Dispute Settlement, Domestic Institutions and Political Integration in North America: A Comparative Study

IMTIAZ HUSSAIN
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Tel. 5727-9800 exts. 2202, 2203, 2417
Fax: 5727-9885 y 5292-1304.
Correo electrónico: publicaciones@cide.edu
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Abstract

Created to cultivate interaction between domestic and supranational economic arrangements/institutions, the North American Free Trade Agreement is in increasing need of arrangements/institutions which bridge political boundaries as well. The document's binational panels, for instance, have been authorized to review domestic duty determinations, but have also dragged domestic political practices, customs, arrangements, and institutions into the supranational arena, in turn exposing potentially deep differences across national boundaries. A comparative study of both basic and complex domestic political structures, affected directly or indirectly by NAFTA's dispute settlement procedures, reveals: a) that as reciprocal relationships increase, arrangements and/or institutions at both levels, domestic and supranational, become more vulnerable; and b) that different experiences across national boundaries may produce uneven degrees of integration. These findings lead to an explorative assessment of political integration stemming from the economic integration currently underway.
Background

Designed to interact with their domestic counterparts, NAFTA’s dispute settlement arrangements raise some sticky political questions: What are some of the domestic practices, customs, arrangements, and institutions impacted in one way or another? How different are these experiences in the three member countries? What are the prospects of economic integration streamlining them to facilitate political integration?

To be sure, membership in NAFTA, as in any other regional trading bloc, requires a number of domestic adjustments, mostly in overall economic policies or specific domestic trade relief procedures. That these adjustments spill over into the political domain has been a logical and theoretical expectation, as well as an empirical explanation, but neither envisioned in the document nor discussed in the booming literature on NAFTA. Having been in operation for three years, NAFTA needs now to be measured in terms of dispute settlement performances, in terms of both what it explicitly states to achieve economic integration, and the ripple effects this may have in non-economic areas. If it seeks to attain economic integration by the targeted year of 2008, what are the implications for political integration?


4Some examples in fn 7.


Three substantive sections examine those issues and questions. In the first, domestic political institutions are compared in a very general manner. Some of these institutions are very basic, others slightly more complex. Those chosen do not represent an exhaustive list, but only to offer some preliminary insights. The second section focuses on the patterns of interest mediation. Most, if not all, trade complaints between countries involve, oftentimes begin with, complaints by affected interest groups. The broad, historical pattern of interest intermediation is compared and contrasted in this second section, paving the way for the third section to undertake a very exploratory assessment of political integration in North America.

Following standard procedures, the three substantive sections are placed in perspective by introducing the dispute settlement procedures of NAFTA beforehand, then drawing conclusions and implications at the end.

**Dispute Settlement Arrangements in North America**

Just as NAFTA emerged from the Canadian-U.S. Free Trade Agreement (CUSFTA) of 1988, its dispute settlement arrangements were also extensions of CUSFTA’s. At least three sets of provisions deal with the subject in the former agreement: a) Chapter 19 creates binational panels to review anti-dumping or countervailing duty disputes; b)
Chapter 20 establishes a Free Trade Commission empowered to organize standing committees or working groups to resolve differences over interpreting and managing the overall agreement; and c) arbitral panels seeking party-to-party consultations to nip disputes on a sectoral basis, and provided for in each of the chapters on Financial Services, Standards, and Investment. Chapters 19 and 20 provisions are discussed below in reverse order.

Through articles 2004 and 2005, Chapter 20 deals with disputes stemming from a) interpreting and implementing the FTA, b) perceived inconsistencies with the obligations of the FTA; c) nullification or impairment with regard to trade in goods, technical barriers to trade, cross-border trade in services, or intellectual property rights; d) environment and conservation agreements, sanitary and phytosanitary measures, or standards-related provisions; and e) any related agreements, such as GATT or the World Trade Organization. Chapter 20 also establishes the Free Trade Commission (FTC), a cabinet-level political body, much like the erstwhile GATT Council. Decisions are made through consensus, and deliberated only when consultations or resolution efforts at lower, informal levels fail.

The process begins when any member with a grievance over interpreting, managing, or implementing the agreement engages in direct consultations with the member causing that grievance. If a resolution is not reached in 45 days, the FTC is formally asked to mediate, which it may do by convening a variety of committees, or resort to alternate methods of dispute settlement. If the dispute still remains unresolved after 30 days, an Arbitral Panel is formed, under Article 2008, from a roster of 30 qualified individuals nominated in equal numbers by the three member countries. A panel consists of five members, two chosen by each of the disputing countries from their own nominees and a fifth selected by the FTC. It has up to 90 days to present a preliminary report, then, after each disputing country's response, to prepare a final report for the FTC. In its report, a panel must notify the FTC if privileges under NAFTA have or have not been nullified or impaired for any member, as well as recommend a solution. As at the multilateral level, compliance involves eliminating the action causing grievance; and non-compliance legitimates retaliation by the member country aggrieved. Articles 2008 through 2019 establish conditions for creating arbitral panels, the qualification of panelists, rules of procedures to be adopted, and the publication of reports.

The relationship between Chapter 20 and the multilateral body is enhanced by Article 2005, which allows members to take a dispute to the multilateral body. While

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Endsley, op. cit., pp. 128-130.
forum shopping is encouraged, consensus of all three members is required to proceed to a WTO panel.\textsuperscript{12}

Chapter 19 governs disputes stemming exclusively from the imposition of ADD or CVD, and contains several innovative procedures. One of them is the establishment of binational panels whose rulings are to be binding.\textsuperscript{13} Among the underlying forces of Chapter 19 are to: a) retain national trade relief measures pertaining to anti-dumping and countervailing duties; b) adopt as a standard of review the measures practised in the aggrieved country; c) permit binational panels to review duty determinations by national agencies; and d) streamline to as practical a degree as possible the trade relief measures of the different countries.\textsuperscript{14} Key provisions from the chapter are elaborated below.

Articles 1901 through 1905 spell out the background, bases, and scope of the dispute settlement mechanism. Whereas Article 1901 limits the applicability of provisions to the trade of only goods, not services, Article 1902 provides each party the right to apply its own trade relief laws, called trade contingency laws in Canada, and trade remedy laws in the United States.\textsuperscript{15} Mexico was required to change its trade relief laws to join NAFTA, as explained below. These laws typically include relevant statutes, the legislative history, regulations, administrative practices, and judicial precedents. Amendments of these domestic laws must now have the approval of other NAFTA members, and be consistent with the spirit of the agreements signed and the obligations imposed by GATT/WTO. By Article 1903, any one party may request, in writing, a review of another party's ADD or CVD statute. Should this review call for remedial action, the other party is allowed several options: to follow through within 9 months, terminate the FTA with a 60-day written notice, or undertake any other legislative or executive action. By establishing a binational panel, Article 1904 allows adjudication at the supranational level instead of through a judicial review based on domestic trade relief laws. Each party provides names of 25 members to a roster, then selects 2, who may be from any country. A fifth member is chosen by both disputing parties together, and in the case of a disagreement, use is made of a lot. No one on the roster may be employed by the government, and a majority of them are to be lawyers. The panel selects its own chairman. Should a party not be able to make its two selections within 45 days, a lot is again employed. Each party may make up to four challenges of the other side's selections. In the case of allegations against a specific ruling, an Extraordinary Challenge Committee (ECC), consisting of 3 judges from a

\textsuperscript{12}See Winham, “Dispute settlement in NAFTA and the FTA”, p. 259.

\textsuperscript{13}Thomas M. Boddez and Alan M. Rugman, “Effective dispute settlement: a case study of the initial panel decisions under chapter nineteen of the Canada-U.S. Free Trade Agreement”, in Investment in the North American Free Trade Area, pp. 93-115; and Winham, Trading with Canada, 44-46.

\textsuperscript{14}\textit{Ibid.}, pp. 262-263.

\textsuperscript{15}Theodore H. Cohn, Emerging Issues in Canada-U.S. Agricultural Trade Under the GATT and FTA. Bangor, ME: Canadian-American Center, 1992, pp. 18-22.
roster of 15, is to be established to investigate the complaint. Finally, by Article 1905, the panel is empowered to review allegations of domestic laws hindering the investigation of complaints filed under the FTA.

