

Bringing the transgovernmental in: the public service in the Canada-United States relationship

La prise en compte du transgouvernemental : la fonction publique dans la relation canado américaine

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Résumé de l'article

L'auteure se penche sur une dimension très souvent négligée des relations canado américaines, c'est à dire le rapport entre les fonctionnaires des deux pays. Les rencontres des dirigeants politiques du Canada et des États Unis font peut être la manchette, mais la très grande part de l'activité bilatérale est le fait des nombreux réseaux et interconnexions qui lient les fonctionnaires canadiens et américains. Malgré le volume important de l'interaction transfrontalière entre les ministères, départements et organismes des deux pays, l'aspect des relations canado américaines qui concerne la fonction publique a suscité relativement peu d'attention théorique ou empirique systématique. Les spécialistes de l'administration publique ont tendance à se concentrer sur l'activité intérieure et à se pencher peu, sinon aucunement, sur la gestion publique des affaires internationales. À témoin, un ouvrage paru récemment sur l'administration publique contemporaine du Canada passe sous silence les relations de cet ordre. Pour leur part, les spécialistes des relations internationales tendent à simplifier à outrance la politique intérieure et les institutions stratégiques. Le présent article contribue à combler la lacune dans les écrits spécialisés. Il prend appui sur le concept du transgouvernementalisme - rapports entre autorités législatives, exécutives et judiciaires et organismes de réglementation et leurs vis à vis étrangers - et examine les mécanismes et les processus qui président à l'interaction transfrontalière (relations sans formalité, accords officiels, organismes mixtes, et ainsi de suite) des acteurs du secteur public. L'auteure examine le rapport entre le degré de coordination bilatérale des politiques dans un domaine stratégique ou problématique et les mécanismes de l'activité transgouvernementale qui caractérisent les rapports transfrontaliers dans le même domaine.



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Introduction¹

This article examines an often-overlooked dimension of Canada-United States relations: relations between Canadian and American public servants.² Meetings between political leaders of Canada and the US may make front-page headlines, but it is the myriad of networks and interconnections between Canadian and American public servants that constitute the lion's share of bilateral activity. Notwithstanding the multitude of daily cross-border, inter-departmental, and inter-agency interactions, there has been relatively little systematic, theoretical, or empirical attention to the public sector dimension of Canada-US relations. Public administration scholars tend to train their sights on the domestic level and pay little or no attention to the public management dimension of international affairs. Indeed, a recent edited volume studying contemporary Canadian public administration does not examine these relations.³ And as Doern, Pal, and Tomlin note, international relations scholars, for their part, tend to oversimplify domestic politics and policy institutions.⁴

This text offers a modest contribution to bridging this gap in the literature. Using the concept of transgovernmentalism (relations between legislative, executive, regulatory, and judicial players with their international counterparts⁵) it examines the mechanisms and processes by which public sector players interact across borders (e.g., informal relations, formal agreements, joint organizations, etc.). The article explores the relationship between the degree of bilateral policy coordination in a policy field, or issue area, and the mechanisms of transgovernmental activity characterizing cross-border relations in that policy domain.

The article proceeds in three sections. The first draws from the literature on globalization, integration, and transgovernmental relations to propose a conceptual framework to explore the pattern of transgovernmental relations characterizing a policy field or issue area. The text examines the role of three key considerations in shaping transgovernmental relations: the degree and nature of bilateral interdependence in the policy field under investigation, the degree of policy coordination in the field (e.g., collaboration, coordination, harmonization, etc.), and the presence or absence of crisis or urgency in addressing bilateral matters in the policy domain in question. The second section seeks to breathe empirical life into this framework by examining transgovernmental relations in energy policy and regulation. The third section brings forward the main points emerging from the exploration of transgovernmentalism in the energy sector, and suggests potential lines of future research inquiry and empirical investigation.

Bringing the transgovernmental into public administration scholarship⁶

Scholarly inquiry examining the influence of globalization and regional integration on public administration has tended to focus on questions of public policy over those of public management. Researchers have queried the challenges integration processes may pose for domestic policy-makers through, broadly speaking, their influence on institutions, interests, and instruments. Globalization and regionalization can influence institutions by, for example, increasing the importance of supranational institutions and interstate negotiations in domestic policy formation.⁷ In the realm of interests, integration can bring new political pressures to bear on nation states through the political advocacy work of transnational or international civil society organizations.⁸ And instruments, globalization, and regionalization can lead to the loss or weakening of policy instruments due to international trade agreements and the forces of economic integration.⁹ These analyses tend to inquire into the means by which, and the extent to which, globalization and regionalization may weaken state policy capacity, expose national governments to an increasingly broad range of actors, processes, and institutions, and can lead to policy convergence or divergence across jurisdictions.¹⁰

In a field analysis on globalization and Canadian public policy, Skogstad notes, "With the emergence of sites and modes of policy making that extend beyond public authorities to embrace private actors, and trespass the local and supranational spheres, domestic policy analysts must train their sights beyond Canada's borders to an unprecedented extent."¹¹ In this transformed policy context, public servants are increasingly making contact with their counterparts

across borders as part of their daily activities. The number of formal and informal cross-border contacts that public servants initiate, respond to, and maintain is staggering.¹² And this activity is not limited to those working in the Department of Foreign Affairs, it is line department and agency officials across virtually every portfolio making contact with their counterparts in foreign jurisdictions. And yet, as noted at the outset of this paper, there is scant theoretical or empirical attention in Canadian public administration scholarship to the patterns, structures, and processes of public servants' cross-border activities. Research beyond Canada's borders has tended toward comparative studies of public administration reform across industrialized countries.¹³

This article seeks to begin the process of bridging this gap in the literature. To do so, it utilizes the concept of transgovernmentalism. Problems at the international level, such as terrorism, environmental damage, and organized crime, have created and sustained the need for relations between legislative, executive, regulatory, and judicial players with their international counterparts.¹⁴ Slaughter identifies a range of formal and informal relations between governments, including informal ad hoc relations, relations formalized by agreements (ranging from memoranda of understanding to treaties), and the creation of formal institutions.

