Buffett Center for International and Comparative Studies
Working Paper: Energy Series

Multilevel Governance in the North American Oil and Gas Sector

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Working Paper No. 10-003
June 2010

BUFFETT CENTER

The Roberta Buffett Center for
International and Comparative Studies
Northwestern University

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Paper prepared for the conference on "Canadian-United States Energy Issues after Copenhagen: Oil Sands and Energy Interdependence"

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I am grateful to Jesse Dillon Savage for superb research assistance and his work in helping organize this workshop. The workshop was made possible through the generous support of Foreign Affairs Canada. Furthermore, I would like to acknowledge the support of the Buffett Center for International and Comparative Studies, the Initiative for Sustainability and Energy (ISEN), and the Environment, Policy and Culture group (EPC), all at Northwestern University. Finally, my thanks go to Toby Bolsen, Stephen Nelson and the members of the workshop for helpful comments and suggestions.

I. Introduction

The United States and Canada are inexorably linked to each other. Over the course of 2009 the United States exported $205 billion worth of goods and services to Canada, while it imported $225 billion worth.[1] Seventy three percent of Canadian exports in goods had the United States as their destination in that same year.[2] The Free Trade Agreement (FTA) of 1987 and the subsequent North American Free Trade Agreement (NAFTA) formalized and expanded the close economic ties between the two states. Moreover, both states are long standing military allies and at present engaged in confronting common enemies. Socially and culturally, short of an occasional hockey dispute, both states are intertwined. For all these reasons it seems reasonable to view the United States and Canada in terms of an inter-dependent region.

Similarly, with regards to energy, analysts have come to see the region in terms of continental energy interdependence (including Mexico as the third NAFTA partner in this equation).[3] Indeed, given that Canada possesses the second largest oil reserves in the world, Canadian policies with regards energy and the environment will inevitably affect the United States.

Furthermore, since environmental objectives inevitable affect energy policy and vice versa, one would expect both states to try to develop robust

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[1] U.S. Census Bureau, Foreign Trade Division, at http://www.census.gov/foreign-trade/balance/c1220.html#2009

[2] Statistics Canada, at http://www40.statcan.gc.ca/l01/cst01/gblec02a-eng.htm

[3] See, for example, Dukert 2007.

national strategies that integrate energy requirements and environmental objectives. One might even hope that both countries would actively coordinate on the issues of economic policy and environment. Given the shared public concerns about global warming—indeed this is true in both Canada and the United States, despite the fact that Washington did not ratify the Kyoto protocol--energy policy and environmental policy can no longer be separated.[4]

As I will argue in this paper, the two countries have not only failed to coordinate their policies, but they have even failed to develop comprehensive strategies that integrate international environmental concerns with *national* energy policy. Within each country, policy has largely been driven by societal demands and actions. Business interests, environmental groups, and the public at large have all influenced political outcomes but they have done so in a haphazard manner. Governments have reacted rather than steered. This lack of an integrated national strategy on environment and energy, makes international coordination illusory.

This paper suggest that the passive role of government largely derives from their traditional anti-statist position and, most acutely, from their fragmented systems of government. Both systems of government provide multiple veto opportunities to private and public actors who at times oppose federal goals. In this context my paper will focus particularly on Canada, although I conjecture that the argument holds equally true for the United States.

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[4] As Harrison (2007, 94) notes, a majority of the public in both countries favored ratification.

(To get a glimpse of how states might differ from the US federal governments objectives, see the paper by George Hoberg.)

The multiplicity of veto points creates internal contradictions in energy and environmental policy, and it creates difficulties in living up to international obligations. The inability of the federal government to override provincial interests is not restricted to energy policy alone. For example, in disputes following the ratification of the FTA some provincial prerogatives clashed with Ottawa's objectives. However, this fragmentation of decision making power has come to the fore in Canada's failure to meet environmental targets that it agreed to in the Kyoto protocol. More broadly, an analysis of Canada's ability to credibly commit to some international agreements raises questions about the prevailing theory of how institutions and credible commitment are inter-related.

II. Ruling Coalitions and Policy Networks as Explanations of the Policy Process

In a seminal work, some 30 years ago, Peter Katzenstein sought to address the question why national economic policies differed so widely across the globe (Katzenstein 1978). Even among the advanced capitalist countries there was considerable variation in the degree of state intervention in the economy, the nature of state institutions, and the level of cooperation among private actors.

