking to Canada,” *Globe and Mail*, March 15, 2003.

this vision of homeland security is the entry-exit data bank. The danger is that these procedures are already being met with a very high non-compliance rate as many visitors have left the US without American customs officials properly recording their departure.

In recent times, when visitors overstayed their visa, these small irregularities were largely overlooked or easily rectified with proper documentation. The new security rules, set out in the Bush government's first "National Strategy for Homeland Security," assume a zero tolerance standard.¹⁵ When fully implemented there will be no exemptions for non-Americans or Americans.

Homeland security is also screening all US citizens buying airline tickets to determine whether the person is a potential security threat. Delta Airlines was the first to experiment with a pilot project where background security and financial checks are made on every customer purchasing a ticket. Should the check establish that the individual is a security risk, he or she will be barred from the flight.¹⁶ Many Americans angrily oppose this measure as an invasion of privacy and a violation of their constitutional rights, but it appears that Delta intends to screen all future passengers before they board. All airplane companies have share passenger information with US security authorities. Canada has announced that it plans to look seriously at comparable proposals.

The "security is everywhere" mentality applies to Canadian residents with non-Canadian passports. Commonwealth citizens living in Canada have to present documents at the border and US border officials have final discretion in deciding who will enter and who will be turned back. US authorities are weighing the advantages and costs of stationing twenty blimps to monitor, track and record cross-border movement. Israel has deployed similar technology in the Gaza. These high-tech blimps can electronically eavesdrop on all kinds of telecommunications in Mexico and Canada. Once in place they will constitute a vital part of the US meta-data collection of information on any visitor or others at the border and behind it. by 2006 it had been announced that the Homeland Security had contracted Boeing to build 1800 watch towers along both the southern and northern borders. The contract is for over \$100 million dollars.

US border officials have always had a wide arc of discretionary authority when deciding whether or not to accept NAFTA multi-entry visas for business professionals. Recently many professionals have had to present employment documents upon entering and re-entering the US. Certainly, border rules have become more arbitrary and unpredictable. But again Canada has no clearly articulated strategic set of goals that puts citizenship rights on the same footing as commercial needs. Faced with so many micro-changes around border security, Canada requires an effective macro-border strategy to minimize the negative effects of US unilateralism

The Immigration Police, Tough New Rules and Mexico in the Cross Hairs

In other areas of US public policy the role and importance of the border as a marker of exclusive national sovereignty has also been broadened, contrary to the theory and

¹⁵ www.whitehouse.gov/news/releases/2002/07/20020716.html

¹⁶ CNN, March 15, 2003, Saturday Weekend News. In 2005 it was revealed that over 30,000 Americans were denied access to flights that they had booked and were deemed security risks.

practice of economic integration. Free trade was to dismantle non-tariff barriers but US practice is to make the US security perimeter intrusive and invasive. A primary target is Mexico and its porous border. NAFTA was not meant to dismantle the border for immigration purposes. In 2002 the INS denied immigrant status to over 170,000 immigrants, most at the US southwest border. Under the old rules more than 100,000 immigrants had been removed from the US each year since 1995. Between September 2000 and November 2001 over 300,000 illegal migrants were apprehended on the southwest border. These numbers are expected to increase in the future. By 2005 removals had topped the one million mark.

Shortly after NAFTA came into effect, the Clinton administration passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 in order to closely monitor and control the cross-border movement of all non-US citizens, or “aliens” as they are termed under US law. The Act required the INS “to collect and record the departure of every alien from the United States and match the records of departure with the record of the alien’s arrival in the United States.” It was aimed at Canadians and Mexicans who entered the US illegally or remained beyond the permissible time period. The INS estimated that Canada was the fourth largest source of illegal immigrants, with about 120,000 Canadian aliens residing in the US as of 1996. The INS studies also found that about 40 percent of all illegal immigrants enter the US legally but stay without a visa.¹⁷

This major legislative initiative, the Responsibility Act, represented one of the most comprehensive statutes enacted by Congress within the larger political context of dismantling the US welfare state. It cut the welfare benefits of US citizens and immigrants alike, radically reducing the benefits that non-citizens could claim and redefining their legal rights as well. This watershed legislation removed a wide range of benefits that government had provided to immigrants on more or less the same terms as citizens, including emergency assistance to families, food stamps and Medicaid.¹⁸ These provisions gave state and local governments the authority to determine who was eligible for public benefits. Almost without exception decentralization has led to cutting immigrants off from benefits they had previously received.