This article focuses predominantly on relations at the executive level, particularly cross-border relations between public servants. It also examines the interplay between cross-border relations "at the working level" (public servants) and formal relations through traditional diplomatic channels such as the Canadian Embassy in the United States or relations at the political executive or legislative levels.

Table 1 analyzes transgovernmental relations along two dimensions: first, according to the degree of policy coordination animating the policy field or issue area, and second, according to the transgovernmental mechanism employed to undertake this coordination. The first column shows a spectrum of policy coordination¹⁵ beginning with policy divergence (no coordination) and moving through to harmonization. Canadian cultural policy provides an apt illustration of divergence, where the focus of Canadian policy has largely been on maintaining "shelf-space" for Canadian cultural products in the face of competition from American cultural industries. Collaboration, meanwhile, refers to the exchange of data, expertise or knowledge across borders, and working together to achieve common objectives. Policy coordination refers to countries' mutually adapting their policy regimes with one another. While each jurisdiction recognizes the other's distinct policy or regulatory framework, it gives consideration to the implications of domestic policy change for the other jurisdiction. Harmonization, in contrast, connotes the activity of developing common policy or regulatory frameworks across jurisdictions.

Table 1: Policy coordination and transgovernmental relations

| Degree of Policy Coordination | Transgovernmental Mechanisms | | | | |
|---------------------------------------|--|---|--|----------|---------------------|
| | Bilateral Political Executive or Legislative Relations | Bilateral Public Service Relations | | | Joint organizations |
| | | Informal exchanges, conferences, working groups, etc. | Mutual recognition agreements, exchanges of letters/notes, protocols, etc. | Treaties | |
| Divergence (no coordination) | ✓ | ✓ | | ✓ | |
| Information sharing and collaboration | | ✓ | ✓ | | |
| Coordination | | ✓ | ✓ | | |
| Harmonization | ✓ | ✓ | ✓ | ✓ | ✓ |

The table categorizes mechanisms of transgovernmental relations into two broad groupings: those that take place at the political level and those that take place between public servants. Examples of the former include prime ministerial and presidential visits and summits, ministerial-secretary meetings, and exchanges between parliamentarians and members of Congress. Given this paper's focus on transgovernmental relations at the level of the public service, the table further categorizes relations among public servants into four principle mechanisms that vary according to their level of formality and institutionalization.¹⁶ The first category is the least formal, least institutionalized, and comprises informal exchanges such as telephone conversations, e-mail exchanges, conferences, and bilateral working groups. The second and third categories are more formalized, institutionalized and comprise agreements. The second category consists of agreements that do not require formal ratification. These may be pertaining largely to technical issues (e.g., information sharing protocols in a particular policy field or issue area). Treaties, meanwhile, are legally binding agreements and generally require ratification in the legislative or executive branches of government. Where treaties exist, they represent the legal framework within which working level transgovernmental relations occur. The final mechanism, joint organizations, refers to bilateral organizations such as

the International Joint Commission or the North American Aerospace Defence Command (NORAD).¹⁷

This article explores a number of considerations that may shape the pattern of transgovernmental relations in a given policy field. First, I examine to what extent the focus of transgovernmental activity will be conditioned by the degree and nature of bilateral interdependence in the policy field in question. In the case of energy, for example, there is a high degree of energy market interdependence between Canada and the US, with the US a net importer of Canadian energy. These conditions can lead to considerable shared interests in the energy field, and as such, may produce an overall focus on collaboration and coordination in the energy sector.

Second, the article conjectures that the focus of transgovernmental relations will in turn influence the mechanisms employed (this is shown by the check marks in the body of Table 1). Where the focus is divergence, I propose that transgovernmental relations will tend toward formal bilateral political relations or the negotiation of treaty provisions (or the use of dispute resolution mechanisms) to secure differentiation or to resolve conflicts. Where interests diverge, transgovernmental mechanisms will tend toward diplomacy. The check mark under informal exchanges in bilateral public service relations is of critical importance, for it highlights the role that public servants can play in averting full-blown bilateral political conflict: many conflicts can be resolved at the working level before they transform into bilateral political crises.

In contrast, when the focus of transgovernmental activity is information sharing and collaboration, coordination, and harmonization, it could be expected that public servants will play a much stronger role in these processes, via informal exchanges. These could include the use of working groups, protocols or mutual recognition agreements. In the case of harmonization, treaties may be utilized to establish a common policy and regulatory framework. A joint organization may then administer this common framework. It is noteworthy that with harmonization, bilateral political relations are likely to be pivotal in the initial stages (e.g., in the decision to negotiate a treaty or to establish a joint organization, for example).

Third, this article queries the role of crisis or urgency surrounding the policy field or issue. When a crisis emerges, bilateral political channels are likely to play a strong role if the crisis leads to the pursuit of divergent interests by the Canadian and American governments. These situations will tend to require a much stronger hand by members of the political executive or legislature. In contrast, where crises or situations of urgency result in shared problems or opportunities for Canada and the United States, I suggest that public servants are likely to play a much stronger role in addressing these situations. Finally, in the absence of crisis or urgency, i.e., where ongoing and day-to-day management obtain, cross-border public service relations are likely to prevail.

The following section explores these considerations using the case of energy. This case has been selected for a number of reasons. First, it resides within the broader field of trade policy, a domain increasingly influenced by globalization and regionalization. The focus of international trade negotiations has moved from “at the border” issues such as tariffs, import quotas, and valuation, to “behind the border” considerations ranging from investment to health and safety standards to intellectual property rights, erstwhile policy choices made at the national or sub-national levels.¹⁸ Both the Canada-United States Free Trade Agreement (CUSFTA) and the North American Free Trade Agreement (NAFTA) contain energy chapters with provisions to liberalize energy trade. The energy sector is increasingly globalized, and as such, offers a fertile empirical terrain for the examination of transgovernmental relations.