The oil crisis of the 1970s in effect provided the perfect "control" research design. Given that all advanced capitalist countries were severely affected by the

rise in oil prices (which jumped from two to three US dollars to about $40 in less than a decade), each country was faced by a similar exogenous shock. Although the countries varied in the degree of dependence on external resources, none could argue that the shock was not real and severe. Consequently, Katzenstein explained the variation in responses to domestic level variables. Countries differed in the nature of state-society relations and the unity of the policy network. These in turn affected their national economic styles.[5]

Extrapolating from his views one can develop a causal schema to explain why some countries will evince state intervention, and determine whether a policy network is unified or fragmented. Whether or not a country will be predisposed to (neo) mercantilism or non-interventionist liberalism will turn on several other factors. First, historical legacies will loom large. As Katzenstein points out with regards to Germany, the Prussian dominance of the political arena and its authoritarian regime had profound consequences for the nature of state society relations (Katzenstein 1987).

Second, the timing of industrialization will determine whether or not governments will attempt to foster economic development. As Alexander Gerschenkron noted, late industrializers will need a government to protect infant industries, develop a national education system, and most importantly generate the financial means for development. The latter might be done by direct government intervention or by allowing close ties to develop between industry

[5] His insight went on to spawn a large literature on the issue about the continued divergence in these "varieties of capitalism."

and the financial sector (Gerschenkron 1962). [6]

Third, a country's security position might require strong government. Nations that face considerable external security threats are prone to government mobilization of the economy for wartime purposes. The security environment will not only affect the degree of government intervention, but the nature of the threat will affect regime type in the state as well. Large standing armies tend to have different political effects than naval forces given their ability to repress internal dissent.

Finally, cultural legacies will influence societal expectations of state behavior. Some countries will have a history of resistance to the state and laud the championing of individual rights. Others will be more inclined to see virtues in strong government.

On all these dimensions Britain and the United States cluster on one side of the spectrum. They faced few security threats; both had removed royal absolutism at an early date; both were early industrializers (particularly Britain); and neither had a particular affinity with statist ideologies. Conversely, Germany, Japan and France tended to cluster on the other end of the spectrum. They lagged in the industrial revolution (particularly Japan); they had mobilized society to sustain large military establishments; and all three had influential proponents of mercantilist perspectives or statist authority. Historically also they had

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[6] For analyses using the Gerschenkronian model, see Hall's comparison of France and Britain, and Amsden's explanation of South Korean success (Hall 1986; Amsden 1989).

grappled with long periods of royal absolutism and authoritarian government.

Countries differ on a critical, second dimension: the nature of their institutions. Both the institutions of governments and societal institutions can create unified or fragmented networks. The American system of checks and balances provides the archetypical example of fragmentation. Its division of authority between executive and legislative; the presence of two strong legislative chambers; the emergence of activist courts with the powers of judicial review; and the considerable powers of the individual states, make one wonder how any policy emerges from Washington. Conversely, Westminster parliamentary systems present the opposite picture on virtually every dimension. Executive and legislature are of the same color; one chamber dominates; there is no judicial review; and county level government wields only weak powers when compared to the American states.

At the societal level American institutions are fragmented as well. It lacks the peak associations that typify German or Japanese industry. Moreover, shareholding prevails whereas the long term relations between industry and finance in Germany (and many other European countries), Japan, South Korea, etc. are best described as stakeholder systems. The industry-finance nexus is weak and indeed actively discouraged. Additionally anti-trust law militates against excessive market capture. By contrast, in states as South Korea half a dozen chaebol dominate the economy. Finally, states vary in the degree to which decision making is inclusive, coordinating among employers, government and

labor. In the United States this coordination, if present, is arms length at best. In Germany such coordination is enshrined by law. Although these variations were most pronounced in the decades following WW II they continue to considerable extent to differentiate the advanced economies today.[7]

Similar arguments are made by scholars who have focused on the number of veto players in the policy process. As Ellen Immergut notes, any actor whose consent is required to pass a given policy, possesses a veto opportunity (Immergut 1992). The more veto players that are present, the less likely it is that a new policy can emerge. Fragmented systems are thus prone to maintaining the status quo, rather than initiating new policies.[8]

Keeping this typology in mind, one can readily deduce the various countries' responses to the energy crisis in the 1970s. Lacking any tradition of significant government steering of the economy (except in periods of war), the U.S. government never articulated a comprehensive energy plan. Although President Richard Nixon argued for greater energy independence, few measures were put in place to actually do something about the problem. President Jimmy Carter's administration was slightly more ambitious. His administration created tax incentives, as for using solar energy, and freed up funds for the nascent shale oil projects in the Rockies. Those efforts were nevertheless relatively modest and were quickly eliminated when Ronald Reagan came to office.

