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Policy Coordination in Federal Systems: Comparing Intergovernmental Processes and Outcomes in Canada and the United States

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Federations exist to divide power and to promote diversity. Nonetheless, in federations interdependence requires degrees of policy coordination across governments. We examine two means of coordinating policies in the U.S. and Canadian federations: administrative and jurisdictional federalism. The former, with its centralized coordinative mechanisms, is thought to produce more uniform national policy outcomes; the latter, operating in the context of non-hierarchical relationships, greater policy variation. An analysis of cases in three policy areas in both countries indicates that despite contrasting coordinative practices, outcomes in actual policies implemented in the two federations are relatively similar. Hierarchical administrative federalism in the United States does not always produce the degree of coordination one might anticipate while a decentralized non-hierarchical system in Canada can achieve surprising degrees of coordination.

The issue of coordinating policies across governments is one of the major intergovernmental challenges facing modern federations. For our purposes “policy coordination” is defined both as “mutual adjustment that causes (governments) to pursue different policies than they would have chosen had policy-making been unilateral” (Webb 1995: 11) and as “the practice of aligning structures and activities to . . . facilitate the likelihood of achieving horizontal objectives, to reduce overlap and duplication, and . . . to ensure that horizontal objectives are not impeded by the actions of one or more units” (Bakvis and Juillet 2004: 8).¹ While federations exist to divide power and to promote diversity, there are areas, whether it be transportation or education, where the coordination of federal and state, provincial and local policies and activities are deemed to be necessary or highly desirable. Furthermore, in modern federations the interdependencies that invariably arise with overlapping responsibilities and activities need to be managed in a

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coordinated fashion, if only to allow the national and regional governments to pursue their objectives.

Different federations have developed a variety of forums and mechanisms for the organization of intergovernmental relations, ranging from settings such as first ministers meetings in Canada and meetings of the various national and regional governors' associations in the United States. As Nicole Bolleyer (2006) has pointed out the degree of institutionalization of these arrangements can vary considerably from federation to federation. So too can the basic approaches that federations take in structuring the modalities of intergovernmental relations, whether, for example bargaining transpires within national legislatures involving a variety of actors or whether relations between governments tend to be hierarchical or nonhierarchical in nature.

In this article, we analyze two different means of coordinating policies and programs across governments—including both formulation and implementation—in two distinct federal systems. In the U.S. federal system, intergovernmental relations are characterized by a matrix of relationships, in which coordination is often achieved through central legislative process or, in its absence, policy convergence through competition. The system includes such key constitutional and institutional features as the separation of powers, federal legislative jurisdiction that is concurrent and paramount over the states, a relatively large number of constituent units (fifty states), and well-developed institutions of central representation of state interests—notably, but not confined to, the U.S. Senate. In the literature on comparative federalism (Maheshwari 1992; Newton 1978; MacMahon 1972; Logan forthcoming), the U.S. system has been characterized as an example of “administrative federalism”, that is, the state governments administer as Congress instructs. However, the reality, as discussed in this article, is much more complex.

In the Canadian federal system, intergovernmental relations are not so much a matrix as a series of dyadic relations: of the executives of the federal government and the executives of the provinces and territories, together, one-by-one, or, occasionally, in regional groups. Coordination is more difficult to achieve because provincial jurisdictional autonomy is protected by constitutional law from many forms of federal encroachment. Provincial legislative jurisdiction is exclusive, and there are few areas of concurrent power. Members of the Canadian Senate are appointed by the federal government and thus lack the legitimacy to represent the interests of provincial populations or governments. Nonetheless, coordination can be achieved through intergovernmental bargaining or, as in the United States, through competitive policy convergence. When achieved through negotiations these deliberations rarely involve the legislative branch. The relatively small number of constituent units (ten provinces, three territories) enhances this form of bargaining. In the literature on comparative federalism, Canada has been characterized as

a “jurisdictional” or “legislative” (Fenna 2007) federation, emphasizing the fact that governments tend to stick to their own jurisdictions with coordination seen as undesirable and often unworkable. Again, as with the characterization of the United States as an “administrative federation”, the reality is far more complex.

In our analysis, we examine summary evidence in three policy areas—health care, environment, and infrastructure provision—to illustrate our argument that despite the use of contrasting institutions, mechanisms, and practices in managing policy development and implementation, policy outcomes in the two federations—at least in these cases—are relatively similar. While it is commonly thought that central coordinative mechanisms (such as joint deliberative institutions, mirror legislation, binding preemptions and regulatory mandates) are a prerequisite to attaining a high degree of consistency and uniformity in programs and benefits delivered throughout a federation, we argue that this can also be achieved through jurisdictional autonomy and bargaining—and even through independent action, mutual adjustment, and competition—rather than central coordination. While in a broad sense this is still coordination, it is akin to Adam Smith’s unseen hand, referring to coordination by the market, and can more accurately be called policy convergence. Still, the practical affect on society may not be greatly different.

Some theorists have postulated that federal systems will over time tend to greater centralization (Fenna 2007), through a gradual accretion of central power, including fiscal power, the accumulation of legislative actions and, in many federations, judicial review. Political culture can also change to favor more coordinated if not standardized outputs from governments, however achieved. Thus administrative federalism can be seen as a natural end stage in the evolution and maturation of federal systems. In this article, we find such theory, once again, to be of limited use. In the Canadian case, in particular, we argue that the federal–provincial relations changed from a cooperative to a competitive mode (Simeon and Robinson 1990). We discuss the possibility of the United States also evolving into a more jurisdictional system, one where there is less dependence on conditional grants and unfunded mandates. This scenario is unlikely to emerge, largely because the intensification of jurisdictional federalism in the Canadian system was triggered by such factors as Quebec nationalism not found, of course, in the United States.

