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Cooperative versus Competitive Federalism

Outcomes and Consequences of Intergovernmental Relations on Climate Change Issues in Canada

Abstract

This paper sets out a general framework for how federalism affects environmental issues and the specific pattern of intergovernmental cooperation and competition influencing policy outcomes. It then dwells on the case of climate change policy, with the added complications of international governance and politics. Key factors influencing Canadian policy outcomes on climate change include difficulties in public acceptance of environmental costs in a rapidly growing population and economy; regional ecological and economic differences reflected in political division; divided and decentralized jurisdiction (competences) for environmental regulation; and intergovernmental mechanisms of limited force and effectiveness. There is still no substantial consensus on a national (i. e. federation-wide) approach to greenhouse gas emissions reductions, and certainly no comprehensive regulatory regime, 20 years after the Rio summit. In the absence of stronger national consensus and federal action, however, competing provincial policy initiatives have partly filled the vacuum. Together with planned federal initiatives, this patchwork of partly coordinated and partly competitive approaches is not yet sufficient to meet Canada's relatively modest targets for GGE reductions, but points the way to ultimate solutions.

Zusammenfassung

Im vorliegenden Artikel beschreibt der Autor allgemeine Rahmenbedingungen des Föderalismus im Hinblick auf intergouvernementale Kooperationen und Rivalitäten im Bereich der Umweltpolitik. Im Zentrum der Untersuchung steht dabei die Problematik des Klimawandels, einem Bereich der Politik, der zusätzlich durch internationale Verträge und Regierungsformen bedingt wird. Schlüsselfaktoren, die die Resultate kanadischer Klimapolitik beeinflussen, sind unter anderem die öffentliche Nichtakzeptanz der zusätzlichen Kosten, die durch umweltpolitische Entscheidungen entstehen und wirtschaftliches Wachstum hemmen könnten; regionale ökologische und wirtschaftliche Unterschiede, die sich in der politischen Polarisierung des Landes widerspiegeln; dezentrale Gerichtsbarkeiten und Kompetenzen im Hinblick auf umweltpolitische Rechtsprechung; und intergouvernementale Regierungsmechanismen mit

begrenzter Effektivität. Zwanzig Jahre nach dem Gipfeltreffen in Rio besteht immer noch kein wesentlicher Konsens über ein nationales (d. h. bundesweites) Vorgehen bei der Reduzierung von Treibhausgasen, und vor allem kein umfassendes Regelwerk. In Ermangelung eines stärkeren nationalen Konsenses und föderaler Maßnahmen haben konkurrierende politische Initiativen auf Provinzebene diese Lücke jedoch teilweise geschlossen. Im Zusammenspiel mit von der Bundesregierung in Ottawa geplanten Initiativen ist dieser Flickenteppich aus teils verordneten und teils konkurrierenden Ansätzen bisher jedoch unzureichend, um Kanadas eh relativ bescheidene Ziele zur Reduzierung von Treibhausgasemissionen zu erreichen. Er weist jedoch den Weg zu längerfristigen Lösungsansätzen.

Résumé

Cet article établit un cadre conceptuel pour comprendre comment le fédéralisme influence non seulement les enjeux environnementaux, mais aussi la structure particulière de coopération et de compétition intergouvernementale qui définit les politiques. Notamment, il aborde la politique du changement climatique, un phénomène aggravé par la gouvernance et la politique internationale. Les facteurs clés qui influent la politique du changement climatique du Canada comprennent entre autres : la difficulté de la part du public à accepter le coût d'une politique environnementale au sein d'une population et d'une économie croissante ; des divisions politiques qui reflètent les différences écologiques et économiques régionales du pays ; une réglementation environnementale distribuée selon des juridictions multiples et décentralisées ; et des mécanismes intergouvernementaux ayant des pouvoirs et une efficacité limités. Vingt ans après le sommet de Rio, il n'existe toujours pas de cadre réglementaire ou de consensus solide sur une stratégie nationale (c'est-à-dire pancanadienne) concernant la réduction des émissions de gaz à effet de serre. À défaut d'un consensus national plus prononcé et de mesures fédérales concrètes, des initiatives concurrentes au niveau provincial ont en partie comblé ce vide réglementaire. En combinaison avec des projets prévus par le gouvernement fédéral du Canada, cette mosaïque réglementaire, qui est simultanément compétitive et coordonnée, n'est pas encore suffisante pour atteindre les réductions d'émissions des gaz à effet de serre assez modestes du Canada. Elle indique pourtant la voie à des solutions possibles.