An Extraordinary Challenge Committee can also be created as a final appeal against a panel ruling. The defaulting party may choose at least 1 of 3 conditions for an extraordinary challenge: 1) misconduct, bias, or serious conflict of interest on the part of a panel member; b) departure from a rule of procedure by the panel; or c) excessive use of power, authority, or jurisdiction by the panel. While appeals to the ECC may reflect the pursuit of self-help, responses to a ECC ruling indicates the degree to which member countries are willing to live by collective rules.

Extending the arrangements of CUSFTA to Mexico necessitated some significant changes on the part of that country, as Article 1907:3 and Annex 1904:15 indicate. Nevertheless, three areas critical to the streamlining of Mexican trade laws continue to be the degrees of a) openness of the process, to injured enterprises, both at home and abroad; b) fairness of the process, in particular rising above the influences of some traditionally vested interests and institutions, as well as customs; and c) the capacity to compile records of the proceedings of injury cases, so as to permit judicial review by panels.

Both Canada and Mexico see the dispute settlement mechanism in Chapter 19 as some kind of an insurance for accessing the world's largest national market, that is, the United States. For one thing, any U.S. trade relief laws cannot now be altered without the consent of its NAFTA partners; and non-compliance by the United States would only spark retaliation. For another, should the U.S. engage in a trade skirmish with the European Union or Japan, the probability of Canada and Mexico being dragged in would be lower. Ultimately, the streamlining of national trade relief measures may result in more effective dispute settlement in North America than at the multilateral level where over 120 countries bring almost as many different national trade contingency customs and practices.

Advantages

What are some of the advantages of the dispute settlement mechanism? First, since all members may be disciplined, whether it is relatively weaker or relatively stronger,
fewer harassment cases may arise than before. Second, by speeding up litigation, it is more appealing than any existing national trade relief laws, or even Article XXIII of GATT was before, and provides the standard by which the WTO dispute settlement arrangements were designed. Third, unlike any existing trade dispute settlement mechanisms, NAFTA rulings are explicitly binding. Although this is a major advance, it also raises the stakes of integration: To not abide by a ruling jeopardizes the entire agreement. Fourth, it strengthens multilateral provisions and obligations by extension, and enhances respect for the multilateral body? Fifth, Mexico’s inclusion tests the robustness of those arrangements. Sixth, if those arrangements endure and the costs of the adjustments are not too large, the possibility of including other countries at a subsequent stage may become less problematic, especially since NAFTA is slated to expand membership in the future. Seventh, the possibility of the United States exerting less relational power over outcomes may be higher in this regional setting of fairly like-minded countries than in the more diverse and competitive multilateral body. Eighth, any success on the regional front would put pressure on the multilateral mechanism to experiment with the regional arrangements, which, in turn, would only have all-round beneficial consequences for trade at both levels. Finally, if all goes as planned, a giant stride may have been taken towards creating the single largest market in the world, with all the implications for meaningful regional integration, economically and politically.

Disadvantages

What are some of the disadvantages? Foremost among them is that members of the panels are not chosen independently, based on legal expertise, but from a roster supplied by the governments. This is not a convincing departure from nationalistic considerations. Second, by making the dispute settlement mechanism the crucible for further North American integration, an unnecessary minefield is being placed in the integration process, especially since the three members are already one of each other’s major trading partners. Third, the dispute settlement mechanism could theoretically become costly and cumbersome should the number of appeals increase. Fourth, there

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is no guarantee that performances of the dispute settlement body may be screened from fluctuations in the national economy—a downturn enhancing nationalistic sentiments among panelists, thereby undermining the very supranational purpose the panels were expected to pursue. Fifth, the internal changes Mexico had to make to become a member still have to take roots, and the probability of those arrangements running off course is probably at its highest in these initial years—creating a suspense which may even hinder meaningful measures. Sixth, in the same way, the political and/or economic uncertainties accompanying Mexico, with its one-party democracy and a history of economic fluctuations, may get in the way of effective adjudication and dispute settlement. Finally, in this decade of rapid economic changes, any sudden economic fluctuation in any of the three countries may add unnecessary pressure upon the dispute settlement body, and thereby threaten supranational pursuits.

**Political Structures in North America**

A structure or institution may be a formal organization explicitly created to seek certain specific goals within the context of some specific rules, or represent a pattern of regularized behavior, among other interpretations. Normally, they evolve over time, usually from documents either formally establishing them, as the constitution does, or informally generating behavioral responses within prescribed sets of rule or arrangements. Ten political structures are identified in Table 1, many of them related in one way or another with the domestic trade relief process, and thereby NAFTA's, some very basic, others more intricate. Each is discussed comparatively first.

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Table 1

Selected Political Structures in North America:
A Comparative Perspective

<table>
<thead>
<tr>
<th>Structures</th>
<th>Canada</th>
<th>Mexico</th>
<th>United States</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Constitution</td>
<td>1867</td>
<td>1917</td>
<td>1789</td>
</tr>
<tr>
<td>Government</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Head of State</td>
<td>British monarch, represented by Governor General</td>
<td>President</td>
<td>President</td>
</tr>
<tr>
<td>4. Form of Government</td>
<td>Parliamentary</td>
<td>Presidential</td>
<td>Presidential</td>
</tr>
<tr>
<td>5. Chief Executive</td>
<td>Prime Minister</td>
<td>President</td>
<td>President</td>
</tr>
<tr>
<td>Legislature</td>
<td>b. Lower: House of Commons (282)</td>
<td>b. Lower: Chamber of Deputies (500)</td>
<td>b. Lower: House of Representatives (435)</td>
</tr>
<tr>
<td>7. Frequency of</td>
<td>a. not applicable</td>
<td>a. 6</td>
<td>a. 4</td>
</tr>
<tr>
<td>elections (in years):</td>
<td>b. appointed for life</td>
<td>b. 6</td>
<td>b. 6</td>
</tr>
<tr>
<td>a. chief executive:</td>
<td>c. once in 5 years</td>
<td>c. 3</td>
<td>c. 2</td>
</tr>
<tr>
<td>b. upper house:</td>
<td>c. lower house:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Term limits for</td>
<td>Not applicable</td>
<td>1 (6 years)</td>
<td>2 (8 years)</td>
</tr>
<tr>
<td>chief executive:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Number of parties</td>
<td>a. in legislature:</td>
<td>a. 2</td>
<td>a. 2</td>
</tr>
<tr>
<td>to win majority</td>
<td>b. for presidency</td>
<td>a. 1</td>
<td>a. 2</td>
</tr>
<tr>
<td>(since World War</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>II)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Historical</td>
<td>Consociationalism</td>
<td>Corporatism (neocorporatism)</td>
<td>Pluralism (neopluralism)</td>
</tr>
<tr>
<td>pattern of interest</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>intermediation</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
then in terms of the relationship, direct or indirect, with NAFTA. The list is not exhaustive, and the discussions are mostly explorative.

One caveat first. As suggested previously, all ten structures have been chosen because they represent historically evolved patterns of behavior. This, in turn, provides the foundation of legitimacy for each. By and large, the constitution of each country itself directly legitimates some of the structures selected—system of government, head of state, forms of government, chief executive, forms of legislature, frequency of elections, and term limits. Even the constitution is accepted as a political structure in its own right owing to the specific circumstances giving it birth in each of the three countries. Two structures not directly mandated by the constitution are the number of political parties permissible and the nature of interest intermediation—although how they have evolved is strikingly consistent with the broad principles advocated in each constitution.

Interestingly, it is with regards both the numbers of political parties and the nature of interest intermediation that the issue of legitimacy is most questioned today—and even then because of dramatic political changes taking place within the domestic milieu of countries, in part, because of their supranational economic pursuits. For instance, through exposure to and interaction with their counterparts in Canada and the United States—which played so essential a part of the NAFTA ratification process in each of the three countries—Mexico’s corporatist/neocorporatist pattern of interest intermediation seems to be assuming more pluralist features without fully becoming pluralistic. In the same way, Mexico’s one-party tradition seems to be increasingly challenged by newer political pressures and groups—thereby creating conditions for the first peaceful alternation of power between parties.

These, of course, are only ongoing processes which could easily reverse themselves, and not complete structural shifts as yet. In consequence, the notion of legitimacy is also broadening itself. For that reason, it is crucial to emphasize that the structures chosen for analysis, although historically determined, also experience concurrent modifications.