Even if government had taken on a more activist role, and even if the

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[7] See, example, Börsch 2007.
[8] See also Tsebellis 1995, 1999, 2002; Katzenstein 1987.

American voter had gone along with such policies, it is difficult to see how such policies could be implemented. Fragmented American government provides opponents so many opportunities to exercise a veto that special interests can quickly override national objectives. Similarly, the lack of coordinating mechanisms with society prevents agreement on policy objectives in the private sector. Consensus or co-decision making, Mittbestimmung as the Germans have it, is not part of the American repertoire.

As a consequence, as John Ikenberry notes in his analysis which shares many of Katzenstein's insights, U.S. energy policy sought refuge in the market (Ikenberry 1986). The rise in oil prices would lead to consumer and producer adjustment. Over time, producers would construct more fuel efficient cars (given changes in consumer tastes); turn to alternative sources of energy, since they had now become cost effective; and reduce the level of resource inputs.

The French response provides a telling counter example. France had a tradition of (neo) mercantilist intervention and government support for "champions of industry." Blessed with a relatively unified political system and elite bureaucracy the state's response was to embark on an aggressive plan to make the country far less dependent on oil for generating electricity. After building 56 nuclear plants, all based on the same design purchased from Westinghouse, nuclear energy now accounts for more than 70 % of electricity generation. (It now possesses 59 nuclear plants.

Canada, measured along the dimensions above, must be squarely placed

within the category of liberal capitalist states along the Anglo-Saxon model. Historically, following in British footsteps, it has never been subject to the absolutist governments that typified much of continental Europe. With regards the timing of industrial development it certainly lagged Britain. However, as a medium late developer it could tap into the private capital of British investors and never that to utilize the top down mobilization of capital that accompanied the East Asian development model. Ideologically, British and American political thought, the benign divestment from the empire—reconstituted in the commonwealth, similarly predisposed the country to a limited role for government. Finally, its relative security made the rise of a garrison state unthinkable. In short, the presence of a liberal non-interventionist state was over determined.

With regards its policy network, however, one might expect a more uniform instrumental machinery to be in place. Given the legacies of Britain and its Westminster system, one might expect but a few veto points in the system. Indeed, the British system is sometimes classified as having a single veto point (Weaver). Unlike the British system, however, Canada, as I will discuss in greater detail in section four, has one critical feature that leads to a fragmented policy: the provinces have constitutional guarantees on the matter of natural resources which give them considerable leverage vis-á-vis the federal government.

III. A New Oil Shock? Pressures in the International Energy Environment

Economic incentives to undercut the OPEC quota agreements that befall any cartel and political dissension fractured the cohesion that had been typical in the 1970s. The Iran-Iraqi war required the combatants to produce greater quantities of oil than agreed so as to pay for the costs of the war, further eroding the OPEC goals. Even the price spike brought on by the Gulf War in 1991 was of short duration and the price for a barrel of oil settled eventually almost at $10. Indeed, by 1994 oil in real terms was priced at the level of the 1973 barrel.

Since the late 1990s, however, the price per barrel has increased steadily. By 2008-09 wild variations pushed the barrel up to the $140 range and then down again to $35, with prices more recently settling in between $60-80. At this price level more costly modes of oil exploration have become viable. Oil sands exploration is commonly thought to require a price in the $30-40 frame (Levi 2009, 8), although others estimate that the world market price needs to be even higher to make oil sands profitable. Similarly deep sea exploration is only viable with a relatively stable, high price.

Although the recent price of oil makes such alternative site developments in oil and natural gas viable, the outlook for oil remains problematic.[9] U.S. supply has remained relatively flat with new methods for exploiting old sites only

[9] Recent finds in natural gas might change the non-renewable resource sector considerably. However, the exploration of some of this natural gas is not without critics. Particularly, the shattering of rock layers to release such gas remains controversial given relatively unknown environmental effects. A minor temblor in California raised questions whether nearby natural gas exploration was a partial cause.

compensating for diminishing well capacity but not increasing the overall level of production.