Canada is of course a federal union and may also be said to be an environmental union as well, which suggests a shared sense of purpose and a Canada-wide approach.¹ However, environmental issues pose some of the most difficult, and

1 Parts of this chapter are based on the author's work in Bakvis/Baier/Brown (2009). The term "environmental union" was used as a theme in the edited book *Managing The Environmental Union* (Fafard/Harrison 2000).

most interesting, challenges the Canadian federation has faced, raising questions about constitutional jurisdiction and the effectiveness of our institutions. Climate change – specifically global warming and the international effort to reduce greenhouse gas emissions – is a key example, with serious implications for both regional and national interests. This paper demonstrates that the specific institutions and norms of the federal system, in particular the bias towards competitive and only loosely cooperative intergovernmental relations, are significant factors shaping policy options.

The Canadian federation occupies one of the largest land masses on earth. Bordering on three oceans, it encompasses enormous ecological diversity and abundant natural resources. At home and abroad, the image of Canadians as stewards of a vast, untouched northern wilderness has been central to the national identity. However, as in other advanced industrial economies, environmental policy in Canada has been a continuing struggle, pitting vested economic and industry interests against local citizens and nationally and internationally organized advocacy groups demanding stronger environmental regulation. It creates struggles within governments as well as between them as policy-makers weigh environmental risks against the costs of industrial or social adjustment. The challenges multiply for trans-boundary problems such as greenhouse gases, which involve both domestic and foreign policy interests. The latter are not always the same, and negotiating simultaneously with domestic interests and international players presents a major challenge for the national government, even in a unitary state (Putnam 1988). All these complications are magnified in the Canadian federation. Before examining the specifics of the climate change issue in Canada, this paper sets out, first, the basic framework of how federalism impacts environmental issues and, second, the pattern of specific intergovernmental competition and cooperation that shapes environmental policy outcomes.

Federalism and the Environment in Canada

The fact that Canada is constitutionally and politically a federal state, has important implications for environmental issues. Theorists see federal power-sharing as promoting liberal and democratic values by setting up competitive governments capable of satisfying diverse needs and preferences (Breton 1982; Ostrom et al. 1999). In this context environmental concerns can be simultaneously local, regional, national, and international in scope. The population in different jurisdictions may value the environment differently, or be willing to make different kinds of economic and social trade-offs to preserve environmental quality. These calculations may also be significantly different at the constituent unit level than they are at the federation-wide or national level. In federations, local and provincial or state governments normally have the power to make decisions on more localized

environmental matters such as land use, water treatment, waste disposal, and forest management, while the national or federal government makes decisions about environmental issues that are national in scope or that cross provincial boundaries, such as air or water pollutants, or the manufacture, sale, and transportation of toxic substances. In all federations, policies and programs developed by the national (central) government are frequently implemented and delivered by the provincial and local governments.

The facts of environmental interdependence in Canada differ from many other countries and are a reflection of its size and geographic and socio-cultural diversity. Because the federation encompasses several different ecological zones, regional climates, and major watersheds, some environmental problems are confined to one region alone, or have differing effects across regions. And since economic activities and levels of development differ across the country, the issues of concern vary accordingly: environmental problems associated with urban sprawl do not affect all provinces to the same degree, and environmental issues related to oil and gas production are of particular concern in Alberta. All the provinces and territories are still trying to encourage industrial development, so they will not want environmental policy to impose undue costs on potential investors. On the other hand, environmentally friendly development and a high level of environmental quality are becoming increasingly important for attracting investment and human capital.

Support for improving environmental quality and the general political salience of environmental issues reflects what political scientists refer to as “post-material” values in the political culture. Since the 1970s support for post-material values in Canada has been consistently higher in Quebec (Nevitte 1996). This difference may explain the stronger public opinion support in Quebec for environmental action, although that support does not necessarily translate into support for increased federal (i.e., central) control. And finally, some environmental issues are especially regionally concentrated. Depletion of fish stocks, for instance, has severely affected coastal communities. Acid rain has been a serious issue in eastern Canada, whereas soil salinization is a concern confined to the prairies.