Second, the overall thrust of policy coordination in the energy sector has altered over time: from divergence accompanied by conflict in the case of the National Energy Program, to collaboration and coordination in more recent times. Inter-temporal comparisons in the energy sector also permit for an examination of the influence of crisis and urgency on transgovernmental relations. Third, energy subsectors within this policy domain offer the advantage of cross-sectoral comparison. The electricity, oil, and natural gas sectors differ along a number of key variables examined in this paper. They differ in the degree of bilateral policy coordination pursued, and they offer differing illustrations of the role of crisis and urgency in transgovernmental processes.

Transgovernmental relations in the energy sector^{19, 20}

Transgovernmental relations in the energy sector are characterized by a mixture of both formal and informal mechanisms via public service and political channels. While there are no joint energy institutions, there are multiple cross-border contacts between energy officials in Canada and the US at the political and bureaucratic levels. These contacts are largely focused on collaboration and coordination, and for the most part, are managed at the working level. As described below, the transgovernmental mechanisms employed have differed over time, across energy sub-markets and according to the degree of crisis or urgency surrounding Canada-US energy market relations. This section begins by analyzing the extent and nature of bilateral energy interdependence along economic and political dimensions. It then turns to the degree of policy coordination characterizing the energy sector both over time and across energy sub-markets, exploring the transgovernmental mechanisms predominating in each. This preliminary investigation of transgovernmental energy relations lends some initial support to the conceptual and theoretical propositions of the previous section.

Degree and nature of bilateral interdependence

Trade interdependence

Canada and the United States exhibit strong interdependence in the energy sector. Canada-US energy trade has increased rapidly over the last decade as a result of trade agreements and deregulation in the oil, natural gas, and electricity sectors, which facilitated bilateral market integration.²¹ Table 2 shows Canada-US energy trade for the years 1991 and 2001. The bilateral trade picture that emerges reveals that Canada is a net energy exporter. While Canada does import American energy, the lion's share of trade flows, particularly in oil and gas, head south. These exports grew considerably in the period shown in the table. In the natural gas sector, Canada's exports to the US more than doubled between 1991 and 2001, from 1.6 to 3.8 trillion cubic feet. Canada exports roughly half its gas supplies, and all of this to the United States.²² Export growth in the oil sector has also climbed significantly, almost doubling from 274 million barrels to 499 million barrels. Canada exports over half of the oil it produces, and virtually all of this is to the United States.²³ Canadian exports of electricity to the US also roughly doubled over this period, from 24.6 terawatt-hours to 40.2 terawatt-hours.²⁴

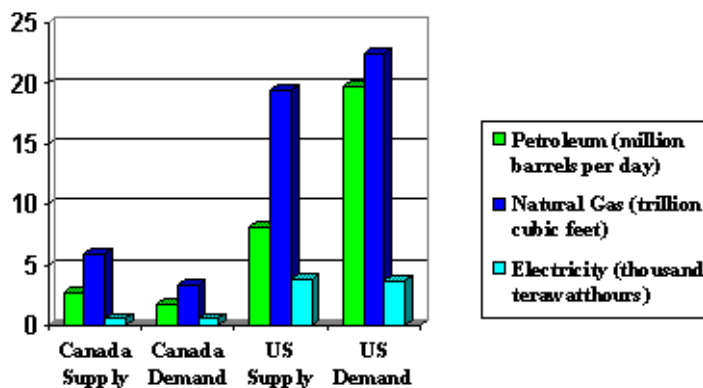
Table 2: Canada-United States Energy Trade, 1991, 2001

| | Exports to United States | | Imports from United States | |
|----------------------------------|--------------------------|-------|----------------------------|------|
| | 1991 | 2001 | 1991 | 2001 |
| Crude Oil (million barrels) | 274 | 499 | 1.5 | 11.4 |
| Natural gas (billion cubic feet) | 1,594 | 3,823 | 15 | 157 |
| Electricity (terawatt-hours) | 24.6 | 40.2 | 6.4 | 17.9 |

Source: Adapted from Paul G Bradley and G. Campbell Watkins, "Canada and the U.S.: A Seamless Energy Border?" C.D. Howe Institute Commentary. No. 178 (April) 2003 (Toronto: CD Howe Institute, 2003).

These trading patterns owe largely to the differing energy supply and demand profiles of the two countries. Energy supply and demand patterns differ markedly between Canada and the US, with the former's supply exceeding demand and the latter's demand exceeding supply. Figure 1 below illustrates this pattern, showing supply and demand in Canada and the US for petroleum, natural gas, and electricity. As the figure demonstrates, energy supply in Canada exceeds demand in all three energy sectors, while US demand exceeds supply, particularly in the petroleum sector.

Figure 1: Energy supply and demand in Canada and the United States, 2000



Note: Petroleum supply figures are for the production of crude oil and natural gas liquids. Petroleum demand figures refer to demand for liquefied petroleum gas, motor gasoline, jet fuel, distillate oil, and residual fuel oil. Canadian electricity generation data are for 1999. (1 terawatt-hour = 10^9 kilowatt-hours).

Source: Adapted from North American Energy Working Group, North America—The Energy Picture. 2002.

US requirements for imported energy generate considerable market opportunities for the energy sector in Canada. The US is a net energy importer and its dependence on foreign energy sources has doubled over the last two decades. The country imported 25 quadrillion British thermal units of energy²⁵ (quads) in 2000, up from 12 quads in 1980 and 14 quads in 1990.²⁶ Canada constitutes the largest energy exporter to the American market, supplying 27 percent of its net energy imports.²⁷

For the United States, imports of oil and gas represent meaningful proportions of the country's net energy imports and domestic consumption. In 2000, the US imported virtually all of its natural gas from Canada; these imports

supplied 15 percent of US consumption.²⁸ The figures were less dramatic for the oil sector, but sizable nonetheless. Canada supplied 9 percent of American oil consumption and these exports represented 15 percent of US net oil imports.²⁹

The above analysis documents the high degree of energy market interdependence between Canada and the United States, with the US a net energy importer in the overall relationship. But there is more to the nature of Canada-US energy interdependence than trade figures reveal, the politics and context of Canada-US energy relations also shape the nature of the countries' energy interdependence.