In explicitly linking the administrative and jurisdictional models to the United States and Canada, respectively, there is the danger of exaggerating the differences between the two federal systems. In reality, elements of both models can be found in both systems and their relative importance of these elements has varied over time. Indeed, in the early post-war period much of the policy coordination in the Canadian federation was accomplished through the center using the instruments of conditional grants under the rubric of cooperative federalism. As well, both federations can be labeled “jurisdictional federations,”² where each order of

government is endowed with its own jurisdictional and administrative responsibilities.

Nonetheless, the instruments of coordination associated with the administrative model typically found in the United States, for example conditional grants-in-aid, and “preemptive” or regulatory federalism (Zimmerman 2005), are largely absent in Canada at present. With the possible exception of the health care field, in Canada much coordination is typically achieved through direct negotiation between the federal government and the provinces, even though provinces are somewhat dependent on the federal government for fiscal transfers to finance their programs.

Administrative versus Jurisdictional Federalism

The term “administrative federalism” has proven to be fruitful in understanding the structure and operational dynamics of a wide range of federations, including Germany, Austria, Mexico, Brazil, and the United States.³ It describes the ways in which modern, highly complex federal systems come to orchestrate the financing and implementation of programs involving two or more orders of government, for example, federal, state, and local. Typically, under this model, the overall design of policies and programs is orchestrated at the federal (or national) level, encompassing either the executive and legislature or both, with the sub-national governments assuming responsibility for the implementation and administration of such federally determined policies and programs.

The most formalized and best example of administrative federalism is the German federation, where lawmaking in most policy fields is the responsibility of the national government; the responsibility for administering policy rests in turn largely with the *Länder* (state) governments. Variants of the German system are also used in the Austrian and (with some important qualifications) Swiss federations (Linder and Vatter 2001). A more recently designed and still emerging model that exhibits some aspects of administrative federalism is the European Union, where EU policy directives are binding on member states but, of course, the implementation of these directives depends totally on the actions of the member states (Swenden 2004).

If Germany represents the quintessential “administrative” federation, then Canada likely represents the best example of a jurisdictional federation where each order of government operates within its own sphere, responsible for both policy and administration and where mechanisms for allowing other jurisdictions to influence policy-making at the federal level are largely absent. As noted below, not only has the evolution of Canadian federalism been influenced by the “watertight compartments” legal doctrine, but also among federations it has the most detailed list of constitutional powers held by the provincial and federal governments, respectively. Elements of administrative federalism are far from absent in the

Canadian case, but on a continuum depicting the range of jurisdictional to administrative possibilities, the Canadian example can be placed close to the jurisdictional end while German case can be placed on the opposite pole and the American case somewhere in between.

In our two-federation comparison, the mechanisms of coordination share both some similarities but many contrasts. In the United States, much but not all coordination takes place in Congress, where elected federal officials enact legislation, but in a highly flexible process involving formal and informal negotiation with federal executives including the President, state executives and legislators, and even individual local government officials—not to mention the role of national organizations of state and local governments, mayors, legislators, and so on. There is also no lack of bargaining between administrative agencies at the federal and state levels. In Canada, intergovernmental relations is also a major industry, but is typically dominated by the executives, both elected and appointed. The machinery of “executive federalism” is complex and layered, involving First Ministers, ministerial councils, and frequent meetings of senior officials across the spectrum of policy fields. However, such bodies remain constitutionally informal with little permanent support. Moreover, the legislatures as such are only rarely significant players in intergovernmental matters.

Features of and Departures from Administrative Federalism in the United States

The federal distribution of powers between the federal and state legislatures follows a pattern of exclusive federal powers, a concurrent list of state and federal powers, and the residual held by the states. Largely as the result of the concurrent powers, the federal legislature has occupied much state legislative room over time, through partial or total preemption of state legislative fields.⁴ From the New Deal in the 1930s until the 1970s, state autonomy had eroded, but that trend has been at least partly reversed in the years since then in a number of policy fields (Cf. Smith 2007). As noted, the constitutional separation of powers in the United States has led to what Daniel Elazar called the matrix of intergovernmental relationships (Elazar 1984): the multiple combinations of dealings between the federal President, cabinet secretaries, and other senior administration officials not only with their counterparts in the states, but also with state legislators and federal Congressional representatives and Senators, and their staff.

In the context of simultaneous and often *ad hoc* competition and cooperation, there remains room for choice and dispute. The courts play an important role in resolving disputes; no major intergovernmental issue survives for long without some legal testing. The ability of state and local government to have autonomous programs for social entitlements, in particular, is frequently challenged by citizens,

often resulting in judgments that mandate state-wide, court-mandated equity standards, or which provide the basis for national debate in Congress resulting ultimately in new or revised national standards embedded in federal legislation. In this process, legislative logrolling enables individual legislators to carve out special considerations for states and their localities or other interests while allowing a broader public policy to proceed. In the United States, both legislative drafting and direct appeals to voters are disaggregated tasks, as individual state and federal Congressmen/women and Senators engage with their constituencies to bridge gaps and to make deals involving contentious intergovernmental issues.

As noted, the overall pattern of politics and intergovernmental relations exhibits both competitive and cooperative features. The fifty states provide competitive experimentation for rapid dissemination about good and bad practices in government, in the process creating “races” both to the top and to the bottom (Rom 2006; Kenyon and Kincaid 1991). The same conditions also promote extensive cooperation: the very multiplicity of state and local government ensures that they must cooperate on those matters where region-wide solutions are essential or where efficiency concerns become paramount. The refusal to cooperate might tip the sometimes delicate balance in favor of greater state control over local government and greater federal control over state and local government. Overall, federal–state cooperation has always had a distinctly hierarchical aspect to it, and in recent decades has relied as much on sticks as on carrots to induce cooperation (Kincaid 1990; Posner 2007).