A second factor that has significant implications for environmental policy is the constitutional division of powers (Winfield/MacDonald 2008; Valiante 2002). Environmental issues as they came to be defined in the late twentieth century were not a consideration in the mid-nineteenth century, and so the *Constitution Act, 1867*, makes no mention of them. Gradually, however, a jurisdictional approach to the environment has emerged through legislation and judicial review. As is common in all federations, aspects of the environment are the concern of all levels of governments. Provincial governments have responsibility for local matters and most issues with respect to the land, its use and development, as well as the ownership and management of natural resources (fisheries being a major exception). Therefore the provinces have assumed jurisdiction (or “competence” in European

vocabulary) for most local environmental issues or matters that can be contained within their boundaries. Much of this provincial jurisdiction is then delegated to the local governments that take responsibility for the water supply, the regulation of land use, and waste disposal. Meanwhile, the federal government has assumed jurisdiction over environmental issues that are more than local in scope, that cross provincial or international boundaries, that are especially costly or technically difficult to handle, or that have major implications for the national economy or national security.

The federal government's constitutional powers are not as strong in Canada as they are in other federations because the overall distribution of powers is mainly exclusive rather than concurrent, as is common elsewhere, meaning that there are stricter jurisdictional boundaries between provincial and federal levels. The decision to spell out the provincial powers was deliberate, intended specifically to confine federal power. In addition, in 1931 constitutional jurisprudence on treaties and their implementation has established that the federal government has clear jurisdiction over the negotiation and ratification of international treaties, but that it cannot implement them in areas of provincial jurisdiction. However, the bulk of Ottawa's legal authority consists in its jurisdiction over trade and commerce, coastal fisheries, and criminal law, along with the 'peace, order, and good government' (POGG) clause. In the last 20 years, the courts have been gradually expanding federal power and it is possible that broader federal legislation in the environment field could be upheld. In fact, environmental protection was at the centre of the *R. v. Zellerbach Crown Canada* case, in which the Supreme Court of Canada ruled in 1988 that Ottawa could use its POGG power to act in a matter that the provinces concerned were unable to tackle, even if that matter normally fell under provincial jurisdiction (see Lucas 1989, 174-177). Similarly, in 1997, the Supreme Court further ruled (in the *R. v. Hydro-Québec* case) that federal legislation, specifically the *Canadian Environmental Protection Act* (CEPA) could be upheld using the criminal law power of the federal parliament (Baier 2002, 26-27).

Legal jurisdiction/competence is especially important in the environmental field because so many of the proposed solutions to environmental problems involve regulation. But no government holds all the legal resources, and it is often unclear, especially for new and emerging issues, which one has the final authority. In many federations this problem is solved by constitutional concurrency. Although Canada's constitution does not provide for such formal concurrency in the environment field, *de facto* concurrency is quite common.

Cooperation and Competition

If *de facto* concurrency describes the overall jurisdiction position of environmental policy, the mechanisms for dealing with such practical interdependence

remain problematic. As outlined in Figure 1, there is a range or spectrum of intergovernmental relations that are possible and available in virtually all federal systems. These relations can be less or more constraining of the policy authority of the governments involved, with four types of outcomes as outlined in the figure: competition, arm's length cooperation, coordination and centralization. However in each federal system the prevailing political culture, the nature of federal values and social factors, and constitutional and institutional features can prefigure or bias intergovernmental relations to be dominated by one or two of the types. This is clearly the case for Canada.

Table 1: Modes of Intergovernmental Relations

Less Constraint on Policy Authority			More Constraint on Policy Authority
Competition	Arm's Length Cooperation	Collaboration	Centralization
Unfettered Sovereignty	Linked Sovereignty	Pooled Sovereignty	Unified Sovereignty

This table is drawn from material in Heinmiller (2002), Painter (1998) and Scharpf (1999)

This author argues elsewhere that, despite the rather centralist biases of the founders of the Canadian federation, the federal system in Canada has evolved into a markedly decentralized system, in both legal and fiscal terms. There is strong public support for provincial autonomy, centered in Quebec but present across the country, a suspicion of federal coordination and a high degree of tolerance for intergovernmental competition. In the context of an only partly integrated national party system, and an unresponsive and appointed Senate, the federal Parliament cannot often muster the political will to exercise its constitutional powers in the face of provincial opposition. The provinces and the federal government alike tend to avoid extensive collusive arrangements, and in particular have shied away from adopting the kind of powerful intergovernmental institutions for co-decision common in Germany, Australia, and the European Union. Thus the Canadian intergovernmental mode is more often of the "competition" and "arm's length cooperation" types depicted in Table 1.

The environmental union in Canada demonstrates these characterizations as much as any other aspect of Canadian federalism. Governments often act unilaterally when the matter in question is sufficiently clear-cut or localized – a clean-up of a specific site, for example, or an environmental impact assessment of a minor project. In other cases, however, they act unilaterally because other governments will not cooperate with them, or because they need to take action that fully meets

the needs of their electorate, and is not compromised by the interests of other governments. The latter can also have strong ideological and partisan overtones.