Political interdependence

In comparison to the early 1980s, there are two key similarities and four main differences in the politics and context of contemporary Canada-US energy relations.³⁰ The first similarity is that Canada's population is still only one-tenth that of the United States, and that Canada's energy resources tend to lie in less densely populated parts of the country. Canada's relatively small population, the majority of which is located at a distance from energy resources, has meant that Canadian energy development has been inextricably linked to the US. The economic viability of constructing a pipeline from one part of Canada to another, for example, often depends on its passing through the United States to serve American markets along the way. As a result, many major energy decisions in Canada necessarily involve American influence and require decisions by US authorities and regulators. Moreover, American firms are active participants in the Canadian oil and gas sector: following a spate of American acquisitions over the last five years, US oil and gas firms account for roughly 40 percent of production and reserves.³¹

The second similarity in energy politics in Canada and in Canada-US relations, in comparison to the early 1980s, is that American energy policy influences Canadian energy development, regardless of whether US policy is protectionist or market-oriented. The implications for Canada of Congress mandating the routing of a natural gas pipeline to bring northern gas to the US is a case in point, as are recent developments respecting reliability in the electricity sector (discussed below).

The first main difference in the contemporary energy milieu is that it is highly improbable that the Canadian government would intervene in as heavy-handed a fashion as it did in 1980 with the National Energy Program (see below). Not only is this unlikely for domestic political reasons (i.e., avoiding the wrath of energy-producing provinces and the implications for national unity) but it is also improbable because of a second main difference in the current energy environment: the country's trade obligations under NAFTA (these largely replicated CUSFTA's energy provisions). NAFTA's energy chapter prohibits the establishment of two-price policies like those found in the NEP and its proportionality provisions virtually eliminate the possibility that the Canadian federal government would act to reduce energy exports to the United States.

The third and fourth main factors differentiating the current era from the past pertain to market integration. The US and Canadian economies are increasingly integrated. This heightens mainstream industries' focus on competitiveness in relation to American counterparts and prompts closer attention to any lever of cost advantage, including energy costs. Market integration in the contemporary period also extends to Mexico. This is the fourth issue that can shape Canada-US energy relations. A number of factors foster continental energy markets: trade liberalization, domestic deregulatory reform, industrial convergence in gas and electricity, and information technology permitting instantaneous market transactions.³² Notwithstanding increasing continental integration, however, the vast majority of energy trade is bilateral Canada-US and US-Mexico trade.

Degree of policy coordination and mechanisms of transgovernmental relations

Transgovernmental relations across time

Over the past twenty-five years, the degree of policy coordination in the energy sector has varied, ranging from divergence (no coordination), to collaboration, to coordination, to harmonization. As the paragraphs below show, the nature of transgovernmental activity has in turn varied over time from a focus on formal bilateral political relations to a variety of formal and informal working level arrangements.

For Canada, 1980 was a defining moment in Canada-US energy relations. This was the year that the federal government, under the leadership of Prime Minister Trudeau, instituted the National Energy Program (NEP). The policy was crafted in the aftermath of the oil crises of 1974 and 1979 and was intended to achieve energy self-sufficiency in Canada over the coming decade. It contained measures to increase Canadian ownership and exploration in the oil and gas sector, to give Canadians priority access to domestic oil and gas supply, to subsidize domestic prices, and to freeze natural gas exports and curtail oil exports to the United States. The policy also sought to increase federal revenues from the energy sector. The NEP was developed with next to no provincial or private sector consultation and resulted in an immediate backlash from the energy producing provinces, particularly oil and gas rich Alberta, from industry, especially American energy firms operating in Canada, and from the American government.

The program was a clear attempt to differentiate Canadian energy policy from that of the Americans, and to respond

to crises in world oil markets. It resulted in considerable conflict with the United States: American energy firms operating in Canada opposed the measures to increase Canadian ownership and exploration and the Reagan administration viewed the export restrictions as an affront to American energy security. In response to pressure from the provinces, from industry and from the American administration, the federal government signed an agreement with Alberta on revenue sharing in 1981, and modified some of the program components that were irritants to the US in 1982.

The NEP illustrates the potential for crises to lead to the pursuit of conflicting interests by Canadian and American governments, in this case, resulting in bilateral conflict. The pursuit of policy divergence and the resolution of the resulting conflict occurred chiefly through bilateral political channels. It did not significantly involve public service transgovernmental relations. Indeed, the Canada-United States Energy Consultative Mechanism (ECM), an annual meeting of energy department officials, fell into disuse during this period, and was not revived until after the resolution of the bilateral NEP conflict in 1982.

It was not until the election of the Mulroney Conservative government in 1984 that the remainder of the NEP was dismantled and an energy chapter was negotiated in the CUSFTA that would prohibit the revival of NEP-style energy policies in the future. The change of government brought with it a change in the degree of policy coordination. In contrast to the Trudeau Liberals' conflict-provoking, centrist, and protectionist approach to energy policy, the Mulroney government adopted a more consensual, consultative and pro-market stance on energy. The focus shifted to collaboration, coordination, harmonization of energy policy and regulation, and utilized both informal mechanisms at the working level and treaties to pursue these aims.

Shortly after their electoral success in 1984, the Mulroney Conservatives dismantled what remained of the NEP and negotiated the Canada-US Free Trade Agreement, which hammered the proverbial nail in the NEP coffin. CUSFTA's energy chapter essentially disallows price controls in the oil and gas sector and prohibits the establishment of two-price policies like those found in the NEP. The agreement also includes proportionality provisions that fundamentally constrain the federal government from reducing exports by stipulating that export reductions must be offset by proportional reductions in supply to domestic consumers. This pro-market approach to energy trade smoothed Canada-US, federal-provincial, and federal-industry relations by responding to the energy security concerns of the US, and to the concerns of energy producers and energy producing provinces regarding federal interventionism. Moreover, CUSFTA's energy provisions helped to ensure secure and predictable access for Canadian energy resources to the American marketplace, another primary consideration for energy sector players who feared American protectionism.