Despite the protest from both Canadian and Mexican governments that this new legislation would impede entries and exits between the three countries, the US Congress remained indifferent to its NAFTA partners. Section 110 of the Act generated a lot of bitter criticism from border communities that wanted US legislators to separate domestic politics from the growing commercial interdependence between the three NAFTA partners and give Canadians and Mexicans a special status under the bill. Their advice carried no weight with US lawmakers. The US congressional view was that it possessed the competence to control and regulate the movement of people across US borders and nothing in the NAFTA limited its right to do so. A tiny concession achieved by the

¹⁷ Theodore H. Cohen, “Cross Border Travel in North America: The Challenge of US Section 110 Legislation,” Canadian-American Public Policy no. 40 (October 1999), p. 3.

¹⁸ Michael Fix and Jeffery Passel, “The Scope and Impact of Welfare Reform’s Immigrant Provisions,” Discussion Paper, 02-03, Assessing the New Federalism (Washington, D.C.:Urban Institute, 2002).

Canadian government was to defer implementation of the Act until March 30, 2001. Now, with the passage of the Homeland Security Act, the new rules and regulations apply to Canadians as well as everyone else. Canada's NAFTA status did not merit any special consideration.

If Canada and Mexico are to develop a strategic border culture, they need to reposition themselves in North America and defend their side of the Great Northern and Southern Border. To this end there are three basic principles that should be committed to memory and then acted on.

Power and Fate:

Globalization and the End of Borders Narrative

The first principle is that *sharing a border with a more powerful country should not be confused with voicelessness or powerlessness*. Voicelessness is a mentality and not a material reality. It is an ambiguous stance, a condition that demonstrates the absence of political will to be independent and self-confident. The absence of such determination is not an enigma but a refusal to assert one's individuality and be different from those around them. Saying nothing and acquiescing to US unilateralism is tantamount to wanting to blend into the life of North America. It is cow-towing to US bullyism rather than standing up for Canadian strategic interests and political values.

It is important to see the larger context and causes of this conflict. Countries such as Canada and Mexico, where the asymmetries with the US are unbridgeable, belong to an elite group of nations with multiple borders and frontiers. Asymmetry of power is always troubling in foreign policy matters, as Russia-Ukraine, Mexico-United States, India-Pakistan and Brazil-Argentina relations aptly demonstrate.

Yet it is not an absolute that squeezes all the air out of foreign policy. Globalization has not punched holes in every border in the world. Brussels is conducting a sweeping review of its border practices and is considering bringing back the border as a security checkpoint.¹⁹ The border retains much of its functionality in the EU to protect the public health of its citizens and for public interest regulation. Many other countries use their borders to generate revenues. These countries want to hold on to this venerable institution and the continual cash flow that it generates. In 2000, Canada collected \$22 billion in GST and PST at the border. Any country with a sales tax relies on the border as a collection agency. A conservative estimate would put border revenues worldwide in excess of the one billion mark. However, some countries are less sure of the border's economic functionality but every public authority has to look at all aspects of the border and try to balance the conflicting needs.