**Constitution**

The first political structure identified is the constitution, adopted, in chronological order, during 1789 in the United States, 1867 in Canada, and 1917 in Mexico. Defined

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as “a body of metanorms,” constitutions may differ simply because of what is classified a metanorm. On the one hand, metanorms are “rules that specify how legal norms are to be produced, applied, and interpreted.” On the other, norms reflect a behavioral pattern whereby, simply put, an individual is punished for behaving one way and not punished for behaving another way. Metanorms are higher-order norms, set the framework within which lower-order norms emerge, and in the final analysis, institutionalize the various interests of society. On the basis of how metanorms and lower-order norms are related, three ideal types of constitutions may emerge: the absolutist, legitimizing, and higher-law. In absolutist constitutions, both metanorms and lower-order norms originate as commands, are centralized, and place the executive powers of the country above the law; in legitimizing constitutions, metanorms furnish the framework of lower-order norms, but state institutions, functions, and resources are more decentralized, while electoral devices and practices are developed and encouraged; and in higher-law constitutions, a bill of rights checks and balances the metanorms of state and lower-order norms of society. Canada and the United States have typically been placed in this third category, while Mexico’s experiences approximate characteristics of the second more than any others.

This relationship between metanorms and lower-order norms influences not only the evolution of judicial institutions, but also their relationships with the institutions of government. Under both these forms, institutions of state are created, provided functions and authority, and connected with society through elections. The key difference is that, in making connections with society, the higher law variety provides a bill of rights through which individuals may challenge state actions, whereas under the legitimizing type, on the other hand, the formulation, amendment, expansion, or alteration of statutes governing civil society are determined by election results. Whereas the former produces a more open and flexible society, with a stable set of guarantees for citizens, the latter requires rule-rigidity, if only to compensate for the ease with which rules may be altered, and whatever guarantees are transient. If in a legitimizing law system one political party remains in power for too long, as in the case of Mexico, those rules may become even more rigid, placing additional pressures upon individuals. All three North American documents are durable: They have existed

28 Stone, op. cit., pp. 445-446.
more than one generation—often considered the minimum time needed in political development to build durable foundations for institutions.  

How is the national constitution and NAFTA's dispute settlement arrangements related? Judicial traditions are influenced by the relationship between metanorms and lower-order norms, and in turn affect political institutions: Since a majority of the panelists supplied to the NAFTA roster have to be judges or lawyers, the place the judiciary occupies in the constitution influences dispute settlement procedures indirectly. One determining factor is the legal system prevailing in the country, whether it is based upon common or civil law. In the former, the judiciary is discussed broadly and briefly in the constitution, in the latter, much more elaborately. Whereas Canada and the United States abide largely by a common law framework, civil law is predominant in Mexico. The broader the treatment, the more legal nuances one may find, creating not only potential bottlenecks to both free trade and supranational convergences of domestic practices. Similarly, the constitution spells out the extent of executive powers and privileges—an important consideration because it informs us how dependent or independent the chief executive is in pursuing his functions, such as selecting panelists, of the legislature. Finally, the constitution also provides a wide array of rights and duties for citizens to resort to should a binational panel ruling or procedure infringe those rights or duties. In many ways, then, the national constitution and the dispute settlement arrangements of NAFTA develop a symbiotic relationship, explicitly and implicitly, directly and indirectly.

System of Government

All three countries have a federal system of government, Canada with 10 provinces and 2 territories, Mexico with 32 states, and the United States with 50 states. At the top of the federal hierarchy is the federal government, located in Ottawa, Mexico City, and Washington, D.C., for the three countries, respectively. Each federating unit has its own system of government replicating the federal government, but subordinate to it. Whereas the federal government has functions that the units do not in all three countries—such as conducting foreign policy, managing the currency, and so forth—the capacity of the units to function independent of the federal government appears to be the most in Canada and the least in Mexico, with the United States lying somewhere in between. However, unit autonomy is attained and sustained


30Discussed in my “Legal integration in North America: domestic and multilateral comparisons”, (CIDE), Mexico City, 1996.

dynamically, even though a constitution may provide the starting point of unit-federal relations. For example, Mexico's federal system is deliberately being decentralized in the mid-1990s to suit the changing times. In addition to the government, the judiciary is also federated and hierarchical. At the apex of the judicial hierarchy is the Supreme Court, then the district courts, finally the circuit courts.

How is the national system of government and NAFTA's dispute settlement arrangements related? Since all three members of NAFTA have a federal system of government, the constitutional allocation of powers between the state and federal governments may bear directly or indirectly upon Chapter 19 disputes if those disputes stem from a provincial-level legislation which the federal government may be slow or unable to counteract. Environmental legislations adopted by a provincial government, for instance, may become a trade barrier for another NAFTA member, thereby necessitating a NAFTA adjudication. Ottawa's recent beer can law did have such an impact on U.S. beer exports, creating the kind of a problem described here. Clearly, the relationship between the federal and provincial governments dictated by the constitution, or ad hoc adaptations made in real-life situations, will be central to a binational panel resolution. A defaulting country willing to comply with a panel ruling may find the provincial government less inclined to do so, creating either delays or confusion, and thereby undermining the supranational arrangements.

Head of State

The constitutional head of state has been the British monarch, represented by the Governor General in Canada, the President in Mexico, and the President in the United States. Of the three countries, Canada has a special status, being a Dominion of Great Britain from 1867—a consequence of once having been a part of the British Empire without seceding from it. As such, the British head of state, Queen Elizabeth II from 1953, serves also as the Canadian head of state through the Governor General. Mexico and the United States have no such arrangements with their previous colonial power, in part because their independence was acquired on the battlefield and not through dialogue. Whereas the presidents are made more hands-on heads of state, the Governor General occupies a largely ceremonial position. Furthermore, as explained below, the Mexican president is more hands-on with routine affairs of state than his counterpart in the United States. Heads-of-states are expected to remain above the fray of domestic politics, and, through their interaction with their counterparts from other countries, serve as a source of support for external agreements. Generally, the more hands-on
heads-of-state become with routine affairs, the stronger the support for external agreements and arrangements. For instance, the Mexican president is likely to find fewer constraints to implementing NAFTA than his U.S. counterpart, who is himself better positioned to advocate the virtues of NAFTA than his Canadian counterpart.

How is the head-of-state institution and NAFTA’s dispute settlement arrangements related? As indicated, one indirect relationship stems from the support heads-of-state can muster for external agreements or arrangements. As part of their functions, heads-of-state usually have to formally sign those agreements; and if at the same time they have a more hands-on involvement with domestic politics, the fate of those agreements may become more promising than if he is not a hands-on official.

Form of Government

The form of government influences patterns of political behavior, as well as the relationship between branches. Whereas Canada alone has a parliamentary form,34 Mexico and the United States have presidential. This, in turn, influences the type of chief executive, with the prime minister heading a parliamentary government and a president the presidential. Since the prime minister is leader of the majority party elected into the legislature, there is no national election for the position. A president, however, is elected separately from the legislators. Quite often in the United States, the president and the majority party in the legislature have belonged to the same party: John F. Kennedy, Lyndon B. Johnson, James E. Carter were in office as Democrat presidents when the Democrat Party controlled both houses of Congress; however, Democrats Harry S Truman from 1948 and William J. Clinton from 1994 found themselves dealing with a Congress in which both houses were controlled by the Republican party, just as Republican Ronald W. Reagan and George Bush were presidents when Democrats controlled both chambers of Congress. Such a variation has yet to emerge in Mexico, where the presidency and the legislature have been controlled exclusively by the Partido Revolucionario Institucional (PRI) from 1929.35

The Canadian fusion of power has strengths and weaknesses: A chief executive with a large majority, for instance, need not have to worry about legislative opposition to his supranational initiatives, whereas one with a slim majority or as a partner in a coalition government, may find himself relatively more restrained in his supranational pursuits. When power is separated between branches, as in Mexico and the United States, legislative majorities should not generally be taken for granted. Although this has not been an experience in Mexico, in the United States this precaution may be worth whatever weight it holds. After all, President Clinton faced more stiff opposition from his own Democrat congressmen in winning approval for NAFTA than from

34See Dawson and Dawson, op. cit., chapters. 3-7.
35See Camp, op. cit., chapter. 7.
Republicans. In other words, the constitutional separation of functions between branches theoretically makes legislative outcomes more unpredictable than when those functions are fused—a factor in and of itself not so significant, but when coupled with other considerations, such as how hands-on or aloof the chief executive may be, could constrain supranational pursuits—such as appointing panelists to the roster, or nipping disputes before they get to the panel stage. A strong President Clinton, for instance, was able to work out a side-agreement with Mexican tomato exporters in October 1996, and thereby strengthen his election chances in Florida, before the complaint could get to the binational panel.