Following the dismantling of the NEP, informal working-level arrangements characterized transgovernmental activities in the energy sector. The Energy Consultative Mechanism is noteworthy in this regard as an inter-agency forum for collaboration and ongoing policy coordination. The ECM, established in 1979 for ongoing exchange on bilateral energy issues, meets at least once a year and serves to enhance cooperation as well as address bilateral irritants before they develop into full-blown bilateral conflicts. At the ECM meeting held in Ottawa in July 2003, for example, the topics discussed ranged from oil sands production to the US' natural gas summit to electricity grid interdependence. These meetings are noted for their focus on cooperation and on seeking resolution to bilateral conflicts. The magnitude of the conflict over the NEP appears to have exceeded the conflict resolution capacity of this working level group, however; as noted above, the mechanism fell into disuse during the NEP conflict and was only revived following resolution of the dispute via formal bilateral political interactions.

Transgovernmental relations across energy subsectors

In recent times, energy has again come to occupy a more prominent place on domestic and bilateral policy agendas. The Bush administration's May 2001 National Energy Policy highlights the administration's interest in and orientations toward energy.³³ One-third of the plan's 105 recommendations focus on building international relationships to achieve the administration's aim of greater diversity in energy supply.³⁴ The plan conceives of energy security in continental terms, and views increased energy production and cooperation in North America as an important building block of energy security.³⁵ For Canada, this means principally its oil and gas reserves, but also electricity generation and transmission capacity. The 11 September 2001 terrorist attacks heightened existing US concerns over energy security. While the National Energy Policy identified Canada and Mexico as important partners in domestic energy security, 11 September underscored these concerns and added impetus to achieving energy security through North American energy supply. Analysis forecasting tight supplies of natural gas in North America in both the short and long-terms are also fuelling American energy security concerns. Further, the electricity blackout in August 2003 that left some 50 million people in the Midwestern and Northeastern American states and the province of Ontario without power served to catapult energy ever upwards on the American policy agenda, focusing attention squarely on electricity market restructuring and electricity reliability (see below).

For the United States, Canada's vast energy reserves constitute both a current and future building block of domestic energy security, all the more so following the terrorist attacks. For Canada, with its interest in secure and predictable access to the American energy market, US interest in the country's energy resources presents a considerable opportunity. In this context, collaboration and policy coordination are predominant. This is shown not only in the

transgovernmental activity surrounding the August 2003 electricity blackout described below, but also with the recently signed Memorandum of Understanding (MOU) between Canada's National Energy Board and the United States' Federal Energy Regulatory Commission. The MOU provides for coordination on the timing of decision-making and application procedures when related matters are before both agencies.³⁶

Although the predominant focus of Canada-US energy relations is collaboration and coordination, as shown below, policy differentiation is also evident. What follows examines a number of major sector-level issues in Canada-US energy relations and their associated transgovernmental processes, electricity reliability, the development and transportation of natural gas from Alaska to the lower 48 states, and oil drilling in the Arctic National Wildlife Refuge (ANWR). This examination suggests that where the bilateral focus is on collaboration and coordination, there tends to be greater prevalence of informal transgovernmental relations between public servants. Where divergence is present, there tends to be greater reliance on bilateral political relations and traditional diplomatic actors such as the Canadian ambassador.

Electricity

The electricity blackout of August 2003 focused attention squarely on electricity reliability, particularly reliability in the context of electricity market restructuring in the United States and in the context of Canada-US electricity market interdependence and integration. On August 14, 2003, an estimated 50 million people in the Northeastern and Midwestern United States and in Ontario were left without power. For some in the US, power was not restored for two days, and for some in Ontario, power was not fully restored for more than a week. This crisis illustrates the potentially greater role of public service transgovernmentalism where the urgent situation results in common problems across the border.

In contrast to the NEP, where world oil crises resulted in policy divergence, the August 2003 blackout posed a common threat to Canada and the United States. Rather than bilateral conflict and the severing of working-level contacts, the focus of transgovernmental relations was on information sharing and collaboration and the predominant mechanism was at the working level. The two countries established a joint working group, the United States-Canada Power System Outage Task Force, to investigate the cause of the blackout and to recommend how to decrease the possibility of such outages in the future. Officials from both Canadian and the American energy, security, and law enforcement departments and agencies were members of this group. The Task Force's investigation revealed that the blackout was largely preventable and that failure of a number of electricity sector players to comply with voluntary reliability standards established by the North American Electric Reliability Council (NERC) was a strong contributing factor to the incident. The Task Force's final report called "first and foremost" for reliability standards to be made mandatory, with significant penalties for failure to comply.³⁷ The development of a cross-border framework within which to establish reliability standards is largely being undertaken at the working level via informal exchanges (e.g., a technical workshop involving Canadian and American energy officials was held in late fall 2004 on the subject).

Alaskan natural gas

In the natural gas sector, the selection of a pipeline route to bring Alaskan (and Canadian) gas to the US has become an increasingly important bilateral energy issue, and one that generates some tension between Canada and the United States. Gas reserves in Alaska are estimated at 100 trillion cubic feet, a quantity that could supply the American market for 50-60 years. There were two potential pipeline routes under consideration to bring gas to the lower 48: the Alaska Highway project, which would travel via a land route in Alaska across the Yukon and into Alberta, and the Mackenzie Valley route, which would travel across the Beaufort Sea and then south along the Mackenzie Valley to Alberta. Either route would bring the gas to Alberta, at which point a pipeline would move it to Chicago.