Some border crossings resemble armed camps, while others minimize police presence. Do not be fooled though. The border police are always close by and ready to enforce state authority, be it fairly or arbitrarily. Around the globe, borders continue to be places of tension, passageways to freedom and escape routes from repressive regimes. Border guards may be armed with whips, truncheons or worse to keep refugees out or move them in. Along the Afghanistan-Pakistan frontier, hordes of refugees have desperately tried to force their way past the border police. Thousands of people routinely

¹⁹ Sarah Laitner, Brussels seeks tougher border security checks, *Financial Times*, November 25, 2005.

die at sea or along land borders in an effort to escape poverty or despotism. Since 1995, experts estimate that over two thousand Mexicans and other Latin Americans have been shot trying to cross into the US from Mexico.²⁰ Untold numbers of political refugees have been killed attempting to cross land and sea frontiers.

As long as there are nation-states, borders will not disappear from history. Canadians and Mexicans have principally thought of their border with the US in its commercial dimension and as a gateway for immigration. Now they require an integrated strategy that is not predominately commercially-centred. Developing a new understanding of the institutions, processes and policy outcomes that ensure policy stability will depend on each country's capacity to form a consensus around the strategy of being onside or offside Washington foreign policy revolution, issue by issue, and to act on principle rather than simple expediency.

So the question is: how do these distant neighbours acquire the will-power and conceptual tools to become effective conflict managers when Canada's and Mexico's strategic interests diverge in stark ways from the US agenda? Today, what Joseph Nye has called 'the soft power of public opinion' is more critical than ever for Canadian and Mexican foreign policy goals and practices. If Ottawa and Mexico expect to chart their own course in the age of the smart citizen, public opinion has to be consulted, listened to and mobilized.²³ Foreign policy used to reflect the elites agendas, now Ottawa no less than Mexico has to enlist their broad publics to support a course correction.

Protecting political refugees, poverty eradication, regional development and human rights, Canada and Mexico need to build leverage, acquire voice and co-ordinate their efforts. Kissinger was prescient when he wrote that 'foreign policy is domestic policy'.²¹ If this is true for the US, it doubly applies to Canada and Mexico, countries in which social diversity, hybridity and multiculturalism define their respective national identities and are the strategic interests that must be nurtured and protected. Increasingly, foreign policy will have to reflect the social values of Canadian and Mexican society, rather than, as in the past, the special interests of their self-interested business elites. That is why if the NAFTA cousins expect to be a more effective actors globally, they have to connect with their publics in ways that they never did in the past.

Spillovers and Relative Sovereignty

The second principle is that *the doctrine of formal sovereignty has never effectively protected a weaker nation from the designs of those stronger*. The complex creed of absolute sovereignty has long preoccupied many of the best Anglo-American minds and European experts in the modern period because great powers have never abandoned claims to domestic autonomy, let alone their right to pursue their interests globally. In theory the sovereign state was a hardy creature protected by the interstate system of international relations. Countries were to butt out and not intervene in the internal affairs of another. The external dimensions of sovereignty were very difficult to protect through the principle of non-intervention. Krasner is right to add that sovereignty has never meant

²⁰ Carnegie Foundation, *Caught in the Middle: Communities in an Era of Globalization* (Washington, D.C.: Carnegie Foundation, 2001).

²¹ Kissinger. *A World Restored*, Gloucester: Mass P. Smith, 1973

the existence of a single hierarchy of authority domestically or internationally. There was always the idea that in a plural world countries and civilizations needed to co-exist and develop institutions of cooperation and multilateralism.²² Growing interdependence throughout the twentieth century forced governments to protect national interests and strengthen democratic institutions by privileging the nation-state as the formal seat of national political power. Sovereignty has always been negotiated as an exercise in applied statecraft.