The federal toolkit of intervention takes two broad forms—fiscal and regulatory—and in practice is often combined. The U.S. system remains attached to conditionality in its fiscal transfers, although as a whole the phenomenon of vertical fiscal gap (where the federal government has much greater fiscal capacity than state and local government) that is present in all federations is less severe. States and local governments are less reliant on transfers than constituent units in some federations (but more so than Canadian provinces) and there is less revenue sharing. However, as Ronald Watts has shown, federal support to the states (and through them to local government) is 100 percent conditional, in sharp contrast to Canada, where the estimated conditionality is 26.8 percent for comparable programs (Table 1) (Watts 2008: 107).⁵ What is mixed into the purely fiscal transfer equation in the United States are the regulatory provisions: direct orders or involuntary mandates for state and local administration of specific federal programs to follow specific federal law (e.g., employment equity); cross-cutting regulations affecting all state, or local programs using federal funds (e.g., environment, access to information); cross-over sanctions where a portion or all funds can be rescinded unless the requirements of another program are satisfied (i.e., some degree of voluntary acceptance); and partial preemptions, where federal standards are legislated in place of state law (Stephens and Wikstrom 2009: 142).

Table 1 Comparing Features of Fiscal Federalism, 2004

	Canada	United States
Federal government revenue before transfers (percent of total FSL)	47.2	54.2
Federal government expenditure after transfers (percent total FSL)	37.0	45.9
Intergovernmental transfers (percent of S/P revenues)	12.9	25.6
Conditional transfers (percent of total federal transfers to S/P-L)	26.8	100.0

Notes: FSL: Federal–State–Local (or in Canada: Federal–Provincial/Territorial–Local). S/P–L: State or Provincial/Territorial–and Local. The calculation of transfers for Canada assumes that the Canada Health Transfer and the Canada Social Transfer programs can be classed as unconditional. *Source:* Watts (2008).

In the overall blend of fiscal and regulatory instruments, one can characterize the general trend as toward greater state and local flexibility on the one hand, and for a more standardized approach to accountability, citizen access, procedural justice, and the rules for business, on the other (Posner 2007). Stephens and Wikstrom (2009: 73) refer to the paradoxical tension between the “devolution revolution” on the one hand (affecting so many of the social and other major expenditure programs spawned in the 1960s) and a “centralizing dimension” on the other. The latter is seen clearly in such fields as security, environment and economic regulation. In this respect, Republican administrations are now perceived to be as centralizing as the Democrats (Posner 2007). On the other hand, on policies concerning the rights of gays and lesbians, and family law and policy, conservatives in the United States remain decentralist.

In sum, policy coordination is essentially a product of the bargaining between governments and other interests, but in the context where Congress in particular plays a major role. The shape and nature of federal preemptive legislation will be in part a function of the influence that state and local governments have been able to bear on the federal legislative process.

Features of and Departures from Jurisdictional Federalism in Canada

Essentially a “dual” or jurisdictional federation, Canada is exceptional among federations in the degree to which the details of the powers of the two orders of government are spelled out. In the 1867 constitution the provinces were given jurisdiction over areas considered to be essentially local, private, or (in the context of language and religion) of special value to an established provincial or regional community. These included hospitals, schools, and other forms of education, municipalities, and property and civil rights. The Constitution allocated to the

federal parliament powers over banking and currency, national defense, criminal law, trade and commerce, and interprovincial transportation among others. Crucially, the federal government was assigned the general power to make laws for the Peace, Order and Good Government (POGG) of Canada, while the Crown in the provinces retained both ownership of and jurisdiction over natural resources. Over time, through judicial rulings, the more specific provincial powers tended to prevail over more sweeping federal residual powers such as the POGG provision. As Canada moved into the second half of the twentieth century, the provincial responsibility over health and education also became increasingly important, and expensive. Provincial control over natural resources, intended to provide the provinces with a basic source of revenue, by the latter part of the twentieth century represented for some provinces, especially the energy rich ones, an enormous financial windfall.

The other feature, already noted, that has a major impact on policy coordination is that unlike the United States and most other federations, Canada has few concurrent powers. In the Canadian constitution there are only four areas where there is formal jurisdictional concurrency—agriculture, immigration, contributory pension plans, and the regulation of prices for natural resources—and one area of essentially shared jurisdiction—criminal justice. Finally, as noted, the British Westminster parliamentary model ensures executive dominance of the legislature, through party discipline and the conventions of responsible government and cabinet solidarity. Thus, in Canada, at the federal and provincial level, the executive, and especially the first minister (prime minister in the case of the federal government and premier in the case of the provinces and territories), dominates. The net result is strong governments not only at the federal level, but also at the provincial level, which sharpens concerns with jurisdiction and encourages jurisdictional disputes.

Despite these features of jurisdictional federalism, Canada has enjoyed a significant pattern of intergovernmental cooperation (along with competition). In an era of cooperative federalism after the Second World War, lasting into the 1970s, what were called conditional grant programs helped finance a host of initiatives in the realm of transportation and social policy infrastructure. Using so-called fifty cent dollars, the federal government would provide provinces with funding for projects such as hospital construction, the Trans Canada Highway system and a variety of social programs as long as certain conditions were met and the federal funding was matched. The two largest social program fields, in terms of funds spent, were, first, social assistance (welfare) and related social services—through the Canada Assistance Plan (consolidated in 1966), and, second, health care, through universal and publicly funded and administered hospital and medical care insurance programs, launched in the 1950s and mid-1960s. By 1977, Ottawa and the provinces agreed to drop most conditions and instead use what came to be

called block funding (which is similar, but not identical, to what is meant by block funding in the United States) for most conditional grant programs, with the exception of the Canada Assistance Program (CAP). In return, the provinces, while free to spend the federal transfers as they wished, nonetheless agreed to maintain the integrity of these “mature” programs. Whether or not this integrity has been maintained, remains a matter of lively public and intergovernmental debate, as discussed below.