The Canadian government and the Bush administration both adopted route neutral positions. Meanwhile, Congress was intent on mandating the Alaska route and sought to create a pipeline subsidy and a price subsidy for Alaskan North Slope gas. The Canadian government expressed the position that the choice of route is ultimately one for the private sector to make in letters to the Bush administration, the media, and Congress. The Canadian government also pointed out that subsidies could depress natural gas prices in other markets such as Alberta, which are subject to market prices.³⁸ Given the ownership structure of the oil and gas industry, US companies with considerable interests in the Mackenzie Delta aligned with the Canadian government to press Washington on this file.³⁹

The Energy Policy Act of 2004 prohibits the Federal Energy Regulatory Commission (FERC) from approving the northern route through Canada, and includes loan guarantees for pipeline construction (it does not include gas price subsidies). The House of Representatives passed the bill in June 2004, but the Senate had not at time of writing.⁴⁰ Prospects for comprehensive energy legislation appear slim, given the regional obstacles to passing a comprehensive bill through a splintered Congress and strong opposition to a liability waiver for manufacturers of methyl tertiary butyl ether, a gasoline additive; moreover, the House Energy and Commerce Committee Chairman is said to be according more priority to other issues for 2005.⁴¹

These bilateral tensions were predominantly addressed via formal diplomatic channels rather than mechanisms at the

working level. Canadian ambassador to the United States, Michael Kergin, expressed these positions repeatedly in letters to the US Secretary of Energy, the Under Secretary of State for Economic, Business and Agricultural Affairs, in a letter to the Wall Street Journal, and in a letter to the co-chairs of the House-Senate Conference on the Energy Policy Act of 2003.⁴²

The Arctic National Wildlife Refuge

The Bush energy plan proposes to open up drilling in the coastal plain of the Arctic National Wildlife Refuge (ANWR) in Alaska. While opposition in the Senate has thus far thwarted exploration and drilling in ANWR, the results of the 2004 congressional elections may have diluted opposition sufficiently for Congress to enact legislation in line with the president's energy plan. For Canada, energy activities in ANWR raise important domestic concerns. The Refuge, which borders on the Yukon, is pristine environmental land and its coastal plain is the summer migratory destination for the Porcupine caribou, which spend their winters in the southern part of the refuge and in Canada. In the summer calving season, they migrate to ANWR's coastal plain, which provides an abundance of vegetation and safety from predators. Porcupine caribou are central to the culture and subsistence of the Gwich'in ("people of the caribou") First Nation people, that live in northeast Alaska and northwest Canada. The Gwich'in people have actively opposed drilling in ANWR, and have made numerous representations in Washington, testifying at congressional hearings and meeting with congressional staff. The Canadian government supports the Gwich'in in their efforts and Ambassador Michael Kergin has urged the United States to protect the refuge.⁴³ Transgovernmental relations regarding ANWR appear to support the claim that where interests diverge between Canada and the United States, formal bilateral channels will prevail over transgovernmentalism at the working level.

Discussion and conclusions

This article began by pointing to the shortage of systematic, theoretical, and empirical research on working level arrangements and institutions in Canada-US relations. It aimed to begin to address this theoretical and empirical gap by developing a conceptual framework and exploring considerations shaping the pattern of transgovernmental relations prevailing in a given policy field.

The case of energy tends to support the conceptual framework developed in this article. Table 3 below reproduces Table 1, with the energy sector transgovernmental relations discussed in the previous section summarized in parentheses in its body. As the table shows, where there is little policy coordination, as in the case of the National Energy Program, drilling in the Arctic National Wildlife Refuge or pipeline routing and pricing for Alaskan natural gas, transgovernmental relations tend toward formal bilateral political channels. In contrast, where the focus is on collaboration or policy coordination, informal exchanges via such mechanisms as the Energy Consultative Mechanism or the Canada-United States Power System Outage Task Force appear to prevail.

Table 3: Policy Coordination and Transgovernmental Relations

| Degree of Policy Coordination | Transgovernmental Mechanisms | | | | |
|---|--|--|--|----------|---------------------|
| | Bilateral Political Executive or Legislative Relations | Informal exchanges, conferences, working groups, etc. | Mutual recognition agreements, exchanges of letters/notes, protocols, etc. | Treaties | Joint organizations |
| Divergence (no coordination) | ✓ (NEP, ANWR, Alaskan gas) | ✓ | | ✓ | |
| Information sharing and collaboration Coordination | | ✓ (ECM, Power Outage Task Force) ✓ (ECM, electricity reliability standards) | ✓ ✓ (MOU between the NEB and FER) | | |

The nature of the crisis and urgency surrounding the NEP and the August 2003 electricity blackout appear to have conditioned transgovernmental activity. In the case of the former, the interests pursued by the Trudeau government ran counter to those of the Reagan administration, leading to both the pursuit of divergence and the dominance of bilateral political relations to resolve the ensuing conflict. In the electricity blackout, in contrast, the crisis resulted in a shared problem for Canada and the United States. Although the creation of the task force was announced via

bilateral political channels, Canadian and American public servants took the lead in the investigation and continue to work on policy coordination in this area.

The table also shows the predominance of informal exchanges between public servants when the focus is on collaboration and coordination, as in the case of the Energy Consultative Mechanism. Finally, the Canada-US Free Trade Agreement and the North American Free Trade Agreement provide illustrations of the role of treaties in achieving harmonization, in the case of energy, harmonization of the basic bilateral energy trade framework.

This initial analysis is admittedly very preliminary in nature. It is my hope that further investigation in this vein will help to build a body of research that can ground a subsequent stage of theoretical and empirical work. This next stage could query a range of pertinent theoretical concerns. These could include examining the influence of increasing continental economic integration on bilateral Canada-US transgovernmental relations. In the energy sector, for example, the North American Energy Working Group (NAEWG) is a new transgovernmental forum at the trilateral level. In early 2001, US President Bush, Prime Minister Chrétien, and Mexican President Vicente Fox agreed to collaborate more closely on energy issues. Following on this interest, in March 2001, then energy ministers Ralph Goodale (Canada), Ernesto Martens (Mexico), and Spencer Abraham (United States) committed to the goal of closer collaboration and agreed to create the North American Energy Working Group, a working group of national representatives focusing on continental energy issues. The NAEWG is composed of energy officials from the three member countries and is jointly chaired by Natural Resources Canada, the US Department of Energy, and the Mexican Secretariat of Energy. The NAEWG's goals are to "foster communication and cooperation among the governments and energy sectors of the three countries on energy-related matters of common interest, and to enhance North American energy trade and interconnections consistent with the goal of sustainable development, for the benefit of all".⁴⁴ Working within domestic and international policy, regulatory, and institutional frameworks, the NAEWG seeks to identify factors and issues affecting energy development, production, transmission/transport, distribution and consumption.