Deep sea exploration, although becoming increasingly feasible, is no panacea either. Even regardless of the recent Transocean-BP oil spill, the prospects for deep sea oil exploration are fraught with unknowns. The Brazilian offshore find, for example, requires deep drilling through thick salt layers. Both technical hurdles and economic cost might thus pose impediments.

Moreover, the Mexican oil industry has stagnated in comparison with other Latin American states (see ISA paper). Keeping the Mexican oil industry under tight national control, by excluding it explicitly from NAFTA provisions, the government might have lost the ability to update its technical and infrastructural base.

These issues confront the North American oil outlook occur within a broader international setting that raises even more challenges. For one, the role of the Seven Sisters has largely been assumed by the sovereign oil companies. By some accounts the latter account for almost 90% of world production today. Their economic and political objectives at times correspond with those of the United States and Canada—not in the least because petrodollars for decades have been invested in the developed markets of the world. But this cannot always be taken for granted, particularly given the ever present political instability in the Middle East.

Second, although the subject of debate, the peak oil thesis cannot be

dismissed. According to the calculations that underlie the model, the peak of world oil production was reached around 2000-2005 (Deffeyes 2005). New oil discoveries and proven reserves have peaked and their levels will start to decline from here on.

Even if the peak oil thesis is mistaken there can little doubt that the demand for oil from the late developing countries, specifically the BRIC countries, is growing rapidly. China in particular has taken the challenge of adequate supply seriously and has started to invest heavily in oil in diverse parts of the world, including buying into the oil sands.

Given these concerns with price volatility, the questions regarding adequate supply, and the political costs of doing business in the Middle East and Venezuela, the prospect of increased supply from the oil sands is attractive to the United States and Canada alike.

Ever since the Nixon administration, energy independence has been an avowed goal of the United States. His argument for energy independence followed in the wake of the Arab oil boycott of the United States, the Netherlands and Portugal, given their support for Israel during the Yom Kippur War of 1973. The development of the Canadian oil fields has thus been critical in providing the United States with a non-Middle East source. As of February 2010, the United States imported more than 2.4 million barrels of petroleum per day from Canada, more than twice the amounts from Mexico and Venezuela, the respective numbers two and three. Saudi Arabia, with 900,000 barrels was the

fifth largest exporter to the United States.[10]

However, given that American business and society use more than 20 million barrels per day a self sufficient U.S. oil market is not feasible. Even with the projected doubling of oil sands production in the next 15 years, the U.S.' needs will not filled by North American supply alone. Nevertheless, it is obvious that while the goal of energy independence is unobtainable for the foreseeable future, the Canadian oil transfers are critically important to meeting part of American objectives.

For its part the U.S.-Canadian oil nexus is welcome to Ottawa as well. Aside from the revenue generated by the oil sales, the overall robustness of the American economy is a shared objective, given that most of Canada's exports have the United States as their destination. In short, oil exploitation in Canada as a whole and in the Albertan oil sands in particular serves common political and economic objectives.

The common interest in further exploitation of non-renewable resources, however, confronts a major challenge. Canada has signed on to very ambitious goals in the Kyoto protocol. Given the connection between the use of non-renewable energy sources and global warming, this logically implies that the federal government should aim to reduce the use of non-renewable energy sources as oil. And even in the United States, which has not signed on to Kyoto, the Obama administration has states that it wishes to reduce CO2 emissions.

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[10] U.S. Energy Information Administration. See http://www.eia.doe.gov/pub/oil_gas/petroleum/data_publications

But while both countries have particular, stated national objectives at the executive level, neither side has generated a comprehensive energy plan that integrates energy policy with environmental concerns. The United States has never had an integrated energy policy, let alone a policy that combined energy and environmental perspectives. Canada, however, at one point did have a federal level, statist, energy plan, but the conditions that gave rise to the National Energy Program were unique and unlikely to return.

IV. The National Energy Program: A Momentary Digression from Market Led Adjustment

The Canadian reaction to the oil crisis and particularly the creation of the National Energy Program (NEP) at face value seems to contradict the earlier argument. According to that perspective, non-interventionist states (sometimes referred to as the Anglo-Saxon model of capitalism), which possess fragmented polities, will resort to market let adjustment rather than neo-mercantilist strategies. As a successor to British rule and given that the Canadian economy was closely intertwined with the American market, one would not have expected a uniform statist policy to emerge. How then did the NEP arise?