The era of cooperative federalism began to change with the election of nationalist governments in Quebec able to challenge not only Ottawa’s jurisdictional authority but also its expertise, especially in the realm of social policy. In particular, Quebec began demanding the right to opt out of the conditions imposed by Ottawa on these programs and others, demands to which Ottawa acceded. Other provinces, whose policy and administrative capacity had also been increasing in the 1960s and 1970s, also became concerned about the perceived dominance of the federal government through national spending programs. Quebec’s success in extracting “opting out” agreements from Ottawa did not go unnoticed by the other provinces.

In the period from 1975 to 1995, Canadians witnessed intensely confrontational and disruptive intergovernmental relations, as debates ensued over Quebec’s role in the federation, other matters of constitutional reform, interregional redistribution, national rights, and entitlements, potentially increased autonomy for Quebec/other provinces/aboriginal peoples, and energy and industrial policy, among others. These debates put national unity and the goals of federal integration at grave risk. Nonetheless many of the older cooperative arrangements designed to achieve essential policy coordination remained in place, two key examples being fiscal equalization⁶ and the funding of the Canada-wide health care programs.

In more recent years, Ottawa and the provinces have tried to follow a path of what is described as collaborative federalism, where the two orders of government are seen as partners rather than as competitors with neither subservient to the other, a much less hierarchical relationship in other words. One such development was the Agreement on Internal Trade of 1995 in which the federal government is treated as a party identical to the others (provinces and territories). A “Social Union Framework Agreement” was hammered out in 1999, which established basic parameters and ground rules for launching new federal–provincial programs and for tackling problems such as interprovincial barriers to labor mobility. However, while agreement has been reached on some new joint programs, such as the National Child Benefit, these have not been of the scale of the Canada Assistance Plan, health care, and other such programs of the earlier era. (The issue of health care may be an exception to this trend, and is discussed more fully in the next section.)

Comparing Policy Coordination in Three Cases

In this section, we examine three policy cases to illustrate the patterns noted above. For each policy case we identify and summarize comparable programs in Canada and the United States, comparable in the sense that while the programs may be quite different, the basic policy objectives that the programs are intended to fill are roughly similar. In the discussion section which follows, we will compare, for each of these cases, three aspects of coordination: (i) the degree and nature of interdependence to be managed; (ii) the extent of coordination that is achieved; and (iii) the effect of coordination on the balance of power between the federal and constituent governments.

There are many potential candidates for such examination. Our initial focus explored policy fields that exhibited long-standing patterns of intergovernmental interdependence in both countries, as well as some degree of change in the past decade, relevant to current external and internal forces affecting the systems' capacities to achieve policy coordination. We also sought out policy fields where state/provincial (and/or local) government policy and programs were well established as being the primary actor in administration and implementation, leaving aside fields of interdependence where primary administrative responsibility lies with the central or federal government.

In devising a short list, we surveyed our own recent research into contemporary intergovernmental relations in Canada (Bakvis et al. 2009) and surveyed articles in *Publius*, as well as other recent literature on U.S. intergovernmental relations.⁷ In our first iteration, we chose three social policy fields—education, welfare and health care, and three non-social policy fields—international trade, environmental regulation, and transportation infrastructure.⁸ For current purposes (and partly due to space constraints), we have shortened the list and narrowed the focus to three policy cases: (i) national health care insurance programs; (ii) efforts to reduce greenhouse gas (GHG) emissions; and (iii) the provision of major highway infrastructure. What follows is only a sketch of the details and dynamics of these important areas of intergovernmental relations, but sufficient we trust to illustrate broader trends.

Case 1: Maintaining and Reforming Health Insurance Programs

A cursory glance at policy outcomes belies much similarity between public health care provision in Canada and the United States. Canada has universal, publicly-provided and administered medical and hospital care while the United States relies on a patchwork of private and public insurance plans (the latter being the only member country of the Organization for Economic Co-operation and Development (OECD) without a universal national public program). However, in both federations significant national coordination of public health care

entitlements and of the regulation of private markets has been achieved and sustained: in Canada's case with the legislation and funding programs surrounding public hospital care insurance since 1957, and medical care since 1965 (all provinces included by 1970); in the U.S. case with "Medicare," that is, contributory hospital care insurance and voluntary medical care insurance for the aged, and "Medicaid", public health care insurance for the poor, both legislated by Congress initially in 1965—although only "Medicaid" is in fact an intergovernmental program as such. In both federations the primary responsibility for the delivery of key parts of these entitled services rests with the state and provincial governments. They determine program eligibility, benefits and program administration (in the United States for Medicaid, not Medicare). In both countries, the federal financial contribution to these programs constitutes the largest single set of intergovernmental transfer payments of all federal programs (in 2008 Medicaid alone cost \$203 billion in U.S. federal transfers, 43 percent of total intergovernmental transfers; in 2008–2009 the Canada Health Transfer (CHT) cost \$22.6 billion, 45.3 percent of total intergovernmental transfers).⁹ And, in both federations there has been continuing debates and negotiations among governments over cost containment, minimum national standards, regulatory reform, and potential expansion of the public systems.¹⁰

In Canada, the federal government's long-term emphasis has been on efforts to impose a common template on the thirteen sub-national universal health care administrations (ten provinces; three territories) while containing its own costs and stimulating reform. The *Canada Health Act, 1984* enshrined the five "medicare" fundamentals originating in the 1950s and '60s,¹¹ requiring the provincial/territorial governments to follow these general principles and in particular to ban extra billing by physicians or user fees for hospital services—a key element underpinning the single-payer system (Maioni 2008). The principles and provisions in the Act have only rarely been enforced through the withholding of transfer payments, in a context in which there is strong multi-partisan political support across the country for the universal public system. Federal funds, in any case, now constitute about 25 percent on average of total provincial costs (and had fallen to as low as 11 percent in the late 1990s)—while those same provincial expenditures now eclipse in size any other provincial program, 40 percent or more of total provincial program spending.