The Bush administration seems to favour a trilateral approach to North American energy relations.⁴⁵ If American emphasis on trilateralism crowds out attention to bilateral energy issues, this could prove problematic for both Canada and Mexico, albeit for different reasons. For Canada, many energy issues are predominantly bilateral and pertain to managing Canada-US energy market integration in the context of trade liberalization and energy market deregulation. To the extent that American trilateralism crowds out opportunities to address bilateral Canada-US matters, this could erect new challenges for Canada in its efforts to manage the Canada-US energy file.

Subsequent research on transgovernmentalism could also query the extent and nature of the relationship between transgovernmental relations and transnational relations (i.e., nongovernmental actors' pursuit of policy interests). Transgovernmental networks do not exist in isolation from transnational networks, the role of transnational networks vis-à-vis transgovernmental networks must be considered. What is the nature of interactions between these two sets of actors? For example, what is the effect on bilateral relations and policy-making of corporations or non-government organizations (NGOs) attending as observers or making representations to transgovernmental meetings?⁴⁶ By what means and to what effect do nongovernmental actors from the private and civic sectors seek to influence policy decision-making via interest representation to transgovernmental channels?

Finally, subsequent research would do well to consider the influence of differences in the domestic policy and institutional settings between Canada and the US in shaping transgovernmental relations (e.g., parliamentary versus congressional government, partisan versus neutral public sector traditions, differences in jurisdictional arrangements, etc.). The potential influence on the conduct of bilateral Canada-US transgovernmental relations of international or multilateral regimes and institutions in specific issue areas will also need to be theoretically and empirically fleshed out.

This is an ambitious research agenda to be sure. "Bringing the transgovernmental in" to public administration will constitute a significant scholarly undertaking in the years to come. This inquiry is sorely needed and will broaden theoretical and empirical understandings of the influence of globalization and regionalization on public administration. Such learning would permit both enhanced academic understanding of contemporary public administration and would make a solid contribution to the practice of public administration today.

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2 The empirical focus of this article is the federal government.

3 Christopher Dunn, ed., *The Handbook of Canadian Public Administration*. (Toronto: Oxford University Press, 2002).

4 G. Bruce Doern, Leslie A. Pal, and Brian W. Tomlin, eds., *Border Crossings: The Internationalization of Canadian Public Policy* (Oxford University Press: Toronto, 1996), 5.

5 Anne-Marie Slaughter, "The Real New World Order," *Foreign Affairs* 76, 5 (1997), 183-197 and Anne-Marie Slaughter, *A New World Order* (New Jersey: Princeton, 2004).

6 This section draws on a literature review prepared in 2003 by the author for the Canada School of Public Service's Action Research Roundtable on Managing Canada-United States Relations.

7 See, for example, G. Bruce Doern, "Towards an International Antitrust Authority? Key factors in the Internationalization of Competition Policy," *Governance* 9, 3 (1996), 265-286; D. Esty and R. Mendelsohn "Moving from National to International Environmental Policy," *Policy Sciences* 31, 3 (1998), 225-235, and D. Vogel, "The Globalization of Pharmaceutical Regulation," *Governance* 11, 1 (1998), 1-22.

8 See, for example, Steven Bernstein and Benjamin Cashore, "Globalization, Four Paths of Internationalization and Domestic Policy Change: The Case of Eco-Forestry in British Columbia, Canada," *Canadian Journal of Political Science* 33, 1 (2000), 67-99; R.M. Campbell and Leslie A. Pal, *The Real Worlds of Canadian Politics: Cases in Process & Policy*, 3rd ed. (Peterborough: Broadview Press, 1994), Chapter 4; S.J. Kobrin, "The MAI and the Clash of Globalizations," *Foreign Policy* 112 (1998), 97-109, and R. Price, "Reversing the Gun Sights: Transnational Civil Society Targets Land Mines," *International Organization* 52, 3 (1998), 613-644.

9 See, for example, Stephen Clarkson, *Uncle Sam and Us: Globalization, Neoconservatism, and the Canadian State* (Toronto: University of Toronto Press, 2002); Grace Skogstad, "Agricultural Policy," in Doern, Pal and Tomlin, eds., *Border Crossings*, 145-166, and Linda Weiss, *The Myth of the Powerless State* (Cambridge: Polity Press, 1998).

10 See, for example, Keith Banting, George Hoberg, and Richard Simeon, eds., *Degrees of Freedom: Canada and the United States in a Changing World* (Montreal: McGill-Queen's University Press, 1997) and George Hoberg, ed., *Capacity for Choice: Canada in a New North America* (Toronto: University of Toronto Press, 2002).

11 Grace Skogstad, "Globalization and Public Policy: Situating Canadian Analyses," *Canadian Journal of Political Science* 33, 4 (2000), 827.

12 In the deliberations of the Action Research Roundtable on Managing Canada-US Relations, numerous public officials maintained that it would be virtually impossible to fully catalogue or comprehensively track cross-border activity by Canadian public servants with their US counterparts. Nonetheless, the Roundtable prepared a compendium of cross-border activities and contacts at both the federal and subnational levels. The document should be made available shortly by the Canada School of Public Service.