The late 1970s, led to a significant victory for Pierre Trudeau's Liberal party. Capturing 147 seats out of 282, the Liberals could rule without contrarian coalition partners that had saddled the Progressive Conservatives. The Liberal base had a virtual lock on the Quebec vote and took a solid majority in Ontario

as well. In the west, the natural resource rich provinces, the Liberals faired far worse, and thus a challenge to the energy interests of those provinces would come at little political cost. Trudeau, moreover, was far more receptive to interventionist policies that some of his political rivals.

The political institutions at his disposal were also less fragmented than those south of the border. A parliamentarian system gave the executive considerable leeway, and the Liberals saw the decisive victory as a mandate to forge ahead. The party rank and file was thus inclined to give Trudeau their support. The federal system was the one element that created a fissure in this political machinery. The Liberals National Energy Policy thus set out to curtail such state privileges.

The NEP largely had three objectives (Jenkins 1986). First, it aimed to diminish Canadian reliance on external energy sources. Second, it sought to regulate prices and share revenues, with more funds going to the federal government. The prices would also be lower than the world market price. Third, it aimed to increase the Canadian participation in the oil industry which till then was dominated by foreign firms.

Two targets thus emerged in the Liberals' plan: the foreign multinationals and the provinces, specifically Alberta. The federal government received a mere 12 % while companies and the provinces roughly split the remainder (Jenkins 1986, 146). Ottawa aimed to redress this significant imbalance.

The NEP, however, was short lived. The drop in oil prices changed the

international landscape and diminished the need for price controls. Moreover, the election of Ronal Reagan in the United States meant that the Liberals were confronted by a president who was ideologically opposed to interventionist strategies and who put pressure on Ottawa to reverse its policy.

Most significantly, and completely in line with our theoretical expectations, the multiple veto points in the policy process allowed private actors to bring down the NEP. Alliances between local businesses and the multinational companies (MNCs) in the West combined with western provincial opposition to stifle federalist attempts at control with American and Canadian MNCs closing ranks.

The NEP in other words was a deviation from common practice rather than a precursor of things to come. It emerged against a particularly serious international energy crisis and coincided with unique domestic conditions. With Trudeau receding from the scene and the Mulroney government coming to power, combined with increased strength of the provinces, the NEP faded into history.

V. Multilevel Governance or a Labyrinth of Veto Points?

The question before us is whether Canada has been able to devise a coherent energy policy that at once recognizes its energy objectives and at the same time acknowledges environmental realities and its international commitments? Unfortunately, the answer must be negative. This is due to two key factors. First, as noted above, Canada lacks a neo-mercantilist historical

tradition. Second, its policy network, although relatively unified given its parliamentary structure, presents the provinces extraordinary powers.

As noted, the statist intervention of the National Energy Program was only possible against the backdrop of extra-ordinary events. Canada, true to its roots in the Anglo-Saxon model of economic policy making, has little taste for the Rhenish, let alone East Asian developmental strategies in which state and private sector conjoin. Trudeau's gambit succeeded due to the dramatic rise in oil prices of the 1980s and the severe economic problems of the time.

Despite the severity of the financial crisis and despite the volatility of oil prices, the Canadian position today is quite different. It has arguably fared better than most of its G-7 counterparts. With oil production at higher levels than in the 1970s, Canada instead stands to benefit from higher oil prices rather than suffer deleterious consequences. In 2008 it produced 3.35 million bpd compared to the 2.11 million bpd in 1980.[11]

But even if the federal government were predisposed to strategic planning the institutional machinery at its disposal is fragmented. While a Westminster type parliamentary system unites executive and legislature, the executive in Canada stands on a precarious basis. Although plurality systems tend to lead to two-party systems, Canada is endowed with several parties in the House of Commons. Moreover, recently no party has won an outright majority. Consequently, Canada is now in its third minority government. Following the

[11] Energy Information Agency figures on world crude oil production can be found at http://www.eia.doe.gov/aer/txt/ptb1105.html

2008 election, the Conservative Party holds only 143 seats out of the 308 Commons seats. The main opposition parties split the rest, with the Liberals having 77, the Bloc Québécois 49, and the New Democrats 37. The minority government thus holds on but must rely on case by case support.

With the parties differing considerable in their level of support per province, parties will thus tend to be more susceptible to regional interests than might otherwise be the case. The Bloc Québécois of course stands as the starkest example, but considering the Conservatives strong base of support in the resource rich western provinces, it is difficult to see that party go against the interests of provinces such as Alberta.

The considerable powers flowing to provincial authorities, however, constitute the most important feature of the Canadian system. This has bedeviled U.S-Canadian international agreements on environment and energy issues, but also on a broad range of trade issues.