In addition to the main CHT, there is some incremental conditional funding and a number of general non-binding framework agreements between Ottawa and the provinces through which the federal government has endeavored to achieve greater accountability, to reduce waiting lists for surgery and other procedures and to introduce innovation in the delivery of health care. These agreements have had limited effect, however, as the provinces have resisted federal efforts at coordination in many reform areas. Thus, while the basic rudiments of the public health care

system in Canada, as originally put in place in the 1960s are still there, the policy area as a whole is not tightly coordinated, certainly less so than the core federal programs in the United States.

In the United States, two recent trends stand out. First is the growing flexibility of the system to state initiatives and reform. Waivers under the Medicaid program first enacted in 1981 allow for state and federal executives to negotiate the movement of funds from medical and hospital care to home and community-based care; these arrangements nonetheless constitute at present only about 8 percent of total Medicaid transfers in recent years (Thompson and Burke 2008). Second is the trend to protect and expand health care insurance coverage by expanding public insurance or more stringent regulation of private insurance. The Clinton Administration's efforts to expand private coverage to the unemployed would have potentially reduced significantly Medicare and Medicaid costs, while also imposing a major new regulatory regime on the entire system (Skocpol 1996). The reforms signed into law by President Obama in March 2010—the *House of Representatives Patient Protection and Affordable Care Act* and the *Reconciliation Act*—are less ambitious in terms of extending public programs than the Clinton proposals, but do implement major reforms to private insurance plans and significant extensions to public programs to greatly extend coverage to the American population. Also noteworthy has been targeted reforms such as new federal funds after 1997 for the State Children's Health Care Program, renewed by Congress in 2007. Finally, competitive federalism remains alive, although severely constrained by federal law since 1974 (*Employee Retirement Income Security Act*), which preempts state and local regulation of the private insurance sector. In terms of public programs, however, a few states have gone ahead on their own to enact and deliver more comprehensive and universal public programs (Dinan 2008).

In sum, both federations have achieved significant degrees of coordination of public health care entitlements and regulated approaches to private insurance, primarily through the use of intergovernmental transfers. Still, the key programs in the United States are more tightly bound and standardized than in Canada, and in both countries, reform of now mature programs has been a key focus for policy-makers.

Case 2: GHG Emission Reductions

Climate change and GHG emission targets has been the key environmental issue in both the United States and Canada since the late 1990s. Both countries took an active part in the 1992 "Rio Summit" that helped to launch international cooperative efforts to identify GHG emissions as a major cause of harmful climate change, and both were active in the negotiation of a Framework Convention on Climate Change under United Nations auspices, leading to the 1997 Kyoto protocol

by which each signatory committed to targets for GHG emission reductions. These developments have occurred in the political and economic context of a highly integrated continental economy, with similar degrees of carbon-intensive activity and very high per capita emissions on a global scale. However, in both countries there is significant and often partisan debate about the nature of the policy problem and the degree of commitment to potential solutions. In addressing these challenges, Canada and the United States have been active in a considerable degree of multilevel, cross-border coordination on strategic approaches to GHG emission reductions. And Canada, in particular remains hugely sensitive to whatever general approach is adopted in the United States, given its significant degree of economic dependence. Still, neither federation has been successful to date in implementing a coordinated climate change strategy.

In the United States, the federal government under Clinton signed the Kyoto Accord but was unable to obtain sufficient consensus in the Senate for its ratification. The Bush administration not only repudiated Kyoto, but also relied on its allies in Congress to block a number of legislative initiatives designed to implement the Kyoto accord (VanNijnatten 2008). To date, there has been no comprehensive federal legislation to regulate emissions, although Congress has funded a number of initiatives, such as biofuel subsidies, with GHG emission reduction as a goal. The real regulatory action has been at the state level. About half of the states have enacted renewable portfolio standards for electricity production; ten states in the northeast are implementing a regional cap and trade scheme; the Western Climate Initiative adopted by seven U.S. states and four Canadian provinces is developing another regional carbon emissions cap and trading system; states such as New York and New Mexico have legislated state-wide emission reduction targets; and California leads the way on tighter vehicle emissions (Rabe 2004, 2007). Meanwhile, the Obama administration has signaled its hope to build upon Congressional efforts to enact a national cap and trade emissions regulation scheme, and the federal Environmental Protection Agency is proceeding with plans to regulate carbon emissions as an industrial pollutant (likely on an industry -by-industry basis) under the existing *Clean Air Act*. The Administration is being challenged by the House of Representatives with alternative measures to amend the *Clean Air Act*, which would forestall the EPA's new regulations. Much such maneuvering can be expected before a stable, national legislative, and regulatory approach is attained.¹²