John Keane reminds us that the territorial-based nation-state, interlocked with others, has not only pursued its self-interest as much as possible but has also been socialized by the behaviour of other states. Custom, protocol and legal norms emerged and all countries became linked by a global framework governing diverse subjects such as war crimes, the right of non-interference and rules about trade and commerce. These state-enforced limits on sovereignty have supported political space or an arena come to be called “international civil society.”²³ These self-generating bodies outside formal electoral system want to reshape political life globally and locally. The growth of international law evidences the need to codify and institutionalize applied sovereignty regionally and at the world level.²⁴

Even prior to the invocation of free trade’s deep economic integration logic, national autonomy was diminished by cross-border spillovers and challenges to sovereignty from militarism, nationalism and imperialism, and the movements of refugees and immigrants. All countries have exhibited a cynical and ethics-free mentality about exploiting global immigration flows for their own immediate advantages. Industrialized countries routinely tighten border controls to control global immigration flows in the name of self-interest or national security.²⁵ They want to pick and choose who gets in and who is kept out. Skilled immigrants with a university degree are more likely to get the green light from an immigration officer than a poorly educated, barely literate agricultural worker. Still, many countries have welcomed asylum seekers, guest workers, visitors, students and business professionals when it was in their interests to do so.

A high-profile country for immigration, Canada admits close to 300,000 immigrants annually, and it could admit more if there was the political will to do so. So, from a citizenship perspective, the border is a high priority and as important as the commercial gate to the future of Canada as a society of diverse peoples. Control and management of the border for citizenship purposes has become more important as global immigration flows have increased markedly through the 1990s and into the new century.

Immigrants are the dark side part of Mexico’s NAFTA trade picture. About twenty percent of the people attempting to cross illegally from Mexico to the US are not Mexican citizens but are from central America, China, Pakistan and other countries.²⁶ Immigrant smugglers or “polleros” as they are called have created a huge business out of

²² Stephen Krasner, “Think Again: Sovereignty,” *Foreign Policy* no. 122 (January/February 2001).

²³ John Keane, *Global Civil Society?* (London: Cambridge University Press, 2003), p. 22.

²⁴ Saskia Sassen, “Beyond Sovereignty: Immigration Policy Making Today,” *Social Justice* 23 no. 3 (Fall 1996).

²⁵ John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (London: Cambridge University Press, 2000).

²⁶ US Asks to Fight Human Traffickers, *El Diario*, May 3, 2001.

human trafficking. Since 1995 more than three thousand have lost their lives while hoping for a better life. Police corruption, incarceration and danger await the migrants from Guerrero, Chiapas, Jalisco, Oaxaca and Michoacan. All along the border Grupo Beta, the Mexican government agency supposedly dedicated to protecting the lives of migrants, regularly fails to make Mexican migration orderly and legal. Migrants continue to cross to the US via dangerous mountains and desert routes. Human rights groups are highly critical of Grupo Beta's record and dozens of agents have resigned under the threat of prosecution. Immigrant smuggling rings have bribed Mexican officials and compromised Mexican law. US officials regard these human trafficking organizations as a Mexican problem, but the fact is that US employers continue to hire cheap Mexican labour without fear of legal retribution. The US Congress has ruled out an amnesty program for undocumented workers currently employed in the US.²⁷

Mexico's human right's record is far from satisfactory. It has not been active and committed enough to defending immigrants welfare despite Castañeda's declaration while foreign minister, that human rights are universal and indivisible.²⁸ The deeper issue is that soft, underperforming labour markets do not follow the neo-liberal logic of supply and demand, but require an active role for the state to generate the jobs needed. Until the Mexican government is able to raise the employment bar, organize the labour market and provide sufficient short and long term work for its citizens, stemming the massive tide of migration will continue to be the top policy issue for Mexico as it enters the post-NAFTA era.

Canada's immigration situation is dramatically different. Canada is a gateway for political refugees despite the fact that Canada's immigration strategy has changed a lot in the last decade. The demand to admit more refugees is constant. Canada processes between 20,000 and 30,000 refugee applications annually and provides social support and an administrative body to process these claims.