The FTA or Canada-US Free Trade Agreement (CUFTA) of 1987 created commitments on both sides to lower barriers to trade. Parallel with developments in the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO), the FTA constituted a major step forward in reducing overt barriers. But like the other organizations, the FTA still confronts less obvious barriers to trade. Devolution of authority to local and regional levels provides ample opportunity for these authorities to utilize non tariff barriers to forestall implementation of federal level policies.

As the veto points literature reminds us the presence of multiple institutional veto opportunities in itself does not automatically translate to policy stasis. It is the combination of veto points and divergence in preferences that matters. If preferences overlap then actors will not avail themselves of blocking opportunities.

When local interest diverge from federal objectives the national commitment to adhere to international agreements become less credible. The American-Canadian dispute on the cross border trade of beer provides a colorful yet telling example. In the dispute major producers on both sides were eager to gain entry into new markets. U.S. producers as Strohs were keen to gain a foothold in the Canadian market. Conversely, the producers of Moosehead, Molson and other Canadian beers hoped to capture some of the sizeable American market. Both sides, however, were stymied by the wide diversity of regulations inhibiting liberal trade. Simon Reisman, appointed by Prime Minister Mulroney to head the Canadian negotiating team, commented that "The Americans are bastards. They're behaving like real thugs these days in protecting their interests."[12] In the United States, individual states differed on distribution standards, mandated locations were beer could be purchased, as well as on the regulations regarding the days and times when liquor could be sold. Even within

[12] As quoted in Clyde Farnsworth, "U.S.-Canada Rifts Grow Over Trade." New York Times, February 18, 1992. See also " Beer Brawls: GATT "Settles" the Market Access Dispute Between U.S. and Canadian Brewers." by Michael Ryan and Teresita Ramos-Soler. Georgetown Institute for the Study of Diplomacy, case 721.

states, counties and municipalities had the right to set their own standards. Similarly, in Canada, there was considerable devolution of standard setting and requirements to the local level. Moreover, local authorities in both the U.S. and Canada had direct financial incentives to be involved with the regulation of liquor trade, even aside from moral and health concerns.

In short, institutional fragmentation coincided with clashing interests between the federal governments, who were both ostensibly committed to honoring free trade, and local authorities who had a stake in maintaining local diversity and local governance. Implementation of federal agreements proved difficult because of resistance at the provincial and local level.

The FTA similarly opens up free trade in energy resources and indeed prohibits restrictions in supply, as stated in article 605 (later absorbed in NAFTA).

> the restriction does not reduce the proportion of the total export shipments of the specific energy or basic petrochemical good made available to that other Party relative to the total supply of that good of the Party maintaining the restriction as compared to the proportion prevailing in the most recent 36-month period…

In addition, the Canadian government would refrain from giving preference to Canadians over American consumers (Courchene 2006, 663-664). At the same time Article 608 permits Canadian subsidies to enhance energy production without such subsidies constituting a violation of free trade (Clarkson 2007, 9). In other words, restrictions on energy production and subsidies were rolled back with Canada committing itself to refraining from supply interruptions to the

United States. The objective was thus to create incentives for higher energy exploitation in Canada and assure unrestricted trade in oil.

Parenthetically, Mexico, by contrast, explicitly resisted internationalization of its oil industry. Invoking Article 27 of the Mexican constitution, the government resisted attempts to open up its energy sector. Chapter six of NAFTA excludes Mexico from those provisions in which Canada had committed itself to maintain the supply to the United States (Cameron and Tomlin 2000, 36-37).

Canada's international commitment at the federal level, however, stands in potential tension with its Constitution Act. That act, and particularly sections 92, 109, and 125 give the provinces proprietary rights (Cairns 1992, 57). Section 92 gives provinces the right to "make laws in relation to *(a)* exploration for non-renewable natural resources in the province…and make laws in relation to the export from the province to another part of Canada .." Parliamentary laws, however, remain supreme.

However, article 109 states

> "All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick…"

In other words the latter section assigns property rights to the provinces. In this

latter interpretation Parliament would not be supreme but beholden to a possible veto from the provinces who opposed such legislation. In this particular case, the FTA did not raise objections in the western energy generating provinces since they, as the United States, had been opponents of the NEP. The FTA assured access to the American market, while the United States would gain greater access to Canadian production and forestall the attempts to reduce the role of foreign multinationals in Canada. In short, in this instance institutional fragmentation did not lead to a veto on federal objectives, as the goals of Prime Minister Mulroney fell in line with those of the energy generating provinces and energy business interests (Verleger 1988 ch.5).