In Canada, while the federal government did initially ratify the Kyoto Accord, little progress was made toward any kind of binding agreement on firm GHG targets, despite an elaborate and lengthy intergovernmental and government-industry negotiation from 1998 to 2002. Efforts to achieve an intergovernmental consensus were hampered by bitterness over Prime Minister Jean Chrétien's unilateral decisions on Canadian targets at the time of signing Kyoto, by the resistance to the defined

policy problem by Mike Harris' Progressive Conservative government in Ontario, and by the essential non-participation in any national plan by Alberta once the Bush position against Kyoto became clear. These developments all occurred within a context of significant jurisdictional overlap and uncertainty: the federal Parliament may have legal authority (under the "Peace, Order and Good Government" or the Trade and Commerce power) to legislate a comprehensive scheme to cover an emissions trading scheme—even for industrial sectors normally regulated by the provinces such as natural resource production and electricity production. However, this constitutional proposition has not been tested and federal legislation would likely end up in the Supreme Court (Elgie 2008). And, as noted above, there remains significant regional, economic, and ideological conflict over the goals, speed, and ultimate scope of any national approach. In the absence of such strong political consensus, the limited capacity of the intergovernmental system to come up with binding results becomes exposed (Bakvis et al. 2009: 213–217). Then in 2006, the newly elected federal government led by Stephen Harper admitted failure on Kyoto, and also conceded that it would not have ratified the agreement in any case, effectively putting it in the same position as the Bush Administration. As noted, some Canadian provinces have joined with U.S. states on the Western Climate Initiative and one province, British Columbia, has introduced a carbon tax, a scheme opposed by the federal government.

In sum, in the absence of sufficient national political consensus on a coordinated regulatory scheme, both federations have been relying, by default, on the essentially competitive actions of governments to achieve modest results in GHG emission reductions.

Case 3: Provision of Major Highway Infrastructure

In both countries, a network of major highways was constructed through classic "cooperative federalism" by means of cost-shared, highly conditional programs where project decision making came as much through federal pork-barreling as it did through more rational policy development and planning. Intergovernmental relations have been resolutely multilevel with local government organizations and individual local governments being significant players. In more recent years, highway infrastructure renewal programs struggle to keep up with public demand and the replacement of the now crumbling national networks.

In the United States, federal programs to support state and local highway construction serve multiple purposes. The building of the interstate system was a crucial objective in the postwar years and, with allowances made for log-rolling and pork-barreling by Congress, an effective system was constructed—funded significantly by legislated programs of conditional grants. An initial building phase gave way, by the 1970s, to a more targeted renewal and expansion phase, and by

the 1980s to a system-wide maintenance and renewal phase, as infrastructure in place for forty or fifty years began to fail. Always layered onto the straight-forward provision of infrastructure, has been federal policy for the transportation sector and for economic and social development, including urban renewal. This has increasingly taken the form of regulatory objectives, using cross-over sanctions and related measures, to achieve coordination in areas such as highway and vehicle safety, energy conservation, drinking and driving, and drivers licensing requirements including, most recently, an emphasis on “secure” drivers licenses (Richardson and Houston 2008; Dinan 2008).

The *Intermodal Surface Transportation Efficiency Act* of 1991 attempted to curb the conditional and coercive accretions of successive federal programs, by devolving a degree of responsibility to the states. This created the conditions for metropolitan planning organizations to deal more effectively with regional and urban challenges, including “smart growth” strategies (Vogel and Nezelkewicz 2002). In 1998, the *Transportation Equity Act for the 21st Century* pursued similar goals including the provision of greater flexibility to move highway funds to urban transit. However, the regulatory impulse (despite the reforms of the Unfunded Mandate legislation) continues, as does Congressional ear-marking of project funding (McDowell and Edner 2002). The federal economic stimulus packages in the response to the 2008–09 recession have provided some funds to states and local government for “shovel-ready” capital projects designed to keep the construction sector afloat—a welcome but likely temporary contribution to the highway maintenance and reconstruction deficit (Pagano 2009).

In Canada, federal funding for highways has been more sporadic than in the United States, and more often associated with regional development programs (Turgeon and Vaillancourt 2002). In the 1950s and 1960s, federal–provincial conditional cost-shared programs built the Trans-Canada Highway system completed initially in 1965. Under the auspices of the Department of Regional Economic Expansion (DREE) and its successors, from 1969 to about 1988, intergovernmental framework agreements were reached with all provinces, many of which included subsidiary agreements to identify and fund highway system expansions and upgrades. Since 1993 most federal infrastructure funding has been through a specific infrastructure agency, with a much broader focus than traditional highway expenditures alone, and with a more trilateral cost-sharing and management approach, i.e., involving directly municipal government. Since then, the pattern of cooperative project identification and completion has been remarkable for a relative lack of jurisdictional conflict. This provided an effective background for the anti-recession spending for highway projects underway since late 2008 (Young 2009).

The process in both the DREE sets of programs and the successive National Infrastructure programs has been classic executive federalism. Parliament plays little

role in the direction and implementation of the program, and indeed the overall nature and amount of intergovernmental funding has most often been tied integrally to federal budgetary measures. There is little to no room in this for the kind of log-rolling common in the U.S. Congress. Program funding is conditional on specified projects being completed, but there is no attempt to piggy-back regulatory agendas as in the United States. Furthermore, rather than a single national program, each province negotiates a separate bilateral agreement with Ottawa allowing for variations in program spending to reflect preferences of each province and its constellation of municipalities, as well as those of federal politicians from those provinces (the latter often exercised informally through partisan channels). In addition to the Infrastructure programs, two more general revenue transfer programs may be said to contribute to provincial and local government expenditures on highways. These are the unconditional federal funding for equalization to certain provinces, and the revenue-sharing arrangements with municipalities (again negotiated through the provinces) for a portion of federal excise tax on gasoline (Turgeon and Vaillancourt 2002).