Competitive policy-making can amount to an incredibly rich experiment in what works and what does not. In the United States, where 50 individual states have been making their own environmental policy choices, the overall effect has been a moderate 'race to the top' led by California, which has tended to set the standard for vehicle emissions (Rabe 2007, 2004). Canada too has seen inter-jurisdictional competition on the environmental front in recent years. A recent study of environmental policies and indicators in six provinces found that inter-governmental competition on the environment has not amounted to the 'race to the bottom' that some might have feared. Governments have not been competing to reduce pollution controls, for instance, in order to attract industry. The general trend has been more positive: in the late 1980s, for example, some provinces set out on their own to raise the standards for dioxin emissions in the pulp and paper industry. These standards for dioxin emissions were superseded in 1992 by new, less stringent, national standards (Olewiler 2006). As outlined more fully below, recent actions by several Canadian provinces to reduce greenhouse gas emissions suggest that a new 'race to the top' is underway.

Responding to environmental problems of national, international, or even global scope would logically seem to be the business of the federal government alone. Unilateral federal action is called for when an environmental problem requires a single, unambiguous, and consistent regulatory regime of a kind that would be impossible for provinces to implement. As noted, the federal parliament already has partial jurisdiction over large areas of the environmental policy field, including fish habitat and trans-boundary air pollutants. And as the Supreme Court's rulings in the *Crown Zellerbach* and *Hydro-Québec* cases suggest, the POGG and criminal law powers in the *Constitution Act, 1867*, could justify new federal regulatory powers in certain cases. Environmental advocacy groups have been calling for strong unilateral action since the 1960s (Boardman 1992). But even the key achievements of federal legislation since 1970 – the *Canada Water Act, 1970*; amendments to the *Fisheries Act, 1970*; the *Clean Air Act, 1971*; the *Canadian Environmental Protection Act, 1992*; and the *Canadian Environmental Assessment Act, 1992* – were usually the product of extensive intergovernmental consultations.

The alternative to competition or unilateral action is cooperation of some kind. Two or more neighbouring governments will cooperate to deal with a specific regional issue, or to take a particularly regional approach to a national or international issue. In the long lead-up to the Canada-US Air Quality Agreement of 1991, for example, governments on both sides of the border cooperated extensively to reduce "acid rain", especially in the 'downstream' region represented by the Conference of New England Governors and Eastern Canadian Premiers. The federal government and one or more provinces will occasionally come together in a bi-

lateral or regional forum to hold a joint environmental assessment (e.g., the Great Whale hydro project in Quebec and the Hibernia oilfield project in Newfoundland and Labrador). For larger, more complex efforts, however, the most important forums are still the multilateral Federal-Provincial-Territorial conferences of ministers and the subsidiary meetings of senior officials and experts.

Kathryn Harrison has suggested that one reason the federal government is willing “to relinquish the lead role to the provinces” and embrace intergovernmental cooperation is in order “to avoid electoral blame” – in effect, to pass the buck (Harrison 1996b, 20). Ottawa is averse to trampling on provincial jurisdiction lest it provokes regional discontent, and to pick a fight with Quebec that could be damaging to national unity. Unilateral action would also require strong public support, and Canadians’ record on that score has not been consistent.² Finally, leadership is costly: for Ottawa to develop and enforce a new set of environmental standards would entail major bureaucratic and technical investment, potentially duplicating provincial efforts. With a few exceptions, such investments have been considered more than Ottawa could afford.

For all these reasons the more common approach has been for the federal government to work with the provinces and territories on environmental problems. If a regulatory standard or process is required, it is not ‘federal’ but ‘national’ – jointly created either by all the governments or by a few of them through bilateral or regional arrangements. This collaborative approach has produced a long series of agreements, and the intergovernmental machinery devoted to it is well-established. The problem – by no means confined to environmental policy – is that Canadian intergovernmental institutions do not deal well with issues requiring uniform, consistent regulatory results. The main intergovernmental body in the field of environmental policy, the Canadian Council of Ministers of the Environment (CCME), brings together hundreds of officials in committees and task forces, and conducts extensive consultations with the environmental NGO community. When the product of all those efforts goes to the ministers for final approval, however, the decision is made on the basis of consensus bargaining alone. No votes are taken; governments can refuse to take part; and agreements cannot be enforced in law. Thus the CCME and similar processes tend to produce lowest-common-denominator outcomes (Fafard 2000).