Nevertheless, in effect the federal government has constrained its policy options. On the one hand it potentially confronts provincial authority. In this instance their preferences aligned but this need not always be the case. On the other hand the NAFTA clauses constrain the government at the international level. It is bound to fulfill the specified supply requirements to its American partner. At the same time it can only credibly commit to fulfilling such obligations as long as it has provincial support to do so.

At the present time, the energy producing provinces' interests have not clashed with those provisions in NAFTA. Indeed, with 99 % of Canadian oil exports destined for the United States there is little reason to expect this to change any time soon. However, with non-American businesses moving into the oil sands area, the American orientation might not last forever. For example, the

Chinese sovereign wealth company, Sinopec recently purchased a large percentage of the Conoco-Phillips stake in Syncrude (for more than $4 billion). Earlier it had taken a 10 percent stake in Total's planned Northern Lights project. And in 2009 PetroChina acquired a majority share in leases owned by Athabasca Oil Sands Corp for close to $2 billion.[13]

More likely, however provincial interests will clash with those of the federal government on the issues of royalties, taxation, and revenue sharing. There are various tensions at work. First, Edmonton will wish to retain as much of the revenue as it can rather than see them go to Ottawa. The royalty regime has increased Alberta's share from 37 % to over 47 %, while the federal government's share has fallen more than 10 % to slightly above 12 % (Urquhart 2008, 23). Then there is the question of how provincial revenues should be shared by energy "haves" and "have nots." One could imagine a checkerboard of arrangements between Ottawa and various provinces, leading to what one observer has called bilateral federalism (Courchene 2006, 692). In either of these scenarios the federal government's ability to craft a comprehensive energy strategy will have to be balanced with provincial interests which might run counter to those of Ottawa.

This appears particularly salient when one interjects the connection with global warming into the debate. As a party to the Kyoto protocol the Canadian government committed itself to very ambitious targets. Under the United Nations

[13] Newsline at http://abcnews.go.com/Business/wireStory?id=10354165

Framework Convention on Climate Change (UNFCCC), which was superseded by the Kyoto protocol, Canada committed itself to a six percent reduction of green house gases between 2008-2012. The Conservatives followed up in 2007 by setting a target of 20 percent reduction by 2020 (Rivers and Jaccard 2009, 286). Logically this would seem to require a roll back in the use of carbon emitting, non-renewable energy sources such as oil and gas.

But the provinces are clearly endowed with diverse resource portfolios. Some areas might have an abundance of hydro electric energy or other "green" sources for energy production and would be advantaged by government policies focusing on such clean energy sources. Moreover, provinces that are richly endowed with non-renewable energy sources would face higher opportunity costs for moving away from the use of fossil fuels. Alberta would face higher opportunity costs than provinces which lacked oil reserves. Finally, given the revenue stream generated by oil and gas royalties, provinces such as Alberta will be less inclined to support policies that severely curtail oil and gas exploitation.

The consequences have been clear. With multiple veto points and conflicting interests at the provincial and local levels, Canada has failed to meet its Kyoto targets. Indeed, rather than achieve a reduction of 6% between 1990 and 2008-2012, Canadian green house emissions between 1990 and 2003 actually increased by more than 24 percent, more than 10 percent higher than the United States, which did not ratify Kyoto (Rivers and Jaccard2009, 302).

Federal fragmentation is not the only cause. Population growth and

economic expansion have contributed as well. But the federal support for oil sands exploitation, which now produces approximately 44 percent of Canadian oil, no doubt has played a role in this. Not only has oil exploitation increased but the process of converting heavy sands into conventional oil itself consumes 5 percent of Canada's natural gas (Levi 2009, 11).

Despite federal support for oil sands exploitation, Alberta has opposed federal commitments through Kyoto. While it did not succeed in preventing Ottawa from ratification of Kyoto provincial policies can de facto derail federal goals. Although the federal government is given the formal authority to regulate environmental affairs, its powers are limited by delegation to provincial authorities in areas, such as non-renewable energy sources, that have a direct bearing on environmental policy.

VI. Multiple stakeholders and credible commitments

I have argued then that the presence of multiple stakeholders, each with some assigned authority on areas complicates the ability of the federal government to devise and implement a comprehensive policy which integrates energy and environmental objectives. Indeed, the contest between regional and federal authority raises questions about Canada's ability to live up to some of the international commitments it has taken on.

