

BUILDING WITHOUT ARCHITECTURE

BIG Conference

Carleton University and University of Ottawa

September 25-27, 2014

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The Take-Aways

- Rigid, inflexible Type I Governance has become entrenched at borders— will remain that way.
- The architecture of governance behind and across borders is being built, a lot of it as Type II.
- Type II governance reflects the peculiar experience in North America with federalism—“the laboratories of democracy.”
 - We can see it evolving from the DNA of recent initiatives.
- Asymmetry between states
 - Aversion to supranational institutions

Islands of Governance Theorizing

- ***European Union studies***: Multitiered, multi-level governance; network governance; consortio and condominio
- ***International relations***: Multilateral cooperation; global governance; fragmentation; multiperspectival governance; regime development.
- ***Federalism***: Multiple jurisdictions; multi-level government or governance; multicentered governance; matrix of authority; decentralization; competing jurisdictions; market-preserving federalism

Too Many Islands...

- **Local government:** Multiple local jurisdictions; fragmentation vs. consolidation; polycentric governance
- **Public policy:** Polycentric governance; governance by networks; multi-level governance
- **Globalization:** Retreat of the State, Perforated State, Hierarchical Sovereignty

Source: Liesbet Hooghe and Gary Marks, "Unraveling the Central State, but How? Types of Multi-level Governance," *American Political Science Review* 97, no. 2 (May 2003):233-243.

Punch lines from Theorizing

- These literatures share a basic postulate: dispersion of governance across multiple jurisdictions is *more flexible* than concentration of governance in one jurisdiction.
- Resilient, adaptable, survivable, responsive, democratic, self-organizing, self-correcting.

Types of Multi-level Governance

Type I

- General-purpose jurisdictions
- Nonintersecting memberships
- Jurisdictions at a limited number of levels
- System-wide architecture
- Eg. Federalism

Type II

- Task-specific, specialized jurisdictions
- Intersecting memberships
- No limit to the number of jurisdictional levels
- Flexible design
- Eg. Functional, overlapping, and competing jurisdictions. Networks.

DHS as Dysfunctional Type I

- Bureaucratic work in progress.
 - 22 Agencies, 240,000 employees
- Outreach to sub-feds, first-responders
- Fusion centers (72) to synthesize flow and gathering of information.
- DHS morale worst in Federal Government.
 - Many acting, and vacant senior positions.
 - Turf battles over basic DHS function being lost to other agencies, especially vis the Intelligence Community.
- Significant expansion of transgovernmental networks.



DHS and Type I

- Despite efforts to engage state and local officials, DHS distinctly statist.
- General-purpose jurisdictions
- Nonintersecting memberships
- Jurisdictions at a limited number of levels
- System-wide architecture
- Some dispersion of governance, and creativity, but into traditional forms that are inflexible, rigid.
- Hence, basically one size fits all border policy for every crossing.

Alphabet Soup of Border Measures



Security Industrial Complex?

- DHS has done a lot of work with state and local.
- Fusion centers
- Equipment and communications for first responders
 - Militarization of local police
- Don't think we've done enough thinking about how extensive this transgovernmental network actually is

CEC as Type II (bundled?)

- NAFTA Side Agreements never intended as Type I agreements.
 - Devoid of binding institutional governance mechanisms.
- Yet, multiple Type II governance patterns have emerged in the 20yrs of CEC activities.



CEC as Type II (bundled)?

- Often see Type II activity embedded or flowing from Type I.
 - Bundled epistemic and intergovernmental networks.
 - All shaped by Type I activities
- Toluca NALS, commitment to “revive” CEC.



Sub-Federal Activity as Type I or II?

- State and provincial activism.
 - Traditional intergovernmental linkages
 - Western Premiers/Governors Meetings.
 - Council of State Governments (Canadian participation).
 - Trade and economic missions abroad.
- Traditional Type I activity—
 - Byproduct of power sharing among jurisdictions in a limited number of levels: international, national, regional, meso, and local.



Sub-federal Activity as Type I or II?

- Internationally, there is plenty of civil society and non-state stakeholder networking in several policy areas:
 - Environment/climate change
 - Keystone, www.350.org, NRDC, Pembina.
 - Trade
 - Chamber of Commerce, trade associations, Public Citizen, organized labor.
- But, very little Type II governance developing as a result of interactions between sub-feds and non-state actors.
 - Surprising, particularly in Canada, where so much of Canada's trade policy positions is influenced by provinces.

NALS as stimulating Type II?

- First blush, NALS looks like Type I, intergovernmental governance.
- But, agenda and process of Summit remain tied to the Security and Prosperity Partnership.
 - SPP defunct in 2009
 - But agenda lives on and has stimulated Type II governance
 - Again, Type II often embedded in Type I initiatives.



SPP as NALS' DNA?