How is the form of government and NAFTA’s dispute settlement arrangements related? As becomes evident, the relative strength of the chief executive vis-a-vis the legislature may be crucial to the success of supranational pursuits, since legislatures generally tend to be inward-looking and chief executives outward-looking. In addition, since the executive branch implements policies, a strong chief executive leads to a more robust undertaking of this task. Finally, the strength of the chief executive may determine how active or passive judicial appointees may be—a chief executive relatively stronger than the legislature, for instance, producing more politicized appointees than when the legislature checks and balances executive powers and prowess.

Form of Legislature

All three countries have a bicameral legislature. The upper house consists of 104 members in Canada, appointed by the prime minister on the basis of a regional quota; 128 members in Mexico, elected on the principle of equal state representation, with 4 for each state, 2 elected directly by the people, 2 serving as deputies on the basis of party selection; and 100 members in the United States elected into office on the principle of equal state representation, with 2 seats for every state. Similarly, the lower house, called the House of Commons in Canada, consists of 282 members, elected to a large extent on the basis of the population distribution; the Chamber of Deputies in Mexico has 500 members, 300 of whom are elected to a non-renewable term on the basis of 1 member for every 200,000 people, and 200 nominated by the parties on the basis of a proportional map which divides Mexico into 5 broad districts; and the House of Representatives in the United States, with 435 members, elected on the basis of population representation.

How is the form of legislature and NAFTA’s dispute settlement arrangements related? The more elected officials there are, the greater the representativeness in the country—but also more and varied vested groups emerge, seek influence, and sustain the policy-making process in one way or another. The more the representativeness in a country, one might argue, the more vulnerable decision-makers become to the demands and interests of producer groups.
Frequency of Elections

The frequency of elections for the chief executive, upper house, and lower house varies. For Canada, as already indicated, there are no elections for the chief executive. In Mexico this takes place every 6 years, in the United States every 4. Members to the Canadian Senate are appointed for life, but must retire at age 75; and in the United States Senate, they are elected into office for renewable 6-year terms. Similarly, members to the House of Commons in Canada must be up for elections at least once every 5 years, Mexican legislators in the Chamber of Deputies are elected to a non-renewable 3-year term, and members of the House of Representatives in the United States are elected to renewable two-year terms.

How is the frequency of elections and NAFTA’s dispute settlement arrangements related? One may argue that longer tenureships are more conducive for interest group networking—thereby generating stability and predictability in policy pursuits. By this measurement, Mexico may offer the most durable form of alliances between elected officials and societal groups, and Canada the least predictable due to its unspecified election schedule and uncertainty of coalition membership—thus creating greater flux in policy priorities. At the same time, a longer shadow of the tenureship, while attractive to investors, traders, and domestic groups, may not be appealing during an economic crisis. In Mexico, for instance, the current crisis is straining the traditional pactos between government, business, and labor leaders, making them more ad hoc than normally, and thereby increasing uncertainty.

Term Limit for Chief Executive

Term limits for chief executives are different in each country. On the one hand, Canada has no term limits, since tenure is based on retaining a majority in the legislature, acquired in national elections. On the other hand, Mexico limits presidents to only one term, and the United States to two terms.

How is the term limit for the chief executive and NAFTA’s dispute settlement arrangements related? Since a term limit is essentially an issue of longevity of tenureship, the relationship is similar as under the relationship between the frequency of elections and NAFTA arrangements—one which is indirect but unavoidable.

Number of Parties

Whereas Canada and the United States have witnessed different parties control a majority in the legislature, Mexico has experienced the continued dominance of a single party in its own legislature. For Canada, this has meant a chief executive from different parties. Since World War II, the Liberal Party and the Progressive Conservative Party have more or less alternated in power. Among prime ministers
from the Liberal Party were William Mackenzie, Lester B. Pearson, and Pierre Trudeau, and from the Progressive Conservative Party, John Diefenbaker, Joseph Clark, and Brian Mulroney. The United States has also frequently experienced a president from different party. In the case of Mexico, though, the president has invariably belonged to the PRI Why is this relevant? In a competitive party system, such as Canada and the United States, the dominant parties have historically articulated quite contrasting platforms and philosophies, meaning that any change in the party in power could easily result in foreign policy or economic policy shifts of a significant nature. In the United States, for instance, the Democrat Party favors substantial government involvement, labor interests, and limited openness to trade, while the Republican Party supports exact opposite positions. Although both parties may be converging in their interests increasingly in terms of foreign economic policy, considerable differences remain, underlining now tentative foreign agreements may always be.

How is the number of parties and NAFTA’s dispute settlement arrangements related? Although three years of NAFTA have not shed any specific light on this relationship, one may hypothesize, and verify over the years ahead, that the more political parties there are, the more fragmented the interest group network is likely to become—creating multiple and diverging demands which cannot always be satisfied. The result could slow down the policy-making process out of sheer competitiveness among the interest groups, which in turn, may jeopardize supranational pursuits more than if there existed a more centralized policy-making apparatus and a uniform policy adopted.

Pattern of Interest Mediation

Finally, the historically dominant pattern of interest mediation has tended to be consociationalism in Canada, pluralism in the United States, and corporatism in Mexico. The roles of the state and of state interests are most dominating in Mexico, slightly less so in Canada, and the least of the three in the United States. Although Canada is fragmented into several competitive societal groups, representing different classes, cultures, ideologies, languages, and so forth, a pattern of cooperation between the leaders of such groups has traditionally produced more coalitions than competition. This is a fundamental characteristic of consociationalism. Mexico has also experienced

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coalitions, but of a different kind. There is no competitiveness, or at least very little of it, between groups, whose _raison d'être_ and legitimacy depend upon political elites or the institutions of state. Because the Mexican coalitions, or _pactos_, are also created from above, they tend to have monopolistic sectoral representation, and are functionally differentiated and hierarchically ordered. By contrast, in the United States, business, labor, and farmer groups exert influence over policy through votes, lobbying legislators, or in conjunction with administrators over the content and pay-offs of programs. Whereas under corporatism groups are non-competitive, rigid in structure, and invariably express their preferences in terms of the interests of state, under pluralism they are highly competitive, flexible in structure, and fluid in articulating preferences. In the consociational pattern, competitiveness is not as open as in the United States, nor as controlled as in Mexico. The next section develops these distinctions further, and comments also on the transformation into neopluralism and neocorporatism.

How is the pattern of interest mediation and NAFTA's dispute settlement arrangements related? As argued earlier, the more competition in the pattern of interest mediation, the greater pressure for supranational pursuits. Indeed, the probability of disputes stemming from open competitiveness may be considerably higher than under controlled competitiveness, while the domestic support for complaints may be wider under the controlled competitiveness forms of corporatism and consociationalism than under the competitiveness of pluralism. In turn, side-payments may be easier under consociationalism and corporatism than under pluralism.

**Summary**

By reviewing the very rudimentary political institutions in the three North America countries, this section conveys possible linkages between domestic and supranational arrangements and institutions. The comparative study reveals how even basic domestic institutions or structures may bear, directly or indirectly, upon the trade relief or dispute-settlement process. The next section examines more deeply the nature of this mutual interaction for interest mediation across North America specifically.

**Confronting Group Pressures**

Although societal groups influence policy-making in every country, the pattern of interest mediation is not always the same. The argument is postulated that, in part, the legal framework, political structures, and the independence of the judiciary influence the form of interest mediation. Interest mediation in this paper refers to interest articulation, aggregation, negotiation, and legitimation.\(^{40}\) Not being evaluated in this

\(^{40}\)For further discussion, see Wilson, _op. cit._, 1990, chapter 1.
study is the process of aggregation, which is a function typically associated with political parties, and whose discussion is more meaningful within that framework.