This explanation strikes me as more plausible than possible rival explanations. Realists, for example, might point to the importance of relative power distributions rather than institutional arrangements. Thus, one might

argue that Canada's repeal of the NEP and the signing of the favorable energy clauses in NAFTA were dictated by the hegemonic position of the United States. Such an explanation, however, could not account for Mexico's ability to withstand American pressure to open up the Mexican market. If the power differential argument held, Mexico would be even less able to resist U.S. hegemony than Canada. Instead, the interests of the energy producing provinces and their ability to influence Ottawa drove Canada's position.

One might also suggest that the contradiction between the federal government's signing on to ambitious Kyoto targets and its energy policy on the oil sands is more apparent than real. That is, one might contend that the federal government never intended to honor its Kyoto commitments, and in fact favored an aggressive energy export policy with little regard to the environment.

But aside from whether such duplicity could be demonstrated in fact this argument does not refute the institutionalist claim that I have advanced. First, counterfactually, if Ottawa's wish to adhere to Kyoto were real, it would not be able to implement restrictive energy policies given the provinces near autonomy on energy issues. Second, it remains difficult to see why Ottawa would sign the protocol, knowing that it was committing to a target it would overshoot dramatically. While the cynic might respond that the federal government merely signed as window dressing to placate public pressure, subsequent abject failure to meet those targets would jeopardize the government's domestic and international reputation.

This discussion of Canadian energy and environmental policy also raises questions regarding the general proposition regarding the implications of fragmented institutions and credible commitment. The standard literature suggests that fragmented policies are weak in creating new policy initiatives. However, once a policy position has been accepted they do not need tend to reverse themselves. Fragmented policies are thus able to credibly commit themselves to a greater extent than unified polities (Cowhey 1993; Martin 2000). Hierarchical governments, or even more so authoritarian polities, are weak at credible commitment because such leaders can easily reverse agreements given the lack of meaningful opposition.

The veto points perspective makes similar claims. The larger the number of relevant actors who can exercise a veto on any policy initiative, the smaller the winset of solutions to which all can agree since it will be more likely that they have a wide diversity of preferences (Tsebellis 1995). However, once adopted that new policy position becomes the status quo. Consequently, moving away from that established status quo will be difficult since all actors will now have to agree on a new policy which has to be Pareto superior to the old position. We can thus infer that getting decentralized political systems to agree on a new international commitment is difficult, but once they do agree to a particular commitment, such states do not back out.

Our analysis of Canadian energy and environmental politics suggests otherwise. Federal policies not only face obstacles at the point of initiation but

also in the subsequent implementation phase. The standard literature on credible commitment assumes that a) fragmented states that sign on to international commitments have secured the support of potential veto players, and b) if veto players' preferences change they are constrained from reneging on the international commitment because establishing a new equilibrium position will be difficult (given the need to mobilize support from the other veto players).

Neither is necessarily the case. Alberta from the beginning resisted signing on to Kyoto, with Alberta's Prime Minister Klein warning in 2002 about dire economic consequences.[14] Moreover, while it might be difficult to arrive at a new policy position that has broad support, the autonomy that local authorities already possess will allow them to de facto resist implementation without establishing a new winset. Indeed, the very nature of the agreement creates incentives to defect. Canada's Kyoto commitment imposes general benefits but targeted costs. Energy rich provinces will thus attempt to free ride and roll the costs of compliance over on others.

In conclusion, Canada faces two contradictions. At one level the federal government's objectives to limit green house emissions are extremely ambitious. However, this ambition stands in contrast to its aim to more fully exploit the oil sands. While this exploitation no doubt generates considerable revenue and greater energy independence, it raises serious challenges given the

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[14] The interview with Premier Klein can be accessed at http://www.ctv.ca/servlet/ArticleNews/print/CTVNews/20021023/klein_kyoto_020101023/20021023/?hub=Canada&subhub=PrintStory

environmental effects of both the use of fossil fuels and the production process itself.

At another level, federal objectives conflict with the goals of energy rich provinces such as Alberta. Even if the federal government manages to solve the tensions between its aims of fulfilling Kyoto commitment and oil sands development, it will confront the institutionally created veto rights that flow to the provinces given the Constitution Act. For the foreseeable future, market led adjustment will thus be the norm rather than government planning-- Plus ça change.

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