13 See, for example, Peter Aucoin, *The New Public Management: Canada in Comparative Perspective*, (Montreal: Institute for Research on Public Policy, 1995); Sandford Borins, "Transformation of the Public Sector: Canada in Comparative Perspective," in Christopher Dunn, ed., *The Handbook of Canadian Public Administration*. (Toronto: Oxford University Press, 2002), 3-17, and Donald J. Savoie, Thatcher, Reagan, Mulroney: In Search of a New Bureaucracy (Pittsburgh: University of Pittsburgh Press, 1994).

14 Slaughter, "The Real New World Order" and Slaughter, *A New World Order*.

15 This spectrum is adapted from Wendy Dobson, *Economic Policy Coordination: Requiem or Prologue?* (Washington, D.C.: Institute for International Economics, 1991).

16 The first three categories draw from Slaughter, "The Real New World Order."

17 Joint organizations can be classified according to the extent to which they handle matters of high versus low policy. The former institutions are comprised of political members, while membership in the latter tends to involve individuals possessing specialized technical expertise. Most bilateral organizations fall into the latter category: they are made up of public officials and/or of members with "special qualifications" from outside the government. They focus on technical matters at the administrative level, paying only limited attention to matters of high policy (William R. Willoughby, *The Joint Organizations of Canada and the United States* (Toronto: University of Toronto

Press, 1979), 12).

18 G. Bruce Doern and Brian Tomlin, "Trade-Industrial Policy," in Doern, Pal, and Tomlin, eds., *Border Crossings*, 167-187.

19 This section examines the oil, natural gas, and electricity sectors and focuses on the federal level only. A full treatment of all energy commodities and sources at both the federal and sub-national levels is beyond the scope of this article.

20 This section draws on Monica Gattinger, "Power in the Canada-US Relationship: the Politics of Energy," invited paper presentation to *Relating to the Powerful One: How Canada and Mexico View their Relationship to the United States*, a trilateral seminar organized by the Weatherhead Center for International Affairs at Harvard University, the Department of International Relations at the Instituto Tecnológico Autónomo de México, and the Norman Paterson School of International Affairs at Carleton University (Cambridge, Massachusetts, May 5-6, 2003).

21 Paul G Bradley and G. Campbell Watkins, "Canada and the U.S.: A Seamless Energy Border?" *C.D. Howe Institute Commentary*. No. 178 (April) 2003 (Toronto: CD Howe Institute, 2003).

22 Ibid.

23 Ibid.

24 1 terawatt-hour = 109 kilowatt-hours.

25 The British thermal unit (Btu) enables quantities of different energy sources (oil, gas, electricity, etc.) to be converted into a common energy measurement. One Btu is equivalent to the amount of heat needed to increase the temperature of one pound of water by one degree Fahrenheit.

26 North American Energy Working Group, *North America—The Energy Picture*. 2002.

27 Ibid.

28 Ibid.

29 Ibid.

30 Bruce Doern and Monica Gattinger, "Another 'NEP': The Bush Energy Plan and Canada's Political and Policy Responses," in Norman Hillmer and Maureen Appel Molot, eds. *Canada Among Nations 2002: A Fading Power*. (Toronto: Oxford University Press, 2002), 74-96.

31 Claudia Cattaneo, "U.S. companies have altered energy scene." *National Post*. 5 May, 2003 FP3.

32 Joseph M. Dukert, "The Evolution of the North American Energy Market: Implications of Continentalization for a Strategic Sector of the Canadian Economy," *American Review of Canadian Studies* 30, 3 (2000) 349-359.

33 National Energy Policy Development Group, *Reliable, Affordable, and Environmentally Sound Energy for America's Future*. (Washington: US Government Printing Office, 2001).

34 Spencer Abraham, "Supply Diversity" Excerpted from U.S. Energy Secretary Spencer Abraham's remarks 27 June 2002 to the American Petroleum Institute in Dallas Texas. *The Daily Deal*. July 18, 2002.

35 National Energy Policy Development Group, *Reliable, Affordable, and Environmentally Sound*, 8-8 to 8-10.

36 Memorandum of Understanding Between National Energy Board and Federal Energy Regulatory Commission, 10 May 2004.

37 United States-Canada Power System Outage Task Force, *Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations*, 2004.

38 Michael Kergin, Ambassador Kergin's Letter to [Secretary of Energy] Spencer Abraham, September 5, 2001; Ambassador Kergin's Letter to [Under Secretary of State for Economic, Business and Agricultural Affairs] Alan P. Larson, September 17, 2002; "Trust the market (and Canada)," Letter to the *Wall Street Journal*, *Wall Street Journal*, 15 May 2002, and Ambassador Kergin's Letter to Rep. W.J. Tauzin and Sen. P. Domenici, September 12, 2003.

39 Claudia Cattaneo, "Energy ties." *National Post*. 14 March, 2003, FP6.

40 In October 2004 the House of Representatives detached the pipeline provisions from the comprehensive bill and included them in a military construction appropriation bill. The Senate had not approved the bill at time of writing.

41 Darren Samuelsohn, "Barton may shelve energy next year for Clean Air Act debate," *Environment & Energy Daily*, 13 October 2004.

42 Kergin, Ambassador Kergin's Letter to [Secretary of Energy] Spencer Abraham, Ambassador Kergin's Letter to

[Under Secretary of State for Economic, Business and Agricultural Affairs] Alan P. Larson, “Trust the market (and Canada),” and Ambassador Kergin’s Letter to Rep. W.J. Tauzin and Sen. P. Domenici.

43 Kergin, Ambassador Kergin’s Letter to Rep. W.J. Tauzin and Sen. P. Domenici.

44 North American Energy Working Group, North America, ii.

45 American Ambassador to Canada Paul Celucci reportedly lauded the North American Energy Working Group at a reception for officials that had participated in the July 2003 NAEWG and ECM meetings, which were held back-to-back in Ottawa. He did not seek to highlight the work of the long-standing Energy Consultative Mechanism in his remarks.

46 In this vein, the North American Energy Working Group held a trilateral meeting in Washington to which private sector members of the Canadian, American and Mexican energy markets were invited to submit input regarding a number of reports prepared by the NAEWG.