Three types of interest mediation are identified—pluralism, corporatism, and consociationalism. First, the more broadly based the legal framework, the greater the political and social competitiveness permitted by the political structures, and the more independent the judiciary, the more likely to be flexible, competitive, and open the pattern of interest mediation. This pattern has historically been associated with pluralism. Second, when the legal framework is detailed, political and social competitiveness circumscribed by the political structures, and the judiciary must compromise its independence, interest mediation takes on a rigid, non-competitive, and closed form—a pattern identified with corporatism. Third, when the legal framework is mixed, political and social competitiveness unrestricted, and the judiciary is quasi-independent, interest mediation takes on a different structure often found in a consociational society. Borrowing from the literature, this study finds pluralism or neopluralism as the historically dominant pattern in the United States.


corporatism or neocorporatism as the traditionally prevalent form in Mexico, and consociationalism as the pattern most ascribed to Canada. In the first section to follow, the characteristics of pluralism, consociationalism, and corporatism are compared and contrasted; and in the second, the interest mediation pattern in three North American countries are compared and contrasted.

Beforehand, however, some conceptual clarifications are made. Neither pluralism nor corporatism exist in pure form today, reflecting instead evolutionary and incremental modifications. The competitiveness and rigidity associated with pluralism and corporatism, respectively, have also waxed and waned over time.

In the case of pluralism, competitiveness seems to have produced administrative rigidity over time, especially in maintaining programs for privileged groups, as well as a spate of ad hoc, unorganized, and transient associations articulating broader, non-economic interests and reflected mostly by grassroots or citizen's concerns movements. In addition to the diversification of group interests in post-industrial societies, interests are also converging or concentrating because of the survival-for-the-fittest market approach. Together, these changes have loosened considerably stereotyped pluralism. The term used instead to encapsulate these varied and paradoxical developments is neopluralism.

In the same way, evolutionary changes in society have altered some of the features of corporatism, leading many to use the term neocorporatism instead to refer


to them. Just a sample of the many changes currently underway: the emergence of democratic pressures in segmented societies, monopolistic group representation giving way to oligopolistic control, increasing compromises between the government and groups, and the more relaxed demands of state as well as the greater demands for broader distribution of rewards and resources. State-centricism, the hallmark historical characteristic of corporatism, remains, but in considerably modified form. To be sure, the state is not eliminated as an actor by any stretch of the imagination, but groups are gaining more autonomy and maneuverability in their relations with state. From performing a prescriptive role and seeking consensus among groups, the state is increasingly performing a descriptive role seeking contracts instead. Yet, under both the rigidities of corporatism and the relaxations of neocorporatism, the state continues to set the agenda through the economic and social order it seeks, the key difference being that the rules of interest intermediation are more open to negotiations than ever before.

Consociationalism, Corporatism, and Pluralism

Table 2 compares the three forms of interest mediation along selected dimensions. The discussions below follow the tabulated order.

Definition

Both consociationalism and pluralism involve group competitiveness, the former being more inclusive, the latter more exclusively. Many diverse groups participate in both. Under consociationalism, coalitions become necessary and assume permanency over time. In the United States, coalitions are increasingly more transient. By contrast, a corporate society relies upon a coalition between the institutions of state, on the one hand, and monopolistic groups representing each sector in society, on the other. It may be even more permanent than its Canadian counterparts, although the terms of the agreement may change over time as the government changes policy priorities.


### Table 2
Forms of Interest Intermediation: A Comparative Perspective

<table>
<thead>
<tr>
<th>Dimensions</th>
<th>Consociationalism</th>
<th>Corporatism</th>
<th>Pluralism</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Definition</td>
<td>group competitiveness of pluralism balanced by cooperation between leaders of different segments, creating a grand coalition</td>
<td>state-centric society in which groups are defined by state, and lesser coalitions emerge under state guidance</td>
<td>society divided by segmental cleavages, which may be of various forms and in constant competition</td>
</tr>
<tr>
<td>2. Key Characteristic</td>
<td>elite cooperation</td>
<td>statism</td>
<td>competitiveness</td>
</tr>
<tr>
<td>3. Actors</td>
<td>elites; social segments</td>
<td>state; domestic business interests; foreign business interests; labor; farmers</td>
<td>groups; state managers; legislators</td>
</tr>
<tr>
<td>4. Nature of political regime</td>
<td>democratic-elitism</td>
<td>democratic-authoritarianism</td>
<td>democratic</td>
</tr>
<tr>
<td>5. Nature of interest intermediation</td>
<td>state-societal; state as arbiter and agent of vested interests</td>
<td>state-societal; state as agent of vested, deterministic interests</td>
<td>legislator-group; administrator-group; state as arbiter of subordinate interests</td>
</tr>
<tr>
<td>6. Scope (how many sectors covered)</td>
<td>as many as possible</td>
<td>as many as possible</td>
<td>as few as possible</td>
</tr>
<tr>
<td>7. Dominant methodology</td>
<td>bargaining over form rather than over policy outcome</td>
<td>bargaining over form rather than over policy outcome</td>
<td>bargaining over policy outcome rather than over form</td>
</tr>
<tr>
<td>8. Strategy towards competition</td>
<td>manipulation of macroeconomic instruments, and domestic stabilization</td>
<td>manipulation of macroeconomic instruments</td>
<td>domestic stabilization programs</td>
</tr>
</tbody>
</table>


9. Most efficient allocation of resources

determined by political coalitions, macroeconomic management, and market

determined by political coalitions & macroeconomic instrument
determined by market

10. View of market

inconsistent for economic growth

inconsistent for economic growth
determines trade patterns

11. View of political intervention in trade

necessary for economic growth

necessary for economic growth

inconsistent for economic growth

Key Characteristics

The chief feature for consociationalism is elite cooperation, for corporatism statism, and for pluralism competitiveness. Four of the components of elite cooperation under consociationalism are a grand coalition, mutual veto, proportionality, and a high degree of autonomy for segments, as elaborated later within the context of Table 3. Under the statist pattern of corporatism, the state becomes the determining factor and state interests the guiding elements. This, in turn, insures that groups are non-competitive, monopolistic, hierarchically ordered, functionally differentiated, and compulsory, while class divisions are pronounced, compromises between groups and between groups and the government are encouraged, and stimulates functional representation. Pluralism, on the other hand, de-emphasizes state institutions to an intermediary place in policy-making, which enhances the competitiveness of both societal groups and political parties over policy influences, creates a fragmented group system, limits intra-sectoral integration, lowers the density of membership, emphasizes political action over technical activities, enhances competition to win members, avoids formalizing ties with parties, and encourages non-producer groups.
### Table 3
Patterns of Interest Intermediation in North America: A Comparative Perspective

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>Canada</th>
<th>Mexico</th>
<th>United States</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Consociationalism</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ELITE COOPERATION</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td><em>grand coalition</em></td>
<td>M</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td><em>mutual veto</em></td>
<td>Y</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td><em>proportionality</em></td>
<td>Y</td>
<td>M</td>
<td>T</td>
</tr>
<tr>
<td><em>high autonomy for segments</em></td>
<td>Y</td>
<td>N</td>
<td>Y</td>
</tr>
<tr>
<td><strong>Corporatism</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>STATISM</td>
<td>M</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td><em>rigid class divisions</em></td>
<td>N</td>
<td>Y</td>
<td>M</td>
</tr>
<tr>
<td><em>limited and centralized interest groups</em></td>
<td>N</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td><em>compromise between groups, and groups and government</em></td>
<td>M</td>
<td>Y</td>
<td>M</td>
</tr>
<tr>
<td><em>functional representation</em></td>
<td>M</td>
<td>Y</td>
<td>M</td>
</tr>
<tr>
<td><em>centralized, deterministic state</em></td>
<td>N</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td><em>groups are singular, monopolistic, compulsory, non-competitive, hierarchically ordered, functionally differentiated</em></td>
<td>N</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td><strong>Pluralism</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>COMPETITIVENESS</td>
<td>Y</td>
<td>N</td>
<td>Y</td>
</tr>
<tr>
<td><em>fragmented group system</em></td>
<td>Y</td>
<td>N</td>
<td>Y</td>
</tr>
<tr>
<td><em>limited intra-sectoral integration</em></td>
<td>M</td>
<td>N</td>
<td>Y</td>
</tr>
<tr>
<td><em>low density of membership</em></td>
<td>M</td>
<td>N</td>
<td>Y</td>
</tr>
<tr>
<td><em>political action more important than technical activity</em></td>
<td>Y</td>
<td>N</td>
<td>Y</td>
</tr>
<tr>
<td><em>competition to win membership</em></td>
<td>N</td>
<td>N</td>
<td>Y</td>
</tr>
<tr>
<td><em>formal ties with political</em></td>
<td>M</td>
<td>Y</td>
<td>N</td>
</tr>
</tbody>
</table>
Legend:

M: mixed
N: no
T: token
Y: yes

Key Actors

The chief actors in a consociationalist society are the élites of segments, thus also making the societal segments themselves important players. By the same token, in a corporatist society, political leaders or managers of state policy play the pre-eminent role over policy outcomes, almost always in collaboration with the subordinated interests of business and labor. A pluralist society, on the other hand, necessitates the interplay of groups and legislators or administrators in the pivotal seat, as all are of equal importance in determining policy. In consociational and corporatist societies, groups representing workers, business, and so forth are necessary actors, but do not play as decisive a role as the élites of segments do in the former, or political élites do in the latter.