In 2001 Canada received a record number of applications from asylum seekers, 44,500, a 20 percent increase over the number of claims in 2000. Ninety percent of refugees arrive with false documents, having had to escape their homeland without official papers. The Canadian immigration authorities recognized the claims of 13,336 as bone fide refugees and another 5,430 cases were abandoned, withdrawn or otherwise closed. Officially, Ottawa claims a success rate of 47 percent for all applications referred to the Immigration and Refugee Board (IRB). In fact, the approval rate is about 30 percent excluding administratively closed and withdrawn cases. Canada had about 14,000 asylum seekers from Pakistan, Sri Lanka, Zimbabwe, Congo-Kinshasa, Colombia and China in 2001. Over 76 percent of these political refugees were given legal status in Canada.

Since the end of 2001, Canada has altered asylum procedures and given Citizenship and Immigration officers the power to rule a claimant ineligible for refugee status "if the claimant had a criminal record, posed a threat to national security, or had been recognized

²⁷ Jamie Velázquez, All Beta Agents Under Investigation, *La Cronica (México)*, August 20, 2001

²⁸ Jorge Castaneda, "Los ejes de la política exterior de México", *Nexos*, volume 23, no.288, December 2001, cited in Ana Covarrubias, Human Rights and Mexico Foreign Policy, a paper prepared for the Robarts Centre Canada-Mexico Big Picture Reality International Conference, November 7-8, 2005

as a refugee in another country,” such as the US. Ottawa now has given the Department of Citizenship and Immigration the power to remove that individual without the right to file a refugee claim to a higher tribunal should that person be refused refugee status in the US. Under pressure from the Bush administration, Canada has taken a step backward and made it more difficult for political refugees to settle here.²⁹

The ethical questions surrounding acceptance of refugees from wartorn regions have forced states to look beyond their borders. It is not only commerce that dilutes the ideal of sovereignty, but also human rights issues. The growth of international human rights law is the most visible and powerful restraint on national sovereignty in the modern period. Law, even more than commerce, reaches behind the security-tight frontiers of the nation-state, trying to hold countries accountable for what occurs behind and beyond their national frontiers.³⁰ The theory of relative sovereignty and international standards of enforcement frequently bear little relationship to each other. International covenants have the force of moral suasion, but lack the political clout to hold to account those responsible for crimes against humanity, genocide and terrorism. No country is absolutely sovereign and the negotiation of sovereignty remains essentially a political act rather than an objective legal standard that is enforceable everywhere.

The International Criminal Court recently created by the General Assembly of the UN to apprehend and prosecute individuals charged with crimes against humanity, genocide and egregious violations of human rights is a singular new development. It is a response to the horrifying number of civilians massacred on many continents. An international criminal court is one of the crucial missing links in the international legal system. The International Court of Justice at the Hague only handles cases between states and not between individuals. Now individuals can be prosecuted and brought to justice for war crimes for which no one in the past was held accountable.³¹

The establishment and authority of the International Criminal Court was opposed by the Clinton and Bush governments, who refused to recognize its jurisdiction to try US citizens charged with past or future war crimes.³² In the present era, constraining US power and requiring it to adhere to international rules has become a top priority for the international community. As the fallout from the Iraq war affects the global political landscape, Canada and Mexico have yet to make up their respective minds as to whether, in Robert Kagan’s terms, they value hard power and military strength more than soft-power tools such as human security and multilateralism.³³ A fork in the road has been reached, and Canadians and Mexicans have to make up their minds collectively on this

²⁹ The data are from the US Committee on Refugees at <http://www.refugees.org/world/articles/wrs02_easial.cfm#japan>.

³⁰ Robert Howse, “Special Symposium: Boundaries of the WTO,” *American Journal of International Law* 96 (2002).

³¹ Despite large gaps in the rules and frequent disregard of international norms by many states, international human rights advocates remain cautiously optimistic with the establishment of the International War Crimes Court.

³² For details on its mandate, see <<http://www.un.org/law/icc/general/overview.htm>>.

³³ Robert Kagan, *Of Paradise and Power: America and Europe in the New World Order* (New York: Knopf, 2003), p. 33.

most basic question.