- Genetic material for the Toluca Deliverables remains the SPP.
 - “progress” has often meant Type II governance
 - Task-specific, intersecting memberships, no limits to jurisdictional levels, flexible design.



North America and Three “Noes”

- Integration initiatives, but....
 - No Disputes
 - No Legislation
 - No Money
- Gives way to SPP
 - Inherently lends itself to flexible, Type II governance.



Toluca Deliverables and DNA

- **INCLUSIVE AND SHARED PROSPERITY**

- Creating a North American Trusted Traveler Program, allowing vetted individuals to travel more easily between our three countries.
- Harmonizing trade data, consistent with international standards, to make it easier for companies to do business in our three countries.
- Joint Investment and Tourism Cooperation including exchanging best practices.
- Creating a North American Transportation Plan, starting with freight planning.
- Exchanging information on our strong bilateral border initiatives.
- Strengthening trilateral regulatory cooperation in order to ease burdens on business.

- **INNOVATION/EDUCATION**

- Creating a Trilateral Research, Development and Innovation Council, encouraging opportunities for North American leadership and a trilateral network of entrepreneurs, as well as economic development efforts in highly integrated regions, like the Pacific Northwest Economic Region and the CaliBaja mega region.
- Increasing educational exchanges and promoting skills for a 21st century workforce.
- Promoting trilateral cooperation on women's empowerment and entrepreneurship.

Toluca Deliverables and DNA

- **ENERGY/CLIMATE CHANGE**

- Holding a North American Energy Ministers Meeting in 2014 in order to define areas for strong trilateral cooperation on energy.
- Supporting efforts to reinvigorate the Commission for Environmental Cooperation.
- Continue trilateral work under the Montreal Protocol to phase down HFC production and consumption.
- Continuing trilateral coordination in the Climate and Clean Air Coalition.
- Declaring North American adherence to high standards in fuel quality, emissions standards, and fuel efficiency for heavy-duty vehicles.

- **CITIZEN SECURITY**

- Trilateral Coordination on emergency management communications.
- Broadening the North American Plan for Animal and Pandemic Influenza to include other health security threats; leverage this collaboration as a model to strengthen global health security.
- Increasing trilateral cooperation to combat importation of counterfeit products.
- Fighting trafficking in persons, including through a trilateral technical-level exchange.

- **REGIONAL, GLOBAL AND STAKEHOLDER OUTREACH**

- Providing North American support for a Disaster Risk Insurance Initiative for Central America to enhance the ability of the region to respond swiftly to natural disasters.
- Increasing North American cooperation on energy in Central America and the Caribbean.
- Creating an outreach mechanism to increase stakeholder input, including from civil society.

Structural Asymmetry...

- Asymmetrical power is a fact of life in North America that doesn't exist in Europe.
 - Germany, but hardly to the same degree.
- Perpetual problem of getting US to pay attention, engage the US.
 - When US does engage, Canada and Mexico don't often like and are forced into reactive positions.
- Toluca NALS, February 2014– Obama on the ground less than 7hrs, mostly focused on domestic agenda.
- In context of borders, no EU state is a target like the US.

Elephant in the Room.... Asymmetrical power

- NAFTA buried econ agenda in shallow rules and existing agencies.
 - Did little that was actually binding, in terms of disputes.
- DHS has essentially done the same for security.
 - Public Safety, Gobierno
 - Jeh Johnson more important than the President.
- That agenda is mostly buried in US domestic regulatory processes— Geoffrey Hale.
 - Canada and Mexico are price takers.

Elephant in the Room....

- SPP/NALS institutionally weak
 - Big agenda, cherry-pick deliverables.
- Remain limited by US “Three Noes”
 - No money, no disputes, no legislation
- Smart Borders- response to US demands
- SPP– more reaction to US imperatives
- Beyond the Border- RCC
 - Exit data for US-VISIT
- U.S.-Mexico High-level Regulatory Cooperation Council
 - Both plugged into existing US effort run out of OMB

Theory of the Firm and Integration

- Sought way to understand how asymmetry plays out.
- Corporate finance and M&A literatures. How does asymmetry between firms play out?
- Investment specificity: Who needs one party more than the other?
- Not obvious who “weaker” party depending on the issues.

Hierarchical Sovereignty and Policy?

- Sovereignty is hierarchical. State doesn't care about all policy areas equally.
- Power is dynamic and varies issue by issue.
- Mode of governance most appropriate to each issue area may vary as well

- Type I governance is going to be anchored in the dynamics of asymmetrical power.
- Type II less so.

- Old SPP agenda has many items lending themselves to Type II governance.

Conclusions

- Devolution, yes. But beyond state/sub-state distinctions.
- In presence of strong influence of asymmetries on physical border security (Type I), Type II architecture is where some of the most significant future action will be.
 - Task-specific, specialized jurisdictions
 - Intersecting memberships
 - No limit to the number of jurisdictional levels
 - Flexible design