Nature of Expected Political Regime

The political regime produced by such background is quite different. Although all make a claim to democracy, the degree of democracy reflected in the process of interest intermediation is not the same. In a pluralist society, democracy is the least filtered, though it may not necessarily be pure. At the other extreme is corporatism, under which democracy is filtered the most, as for example, by discouraging competition. In between is the democratic elitism of consociationalism, which does not curtail the competitive instinct, rather seeks the inclusion of as many interests as possible, usually through a proportional pay-off structure.
Nature of Interest Mediation

Interest mediation reflects an exchange between state, on the one hand, and societal groups, on the other, under both consociationalism and corporatism, unequal though this exchange may be. In a pluralist society, groups compete to influence policy outcomes and, through elections, the interests of state institutions. Under consociationalism the state is more of an arbiter, though one with vested interests. The state performs different tasks in each type of society: Under consociationalism, it is more of an arbiter, but with its own preferences. Under corporatism, it plays a dominant, deterministic role, based on its own interests. For a pluralist society, the typical exchange involves groups and legislators if the goal is to create policy, or groups and administrators if the goal is to influence the program to be implemented. Here, too, the state plays the role of an arbiter, reflecting arguably less vested interests.

Scope

Given their backgrounds, both consociationalism and corporatism are structured to be inclusive in seeking and sharing policy pay-offs, the former due to an electoral need to be inclusive, the latter due to the imperative of state policy to control all society. By contrast, pluralism, given its free-market orientation, is more competitive than inclusive, although in reality support for one sector may ultimately become support for all sectors.

Dominant Method

In both consociationalism and corporatism, the dominant methodology is to bargain over form than over policy outcomes, determined by the very thrust to be inclusive. On the other hand, pluralism reflects the need to bargain more over outcomes than the form of group support, in order to remain consistent with the philosophy of free market.

Strategy Towards Competition

In the same way, both consociationalism and corporatism rely upon the manipulation of macro-economic instruments to seek competitiveness. The key difference is that a consociational society also seeks to put domestic stabilization programs in place to attain the same end. A pluralist society relies almost exclusively on domestic stabilization programs for attaining international competitiveness.
Allocation of Resources

Corporatism is predicated by the nature of coalitions and the management of macro-economic instruments to seek allocation of resources through the state. A pluralist and consociationalist society, on the other hand, emphasize a market-based allocation of resources, but resorts, by virtue of the sheer number of groups involved and the limited resources available, to non-market means as well, such as price or income support programs administered by the state, or even agreements concluded by the state, such as voluntary export restraints or orderly marketing arrangements, with other countries.

View of Trade

A pluralist society not only relies exclusively on the market to determine the efficiency of resource allocation, but also unrestricted trade. Consociational and corporatist societies see the market as constraining economic growth, but for different reasons—the former because of the varied interests of a coalition which need to be satisfied on a non-competitive basis, the latter because the market is a source of direct threat to the monopolistic groups. As such, the pursuit of free trade is maximum under pluralism, least under corporatism, and somewhere in between for consociationalism.

View of Political Intervention

This, in turn, leads to a view in both societies that political intervention is necessary for economic growth. By contrast, a pluralist society sees political intervention in trade as only a short-term expediency not consistent for economic growth.

Interest Intermediation in North America: Three Cases

Against the background of that broad comparative survey of the forms of interest mediation, Table 3 focuses on how Canada, Mexico, and the United States align with the various characteristics of consociationalism, corporatism, and pluralism. It helps explain why a specific interest mediation form is specific for each country, but more importantly, why the other two are not.

Consociationalism

Taking consociationalism first, the dominant characteristic is elite cooperation, with four features. Though to varying degrees, all of them have a positive impact in Canada, but in none of the other two North American countries. Elite cooperation has been the key to all coalitions in Canada, and a driving force in interest mediation in Mexico too.
Although both political and economic elites are influential in the United States, their role in interest mediation has been of a low profile. The Liberal Party in Canada is known for its leaders who have effected compromises and thereby coalitions among a variety of segments. Partly because of the parliamentary form of government with a fusion of power, these compromises result in a grand coalition affecting societal interests, party preferences, and actual policies. With a separation of powers in presidential system, coalitions do not become so grand and, especially in the case of Mexico, are hierarchic, placing the interests of political elites above all else.

The first feature of elite cooperation discussed is the formation of a grand coalition. In Canada, although cabinets do not represent such a grand coalition, parties may bring together quite different segments, such as the anglophones and francophones—something the Liberal party has been able to do in a fairly symmetrical way. Mexico, which also relies on coalitions has not produced any on a symmetrical basis. The state plays a deterministic role in creating them, and besides, these coalitions are not as grand as in Canada. From 1994, President Ernesto Zedello has given less priority to building coalitions with business or labor interests—a shift in style that may become significant only if it continues for a while longer. By contrast, in the United States, such a coalition, especially of the grand type, has yet to assume a pattern, although at times piecemeal efforts are made when the Democrat Party aligns with labor interests and the Republican Party with business. A mutual veto is the capacity of a significant minority group to block the interests of the majority group. Given its past history, Canada has been quite formal about the presence of a mutual veto power, evident in the double majority rule during the hey days of the United Provinces from 1840 to 1867, but also evident today in the concessions acquired by Québec. Such a capability has not existed in Mexico, and indeed is quite incompatible with the idea of corporatism. It has also not existed in the United States, nor is it consistent with the features of a pluralist society.

The mutual veto capability raises the issue of proportionality, that is, the allocations made to the different segments, especially minority groups, for their participation in the coalition, or in general, as part of their due share of the fruits of policy. Although a weak element, proportionality exists in Canada, for example, in the way that 3 of the 9 judges of the Supreme Court have to represent Québec, according to the Supreme Court Act of 1949, or in the way francophones have received more civil service appointments from 1969 through the Official Languages Act. Hitherto not a salient characteristic of the corporate system in Mexico, the electoral reforms implemented with the 1994 elections, though, indicate a slow formalizing of proportional representation—evident in the 200 deputies of the lower house not elected into office, but getting in through a party list representing five newly-created districts to serve the purpose. How this change plays out remains to be seen, but it indicates how the Mexican corporate system may be approaching the consociationalist pattern steadily. The United States has not had any experience in proportionality affecting
interest mediation, although from time to time the idea of proportionality is expressed in terms of principles, for example, as equal opportunity or affirmative action clauses.

The final feature of consociationalism, high autonomy for the segments, seems to be very pronounced in Canada, slightly less so in the United States, and virtually non-existent in Mexico. Several segments in Canada—linguistic, religious, and so forth—have maintained a very high degree of independence, in spite of coalescing with other groups in grand coalitions. Perhaps it is this ability to be independent that gives the groups salience, and ultimately partnership in a grand coalition. A contrasting pattern is in the United States. Whereas competitiveness in Canada goes hand in hand with inclusiveness, evident in the grand coalitions which create more winners than losers on each occasion, in the United States the single-party majority system reflects exclusiveness, evident in there being more losers than winners with every election. In Mexico, groups do not have the same degree of autonomy. It may be that the political structures of corporatism prevent them from emerging—by placing groups in a hierarchy of interest articulation, that too low in the order.