Protecting the US Nation: Neighbourliness a Scarce Commodity

The third principle is that *even with the fundamentals down pat, the border can no longer be thought of as a nineteenth century wall expected to protect a country's sovereignty; only democracy and political will have real effect on strengthening the social bond in a period of intense globalization.* During the modern period the majority of Canadians and Mexicans have become instinctively “soft” nationalists as a defensive reflex against growing US influence on North American life. Soft nationalists have been committed to the UN system and a multilateral world order that had rules, predictability and limits on superpowers. Ordinary Canadians no less than Mexicans want to maintain access to the US market and are equally committed to stronger sovereign practices. The free trade agreement punched holes in the two borders and rendered them less of a regulatory gate.

Member states of the EU have discovered that public authority and private markets follow very different trajectories and that political culture changes very slowly in comparison to the dynamics of powerful market forces. This is also the case for Mexico. Mexico's transition has been dogged by the triple threat of populism, authoritarianism, and nationalism. Neoliberalism has been a wild card that exaggerates regressive tendencies. In *Blood, Ink and Culture* Bartra “democratic systems invent and construct strange political prostheses to protect themselves.”³⁴ They need an “iron lung” to stimulate political renewal to correct the democratic system's malfunctioning. The temptation is to stay with what you know and not deepen and strengthen the public sphere that can be a powerful alternative to the economic determinism of NAFTA. Mexico's and Canada's “defensive reflexes” to this fundamental issue take them down very different paths. Cumulatively, these persistent differences have had an enormous impact on defining who Canadians are. The Canadian psyche has yet to absorb the compelling idea that convergence and divergence can occur simultaneously and it is the “net effects” that matter in the end. Canadians have yet to make this the cornerstone of Canada-US relations. -

The most powerful forces reshaping Canada's political agenda are domestic, not global, and as its new accent on social pluralism intensifies cleavages from race, language and class, Canada and the US have grown more dissimilar than similar. Diversity and multiculturalism work together in Canada to provide a large constituency with an appetite for social programs. In the United States, the twin axes of modern diversity and a legal culture of individual rights work against race and class, and “interact in ways that undermine support for the welfare state.”³⁵ North Americans should pause to reflect why this is so.

The Authentic Border

Even though 80 percent of Canadians live within 160 kilometres of the US border, deep differences between the two countries persist. Take the case of Toronto and Buffalo—

³⁴ Roger Bartra, *Blood, Ink and Culture: Miseries and Splendors of the Post-Mexican Condition.*, Durham NC: Duke University Press, 2002, p.25

³⁵ Banting, George Hoberg and Richard Simeon, *Degrees of Freedom: Canada and the United States in a Changing World* (Montreal: McGill-Queen, 1997), p. 400.

close neighbours, but worlds apart in terms of health care, taxes, job security, garbage collection, road maintenance, culture and job creation. However, when these communities are in dire need and require funds to build their infrastructure or pay for social services, they both wave the flag of their regional identity to gain national attention and political leverage. US states look to Washington to solve their fiscal crises, while provinces expect Ottawa to provide more funds. It is ridiculous to think it might be otherwise.

If we look north to Canada, it is striking that Canada's powerfully embedded political culture remains the authoritative and constant "forty-ninth parallel" that separates these societies. Institutions, values and all kinds of practices are inescapably public and more resistant to supply and demand signals than any contemporary theory of economics can explain. Thus, the demands of territory on identity and self-knowledge are surprisingly undiminished by cross-border effects and globalization. US influence on what Canadians think and believe could decline further as we become more visibly un-American in terms of equality, diversity and the social bond.