In sum, Canada and the United States both have national highway systems that were constructed with federal dollars, and the ongoing maintenance and renewal of that system involve intense multilevel negotiation. The key distinction between the two federations is the significant layering of regulatory objectives onto spending programs in the United States and its absence in Canada.

Discussion and Analysis

In examining the three cases, three aspects of coordination were compared.¹³ First is the degree and nature of interdependence to be managed, in other words, how dependent is each order of government on the other to achieve its goals? Second is the extent of coordination that seems to be achievable, does it extend to mutual adjustments and framework agreement only or does it result in deep agreement involving fully joint actions and binding results? Third, what does the process and outcomes of coordination suggest for broader federal values, in particular, what is happening to the relative balance of power between the federal and constituent governments?

Of the three cases, the interdependence seems most compelling in the highway infrastructure case, at least in the initial stages. Building a national highway system is a classic integrative and nation-building effort, vital to national economic union and development goals, but of course also to local urban and regional development. The two are inexorably entwined in the development phase, less so once the system is more mature. In the GHG emissions case, a single integrated effort to reduce emissions might not be required to achieve national and global targets if the sub-national efforts are ambitious enough, but clearly they have not been so to

date, and moreover national economic integration and global competitiveness likely demands a single regulatory approach to carbon pricing in particular. Health insurance is an area where competitive federalism might seem to have the most scope, as clearly independent insurance schemes could be effectively sustained in each state and province. Here, the imperatives for national coordination relate more to political goals, such as preferences for national standards and equity of treatment across the federation, although interstate/provincial mobility considerations are also important.

The comparison on the extent of coordination achieved is revealing. While overall the United States in general seems to seek a greater degree of coordination relative to Canada, the gap between the two federations is not as great as might be suggested by common characterizations of the U.S. federal system being more centralized than Canada. To put it differently, one might have expected that, given the relative absence in Canada of top down efforts to orchestrate national policies, coordination would be relatively weak. Yet, even in light of the differing goals (and therefore expected outcomes) in the two systems, seen most clearly in the health care case, both federations achieve what in our judgment appears to be similar degrees of coordination: clear national approaches to health care but with significant degree of sub-national flexibility. On the climate change issue, there is convergence at, thus far, rather low levels of coordination. On highways, the era of cooperative federalism made similar strides in the building of national infrastructure systems. While on the whole coordination in the United States does appear to be more tightly managed by the center, especially in regulatory matters, the level of coordination attained is not dramatically different from that found in Canada. Furthermore, a broader and at the same time more detailed analysis of both federations would likely reveal that overall there is greater uniformity between Canadian provinces on dimensions of spending per capita in areas such as education and health care.¹⁴

It is the third aspect of intergovernmental process where one sees the most divergence. The U.S. system is designed to achieve more uniform national results, when there is political consensus within its central government structure to achieve it. Examples of this abound, and in the cases above include the preemption of all regulatory activity by the states in the private health care insurance field, and in the regulatory riders to achieve standardized safety provisions for highways. The requirement of political consensus is demonstrated by its absence on the matter of national GHG emission regulations. In Canada, central government consensus (the power of the executive-in-parliament) can act more coherently and achieve consensus more quickly, but is by design less able to impose its will on the provinces. The federal government cannot legislate to regulate health care in the provinces, but can use its spending power to significant effect. It cannot unilaterally standardize transportation regulation, and is likely bound to a cooperative process

to achieve a pan-Canadian regulatory approach to GHGs. Including the cases presented in this article, the historic accumulation of the design differences between the two federations, applied to successive episodes of national coordination, has tilted the United States toward a more centralized system over time, as less and less room is left for state and local discretion. There has been some oscillation effect from year to year, but the long-term trend seems clear: the balance is tilted in favor of the federal government. In Canada, in contrast, the political culture and institutional support for provincial autonomy, which also can vary, nonetheless has sustained a deeper experience of federal principles.

Conclusion

In the preceding three sections on Canada and the United States and the three case studies it appears that there are different paths to the goal of achieving a degree of coordination between federal, provincial/state, and local governments in different policy fields. Over the past four decades Canada in the main has relied on tax sharing and unconditional transfers between the federal government and the provinces as the main instruments for the financing of major programs. The highways case discussed above is one of only a few instances of highly conditional, cost-shared intergovernmental programs left in Canada. In the United States, the emphasis has been and continues to be on a blend of conditional funding and block grants, but with an overall emphasis on the conditional grants-in-aid with federal oversight, as well as a greater effort at managerial uniformity, orchestrated through congress and often achieved through federal regulation. While certain programs have provided some flexibility for states, others are highly conditionalized, often with mandates and cross-over sanctions. The health insurance case provides evidence of the former, the highways case of the latter, but in both cases there are elements of flexibility and inflexibility. Even under conservative federal administrations there continues to be considerable appetite for promoting national policy goals and having them implemented by the state and local governments or, through them, by non-governmental agents.

At the same time, in Canada the legacy of conditional programs from past eras—"medicare" and the Canada Assistance Program, both dating from the 1960s—continues to shape basic programs in these policy fields, even though the programs in question have long since been transformed into block funding arrangements with few strings attached (Banting 2008). New federal-provincial programs, while relatively infrequent over the past decade, have mainly been the result of lengthy negotiations between Ottawa and the provinces, and the programs have largely consisted of separate but coordinated delivery. The attempts by the federal government since the late 1990s to impose a common reform agenda on the provincial and territorial health care programs illustrate this trend. Since the

1960s, there have also been relatively few new programs, particularly in the social policy field.