**Corporatism**

Statism, the key characteristic of corporatism/neocorporatism, conveys other features: rigid class divisions, limited and centralized interest groups, compromise between groups and the government, functional representation, and centralized, deterministic state. The final feature is essentially a summation of all the others, made popular in the literature as a definition.

Corporatist societies reflect rigid class division; and indeed corporatist arrangements reflect some degree of compromise between the different interests of these division. In this respect, neocorporatism is much like consociationalism. Both also emphasize elitism. Having made those comparisons, the two systems differ in the strategic area of state involvement: corporatist societies are statist, consociationalist societies are not. At the same time, the recent surge of democracy worldwide, is also amending traditional structures of corporatism, especially the monopolized representation of interests. In any event, although class divisions are evident in every society, they tend to be less rigid under pluralism, and more rigid under corporatism, with consociationalism falling somewhere in between. This is quite evident in Mexico, where the presence of an informal sector in metropolitans is testimony to the deep economic divisions in society, in the United States, where the institution of an ample minimum wage reduces social divisions somewhat, and in Canada, where cultural division have not produced any degree of statism.

A second feature of corporatism/neocorporatism is the limited and centralized nature of groups, reflecting almost invariably interests which are economic. Mexico is a good example of this in North America through the periodical agreements made between groups and the government: Not only has one party formed the government,
but group representation also reflects monopolistic/oligopolistic control. The United States system is quite the opposite—fragmented and decentralized, as the subsequent section on pluralism conveys. Canada's consociationalism is more inclusive and reflects less statism than in Mexico's, but more the fragmentation and decentralization of the United States.

The ability to compromise is the third feature of corporatism. Although the tendency to compromise is evident in all patterns of interest mediation, it is a necessary condition under corporatism and consociationalism, and perhaps simply a sufficient condition under pluralism. As a necessary condition, under corporatism it involves both groups and the government, under consociationalism only between groups.

Corporatism reflects functional representation, that is the organized interests of economic groups take precedence over all other groups, sometimes to the exclusion of other groups. Although the historical experience confirms this feature, newer manifestations of corporatism include increasingly more non-economic groups, although economic groups continue to dominate.

A fifth feature is the centralized, deterministic nature of state—fitting for a society in which groups also share the same feature. Mexico serves as an example of corporatism. Since 1929, a single party has monopolized the government and the legislature, with its dominant base in Mexico City—where almost one-fourth of the population lives and policy-making and resource-generating institutions are concentrated.

In the final analysis, groups are hierarchically ordered, functionally differentiated, non-competitive, compulsory, monopolistic, and singular. In neither Canada nor the United States is the state that deterministic, or centralized. Although the state is the regulator in Mexico, this capacity may diminish if all the changes currently underway run their full course. Since the adoption of NAFTA in 1993 and the economic crisis from 1994, the state has had to relinquish some of its authoritative functions, for instance, managing protectionist policies, some public sector enterprises, and so forth. Whether this is a temporary or permanent shift remains to be seen, and could impact the interest mediation pattern significantly, making it less rigid, closed, and monopolized.

Pluralism

Pluralism, by contrast, represents a competitive society, with a number of appropriate features: fragmentation in the group system, limited intra-sectoral integration, low density of membership, political action being more important than technical activity, competition to win membership, not formalizing ties with political parties, and the encouragement and of non-producer groups.

A fragmented group system is one in which groups compete for influence. Although an essential feature of pluralism, it contradicts the corporatist system in
which competition is minimal, discouraged, or entirely absent. Consociationalist societies fall in between these extremes, since its underlying features of coalition-building and elitism de-emphasize competitiveness, but also encourage group inclusiveness. The United States may have one of the most fragmented systems in the world. Mexico, by contrast, has historically experienced quite the opposite—a monopolized group system in which periodical agreements with the government, in essence a single party, sustains the corporate structure. It is interesting to note, however, emerging pressures towards a pluralistic system in Mexico.\(^{50}\) As with the United States, Canada’s system is also fragmented, but the need to coalesce to defend or promote minority interests prevents it from shifting too close to the U.S. system in one direction, or the Mexican in the other.

The second feature of pluralism, limited intra-sectoral integration, follows from the fragmentation just discussed: competitiveness prevents integration. With a high degree of competitiveness, the pluralistic system in the United States has not reflected any sustained tendency towards sectoral integration, in fact, intra-sectoral diffusion better explains reality. However, the limited or no competitiveness in Mexico’s corporatist system makes it perfect for intra-sectoral integration. Canada’s experiences fall in between, perhaps more towards the pole of high intra-sectoral integration than low owing to the unique cultural division within the country and the preponderant economic influences of the United States.

Even though the United States may have more interest groups and lobbies than any other countries, membership is disproportionately low—as the third feature of pluralism predicts. Competition produces two paradoxical forces—association of vested interests, and independence at the individual level. By contrast, Mexico’s corporatist system induces associations at both group and individual levels to maximize benefits, an experience quite similar to Canada’s consociationalist system where membership may be crucial to minority groups to minimize losses.

A fourth feature of pluralism is the greater emphasis placed upon political action than on technical activities, which is quite consistent with a competitive society in which results are more important than the methods. This is not to say that in pluralist societies groups do not rely upon nor engage in research to support their points of view, but resources and attention are directed more to win policy influence and shape outcomes than to prepare technocratic detail. Whereas the U.S. mediation system reflects this trait, Mexico’s does not, with the Canadian, again, falling in between.

Fifth, consistent with the fragmentation of group interests, even contributing to it, is the feature of inter-group rivalry within any given domain for members. Aspiring group members under pluralism invariably have choices, which they do not under

\(^{50}\)For more on this point, see Merilee S. Grindle, *Challenging the State: Crisis and Innovation in Latin America and Africa*, Cambridge, Cambridge University Press, 1996, chapter 1, esp. pp. 3-7.
corporatism, and which is not quite as important or relevant under consociationalism. As such, the multiple options for group membership in the United States contrasts with the limited options available in Mexico.

A sixth feature of pluralism is that group ties with political parties are not formalized. Although group interests may coincide with party interests, often creating a singular identity, these are rarely formalized—quite unlike a corporatist society where both interests and ties are explicitly formalized. In the United States, for instance, AFL-CIO interests often used to be directly associated with the Democratic Party, an identity which is not always the case these days, yet never institutionalized. In Mexico, however, groups have to enter into pactos with the PRI, as much as to maximize their own benefits as to avoid losses. Canada’s system represents an admixture of both—ties being formalized when they are crucial to the survival of groups, but informalized simply to facilitate coalition-building.

Finally, pluralism encourages the growth of non-producer groups, such as those based upon environmental or gender issues. Groups of these kinds are increasingly evident in all societies today, but the equal opportunity and policy relevance they receive vis-à-vis producer groups is perhaps higher under pluralism than under corporatism or consociationalism. As autonomous bodies, these groups use state interests and institutions to influence policy outcomes. All of these features are most evident in the United States, and absent almost entirely in Mexico. In Canada, groups are also part of the competitive political process and convey a great degree of autonomy. However, state interests and institutions play a dominant role, not intermediary, simply because of the need to accommodate different groups in contesting elections or formulating policies.

Summary

A comparative study of a specific political process and institution—interest mediation—shows at least two contradictory patterns: the wide and deep differences in the three countries, which have historically shaped political culture in each; and the tendency in all three countries towards convergence sparked by the imperatives of regional economic integration, including the drive to attain sectoral competitiveness, privatize industries, and liberalize trade relations. These are slow and isolated shifts, but significant. They seem to be taking place most in the country where competitiveness has historically remained at the lowest threshold of policy goals—Mexico; and they seem to be taking place the least in the country where competitiveness has historically remained at the highest threshold of policy goals—the United States. Canada falls in between, closer towards the U.S. pole than the Mexican.

What do these patterns imply for political integration?
Prospects for North American Political Integration

What does the comparative study of domestic political institutions within the context of NAFTA's dispute settlement arrangements suggest for political integration in North America? An explorative assessment follows, built around widely accepted characteristics of political integration and concluding with hypotheses.

Definition and Characteristics of Political Integration

Some see political integration as the capacity of the supranational entity to maintain itself amidst "internal and external challenges," relying on security forces, economic resources, and a dominant identification; others see it as a shift of the decision-making authority, including the perceptions, behavior, and institutions it encompasses, from the nation-state to a supranational entity. Both emphasize political integration as a process, not an outcome. This second approach provides a framework for this study.