But the political divide that separates the two countries remains enormous even when these continental neighbours follow remarkably parallel policies. In Lawrence Martin's choice epithet, penned two decades ago, the "tie of spirit" has never acquired any formidable policy legs in Washington, even in the area of commercial policy where the two countries have the most at stake.³⁶

The Crisis of Nationalism

In the world of US trade politics, America's borders are constructed by law and geography but are politicized by self-interest. Now more than ever the Homeland Security Act has re-nationalized the US side of the border and explicitly extended it into Canadian and Mexican domestic space as part of its stated need to "protect our nation's critical infrastructure."⁴⁵

Since 9/11 Canada and Mexico have not been spared from the brunt of US unilateralism. Washington has changed the rules on entry into the US by Canadian citizens who will require a passport to enter; without consultation it has begun the militarization of the border by building 1800 watchtowers along its side of the 49th parallel; the US Coast Guard has secretly started using the Great Lakes for weapons training; the US Congress has rejected any amnesty for the millions of Mexicans living without full legal status in the US; US authorities seized Mahar Arar, a Canadian citizen, en route to Canada and sent him to Syria where he was tortured and held prisoner. Even commercially, American and Canadian interests diverge strikingly.³⁷ In the Canada-US softwood truce Washington insisted that US companies would keep more than a \$1 billion in illegal duties but also required Canadian companies to withdraw 30 lawsuits

³⁶ Lawrence Martin, *The Presidents and the Prime Ministers: Washington and Ottawa Face to Face, The Myth of Bilateral Bliss, 1867–1982* (Toronto: Doubleday Canada, 1983), p. 21.

³⁷ For a detailed examination of the shortcomings of the Martin government, see Daniel Drache, "Friends at a Distance: Reframing Canada's Strategic Priorities after the Bush Revolution in Foreign Policy", in *Canada Among Nations 2005 Split Images* ed. Andrew Cooper and Dane Rowlands, Montreal: McGill-Queen's University Press, 2005.

against Washington before the US government would lift its illegal duties averaging 10 percent on this country's lumber exports. It is difficult to imagine any other industrial nation that would accept such terms to settle a dispute when the WTO ruled against US interests.

With the election of the Harper government, the political ordinals on Canadian foreign and defence policy now point sharply to Washington. The bedrock of Canadian foreign policy is tied unconditionally to Bush's Homeland Security agenda on the continent and globally.³⁸ The reorientation has been dramatic in accepting an aggressive combat role for Canadian forces in Afganistan, unwavering support for Israel in the Lebanese war and a radical alignment of Canada in the WTO's Doha trade round against the global South. Most importantly, the Conservative Prime Minister has not defended Canada's sovereignty nor created a roadmap to define Canada's strategic interests.

With Bush's popularity plummeting and the war against terror being criticized nightly on US television by a steady stream of retired generals, conservative and democratic Congressmen and women, Harper has willfully tied his star to a failing policy. Particularly in Quebec where anti-war feelings are most intense, Harper's rigid loyalty to Bush may well cost him his minority government in the next election where expanding his Quebec base is critical to his political future. Rarely have Canadians had a Prime Minister so indifferent to the views of the Canadian public on Canada-US relations.

Conclusion

Canada's elites have rarely been self-consciously innovative about the border and US policy in general. Mexico's elites have not been successful in translating Mexico's quest for self-determination into autonomous and effective policies. They have not found a bridge between past and present. In neither country have our political class found a way to deploy nationalism to organize our national autonomies by linking up with new forms of democracy. They have not shed the idea that they are trapped in a myth of their own making and as a result have never gone as far as President Richard Nixon, who spoke with characteristic bluntness about Washington's closest neighbour, "It is time for us to recognize that we have very separate identities, that we have significant differences, and nobody's interests are furthered when these realities are obscured."⁴⁶ Too often, in an effort to escape the dumbing-down effect of unequal power relations, Canada's policymakers much like Mexico's have turned into deadbeat conformists rather than determined innovators. They have not recognized that, in the end, political will is the only effective guide to minimize the asymmetry of power and navigate through the high-pitched noise of trade and security disputes.

³⁸ John Ibbitson, "Tories file foreign policy statement in blue box", *Globe and Mail*, August 18, 2006.