Federations need to find ways to encourage essential policy coordination among governments to achieve federation-wide political and policy objectives. While administrative federalism—a primary means for achieving coordination in most federal systems—is to be found in both Canada and the United States, it is more prevalent in the latter, reflecting both differences in federal political culture as well as fundamentally different institutions. What is more interesting, however, is that the convergence in the products of that coordination, as illustrated by the three cases examined here, does not differ nearly as much as the institutional context. A tightly integrated, hierarchical model of administrative federalism is not always as evident as one might expect in the U.S. cases, and where it is, it does not always produce the degree of coordination one might anticipate; that is, greater efforts at coordination from the center may not necessarily result in improved coordination of actual programs or national policy objectives being met.¹⁵ Conversely, the Canadian model only rarely conforms to the characteristics of administrative federalism but nonetheless manages to achieve perhaps surprising degrees of coordination through more decentralized processes, which suggests that a high degree of coordination among governments can be achieved without necessarily depending on a system of administrative or regulatory federalism, a system that generally tends to be dominated by the national government.

In the United States, there remains an extremely lively, parallel discourse of decentralization and competition, often in tension with the desire for (and the requirements of) national policy coordination. Generally, however, the latter tends to predominate when “push comes to shove”. Overall, just as Canada is unlikely to adopt U.S. style oversight and preemption, the United States is unlikely to adopt Canadian style block or unconditional funding any time soon. The role of Congress as a forum and locus for intergovernmental relations, and the legitimacy it enjoys in this respect, constitutes an institutional presence that is unlikely to be displaced by alternative bodies such as the National Governors Association. Furthermore, to the extent that the Canadian model of non-hierarchical policy coordination might serve as a model, it should be emphasized that in Canada there were specific triggers that set the Canadian federation on a non-hierarchical path: the centrifugal role played by Quebec in forcing a much higher degree of decentralization in the federation than would have been the case otherwise. The United States lacks such a centrifugal force.

Finally, in both federations that elusive quality of political will is always an important factor. Even where the central government holds many strong cards in a constitutional and legal sense, a lack of political will or strong national consensus can forestall a nationally coordinated result—this is shown most clearly in the case

of GHG emission policy on both sides of the border. Conversely, a determined federal government with the strong wind of national opinion at its back can achieve significant results despite a rather poor constitutional hand.

Notes

1. These two definitions are drawn from international relations and within government inter-agency cooperation respectively, but in our view are applicable to domestic intergovernmental relations as well. For an excellent review of the varieties of coordination and associated issues see Perri 6 (2004).
2. In the U.S. literature, a strict emphasis on jurisdictional federalism seems to be implied by the term “dual federalism.” The latter term is normally used now in an historic context of political and legal culture prior to the New Deal of the 1930s, but has been invoked by the Supreme Court of the United States since the 1970s. See Stephens and Wikstrom (2007): 132–37.
3. For discussion of this concept and its application in the analysis of various federations see Gunlicks (2003), Lieberman and Lapinski (2001), MacMahon (1972), Maheshwari (1992), Sawyer (1969), and Schwager (1999).
4. For the various types and context of the use of preemption as a federal instrument, see Zimmerman (2005).
5. This assumes that health care transfers in Canada are deemed to be essentially unconditional, as they are by many observers.
6. The goals of the fiscal equalization program are to ensure that all provinces have the wherewithal to deliver public services at reasonably comparable levels with reasonably comparable levels of taxation. Provinces which are found to have a fiscal capacity below the national average are provided with unconditional equalization payments from the federal treasury to close the gap. These payments represent 23.8 percent of total federal transfers in fiscal year 2009–10 and for some provinces make up a significant proportion of their budget.
7. Among the U.S. literature, we found the following especially helpful in identifying recent emerging trends and potentially instructive cases: Dinan, 2008; Krane, 2007; Posner, 2007; Stephens and Wikstrom, 2009, Zimmerman, 2007.
8. Of course, international trade policy is not primarily a state or provincial responsibility, although governments in these two federations share responsibility for economic development and trade promotion. Other potential cases or broad policy fields that exhibit long-standing patterns of interdependence and varying degrees of policy coordination include urban and regional development, immigration settlement and services, public health (in particular related to epidemics), financial services regulation, emergency measures, and criminal law enforcement.
9. U.S. figures in U.S. dollars; Canadian figures in Canadian dollars. Sources: Finance Canada website, accessed September 25, 2009: <http://www.fin.gc.ca/fedprov/mtp-eng.asp>; and U.S. Census Bureau, 2009 Statistical Abstract, Table 415, at website, accessed 25 September, 2009: <http://www.census.gov/compendia/statab/>.
10. For a recent comparative overview, see Boychuk (2008).

11. The five principles of Canadian medicare cited in the Act are: universality, comprehensiveness, accessibility, portability, and public administration. For discussion see Lazar (2006) and Maioni (2008).
12. See Robin Bravender "House Ag Chairman Backs Bid to Block EPA Greenhouse Gas Regs" *New York Times*, February 3, 2010.
13. These three aspects or categories are based on ones used by Lazar (2006) in his analysis of different policy areas in Canada.
14. Simeon and Miller (1980) found considerable convergence in per capita spending by provincial governments in different social policy fields in the period from the mid 1960s–80, a development they largely attributed to the introduction of the federal fiscal equalization program (see note 6 above). This program, still in place, provides unconditional transfers to the "have-not" provinces.
15. Of course some observers would likely contend that the problem is not enough, or not sufficiently effective administrative federalism. Lieberman and Lapinski (2001), for example, argue that in instances where conditions and/or oversight of states has been lacking, as in the case of Aid to Dependent Children under the 1935 Social Security Act, the result has been sharp divergences between states and the compromising of program objectives.

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