According to the shift-based approach, there are four pre-requisites to political integration: 
1) the development of central institutions and politics;
2) the assignment of specific and important tasks to these institutions in order to generate or allocate socio-economic activities;
3) selecting tasks which are expansive, that is, having forward linkages; and
4) harmonizing national and supranational interests.

Once these have been met, the measurement of a complex array of other properties provide a sense of the degree of political integration taking place. Ten such properties have been identified, grouped under three headings:

a. prior considerations: identifying the scope of policy areas affected, range of stages of overall decisions, and the degree of decisiveness behind each decision;

b. animators: specifying flows of demands, behavior of collective leaders, and resources available; and

c. consequences: determining goals, as well as degrees of penetrativeness, compliance, and distribution of benefits from each decision.

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Fitting the North American Experiences

The two comparative studies indicate that a) some form of political integration is underway in North America; but b) is at an extremely nascent stage to make a difference. Although no explicit nor implicit shifts of decision-making have occurred as yet, the dispute settlement arrangements adopted by NAFTA, especially through the Chapter 19 binational panel, are generating pressures of sort which necessitate a political resolution, not at the domestic level, but supranationally. As with the European Community, several forms of supranational coordination are already taking place—in terms of organizing and evaluating summits, proposing and monitoring rosters for binational panels, even preventing complaints over sensitive products from reaching those panels through some form of arbitration. If the traffic of cases increases, these ad hoc coordinating agencies could easily become formalized institutions with arrangements already well demonstrated.

If that happens—and there does not seem to exist sufficient hindrances preventing it—the first of the four pre-requisites to political integration would have been met: developing a central institution. This, in turn, would spark the fulfillment of the other three—assigning specific tasks to galvanize socio-economic activities, developing forward linkages from them, and streamlining some national interests with the supranational. There seems to be nothing Panglossian about these expectations: The seed for them have been sown; and the European Community experiences remind us that seeds of this kind have in fact borne fruits, even though not in the pure form nor in the time-frame of our expectations.

The fulfillment of the pre-requisites automatically activates some of the ten properties mentioned earlier. In a way, the pre-requisites overlap with the three prior considerations specified; and the three animators logically follow from the specification of decisions—identifying the demands, leadership, and resources. How these are moulded leads to the three consequential variables. Like a spinning wheel initially develops its own momentum briefly each time force is applied, political integration can make strides once the process is set into motion and occasionally catalyzed. The problem is probably not how the big leap from the dynamics of economic integration to political integration is to be taken, nor the distance itself; it is simply that progressive movements will have to adjust to the retrogressive movements every now and then as the different countries adjust to unfamiliar behavioral patterns emanating from outside their national boundaries, especially in the initial phases—a time when insufficient will, compromises, energy, leadership, and hope could do irreparable damage.
Prospects

From all the political structures evaluated, where might those progressive movements originate in North America? Just as economic integration is widely accepted as the catalyzing force behind political integration, we might also find the economic drive within political institutions as paving the way for political integration. One example could be the very preferences of interest groups. Although they have contributed in no insignificant way to the development of political culture in each country, their instincts of self-help and survivability are, of necessity, adaptable. Should the forces of competitiveness push groups to seek common identities or interests across national boundaries—a response evident during the very epigenesis of the NAFTA document itself—then a giant, though potentially reversible step will have been taken to supranationalize domestic practices, customs, arrangements, and eventually institutions. It is unlikely that many other political structures will be able to shift in a supranational direction that quickly—simply because an economic instinct is either absent or insignificant. However, coordination agencies connecting heads-of-states, the nature and forms of government, as well as constitutional congruences also possess a capacity to adapt which may facilitate supranationalism of some kind reflecting political integration.

Conclusions

The study began with three broad questions: What are some of the broad domestic practices, customs, arrangements, and institutions impacted by NAFTA’s Chapter 19 dispute settlement procedures? How different are these experiences in the three member countries? What are the prospects of economic integration facilitating political integration?

Those questions were addressed through two sets of country-wide analyses, the first a broad survey of basic political institutions or structures, the second more specifically focused on one of those institutions or structures—the pattern of interest intermediation. An examination of the elements of consociationalism, corporatism/neocorporatism, and pluralism/neopluralism resulted in some preliminary considerations of political integration in North America.

Several domestic practices, customs, arrangements, and institutions impinge upon the Chapter 19 dispute settlement procedures of NAFTA—from the very nomination of candidates to the binational panels, to every adjustment called for by a panel ruling. Even the most basic practices, customs, arrangements, and institutions—such as the constitution, system of government, head of state, form of government, type of chief executive, form of legislature, frequency of elections, and term limits for chief executive—are impacted formally or informally, directly or indirectly, not to
mention the more complex ones—number of political parties and pattern of interest intermediation.

Any impact reveals the potential of reciprocal relationships between domestic and supranational arrangements/institutions becoming formalized, or cross-national relationships assuming a more meaningful stage. What are some of these potential relations?

One may be between societal groups across national boundaries. A common economic interest could bring together culturally quite different groups; and the creation of one such supranational entity could have a snowball effect in a part of the world where there are too many self-seeking groups. A related form of reciprocal relationship involves non-organized groups across national boundaries, for instance, grassroots movements keen to preserve the environment.

Another could be heads-of-states getting together to satisfy a national goal, but in the process generating a supranational forum, format, or agenda attractive or strong enough to endure. In this respect, NAFTA has spawned numerous possibilities already. Summits of this kind may accelerate interaction between the national and supranational levels.

A third area could be constitutional congruences stemming from a desire to synchronize some laws. This is an area of enormous supranational potential, since legal integration has been taking place across national boundaries in one form or another for many centuries, especially when empires were built throughout history and continents. Today’s imperative placed upon regional and global integration is also facilitating a similar process. Several common threads tie the three countries of NAFTA together already, and could serve as the basis for further deepening the integrative framework.

Finally, although the Chapter 19 binational panels and the Chapter 20 Free Trade Commission are formalized institutions seeking economic integration, they depend upon a wide variety of political decisions taken at the national level, thereby creating a mutual relationship which seems to be standing the tests of time, sentiments, and other idiosyncrasies fairly well thus far.

How different are these practices, customs, arrangements, and institutions in the three countries? The salient finding of the study is that, while economic integration is being sought very earnestly, at least the dispute settlement procedures adopted supranationally are pointing to wide and deep differences in the political culture of the three countries. This is evident most particularly in the patterns of interest intermediation, which reflect some basic instincts, behavior, and aspirations of individuals in a societal framework. Competitiveness under pluralism or neopluralism, statism under corporatism and neocorporatism, and coalition-building under consociationalism reflect three quite distinctive political culture and societies.

On the other hand, however, the integrative impulse in North America seems to be accelerating evolutionary modification in all three patterns of interest
intermediation. For example, relaxing the strictures of corporatism, well under way even before any free trade agreements were signed in North America, is taking place much more rapidly after the adoption of those agreements—suggesting not only potential future convergences across national boundaries, but also an unusual degree of contemporary flux. Furthermore, the degree and rapidity of changes are different for the three countries—with maximum change taking place in societies where competitiveness has been most constrained, in this case, Mexico, and least changes taking place in societies where competitiveness has been least constrained, in this case, the United States.

What do these comparative observations suggest for political integration?

First, even with two contradictory forces at play—supranationalism and nationalism—a higher level of integration, even if glacial, is still being attained as a trend over time. Whereas the former represents the unpredictable forces, the latter represents the predictable. The admixture between them for economic integration has not had any crippling consequences as yet, suggesting that political integration cannot be ruled out.

Second, even though some of the elements of political integration are in place already, even more efforts and resources may be needed to actualize the goals and make the process irreversible. For as long as the North American countries do not turn back, the distinct possibilities of long-term political integration of a modified form are promising—with or without conscious efforts, since that goal seems to be taking place implicitly already.

Finally, without the motor of economic interests, and thereby of economic integration, political integration may remain a long-term reality at best, and wishful thinking at worst. We do not have any examples of political integration between countries taking place without force or economic integration of sorts to be able to say it will happen automatically in North America. However, North America is a small enough playground to set in motion the process towards that goal if it can get its economic house in order.
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