Intergovernmental processes can take years to complete, and even then the results are often weak and unsubstantial. The *Canadian Environmental Protection Act* (CEPA) – broad federal legislation first introduced in 1988 – underwent four years of negotiations before the federal government felt it had sufficient consensus to pass through parliament. The big four provinces – British Columbia, Alberta, On-

2 Kiss (this volume) has shown that there exists substantial public support in Canada for increased federal spending on environmental issues, but rather limited support for measures seen to be jeopardizing economic prosperity. This goes some way to explain cross-party consensus for issues such as investment in new technologies.

tario and Quebec – opposed the original bill vigorously and relented only after the legislation was changed to allow for the recognition of ‘equivalent’ provincial measures to stand for potential new federal regulations in some cases. Negotiations over the Canada-Wide Agreement on Environmental Harmonization took five years, from 1993 to 1998; and as discussed below, it took three years, from 1997 to 2000, to produce an anodyne and ultimately ineffective agreement on a ‘national action plan’ to deal with greenhouse gas emissions.

One way of dealing with the limitations of the cooperative machinery is by reducing the need for cooperation in the first place. Thus governments try to fine-tune their respective responsibilities to avoid overlap. In this approach, termed ‘rationalization’, the governments involved negotiate new national standards for environmental regulation, and then decide definitively which government will be responsible for implementing and enforcing the regulations (Harrison 2002, 125-127). This approach offers the same certainty as unified federal action, but allows the governments to choose the style of implementation they prefer: more decentralized and flexible, or more uniform and centralized. The best recent example is the Environmental Harmonization agreement of 1998, which set in train a variety of processes, overseen by the CCME, to review environmental problems. Nevertheless, the Harmonization Accords have been likened to a series of ‘joint decision traps’, relying too much on consensus and producing lowest-common-denominator results (Fafard 2000, 81-101). Standards are being set and enforced, but according to observers – in particular environmental NGOs – they tend to be weaker than might be expected if only one jurisdiction were involved. Provincial governments with strong economic interest in resisting higher standards have generally been successful in doing so (Winfield/MacDonald 2008, 281-284). On the other hand, the threat of unilateral federal action seems to have produced a more stringent Canada-wide standard in some cases (Harrison 2002, 134-139).

Finally, one notes that individual federal governments (e.g., Chrétien, Martin, Harper) will favour different modes of interaction, some choosing mostly cooperation, some mostly competition (Harrison 1996a; VanNijnatten/MacDonald 2003; Simpson 2007). However, no federal government in recent decades has shown much determination to take strong centralized action on the environment. The Harper government, with its apparently decentralist ‘open’ approach to federalism, has not broken with this pattern. Thus, even before examining in more detail the climate change case, it should be clear that in Canadian intergovernmental relations the overall bias for environmental policy-making remains at the “less constraint” end of the spectrum: competition and looser forms of cooperation much more often than tight collaboration or centralization.

The Case of Climate Change Policy

All of the factors addressed so far in this paper – the difficulties of accepting environmental costs, the interaction between the economy and the environment, regional and jurisdictional differences over environment policy, and the mechanisms and dynamics of intergovernmental and international relations – come together in the climate change case. In addition, while other environmental issues have international dimensions, climate change is likely to become the classic example of the challenges posed by multilevel governance. For Canada the issue has two external dimensions: as a major foreign policy matter with significant multilateral implications that must be handled through the United Nations, and as a major bilateral and continental issue with the United States. Domestically, therefore, addressing the issue means negotiating the details of treaty ratification and implementation, national and regional competitiveness, and adjustment to a carbon-reduced economy, in addition to the challenges of reaching intergovernmental consensus where required.

In terms of direct interests, the differential impact of greenhouse gas emissions (GGEs) production is stark. The main sources of GGEs in Canada, in order of magnitude, are: transportation, electricity generation using fossil fuels, oil and gas production, residential and commercial fuel consumption, industrial production, and agriculture. Whereas fossil fuels are used for transportation across Canada, oil and gas production, along with electricity generation from carbon sources (oil, coal, natural gas) are regionally concentrated. By 2004 Alberta's oil and gas industry, including the oil sands projects, had made the province the largest producer of GGEs in Canada. Ontario, with the largest population, greatest urban density, and significant industrial production, was the second largest emitter, and Saskatchewan, also a significant oil and gas producer, with a big agricultural sector, had the highest per capita emissions. Provinces that rely on hydroelectric power for most of their electricity and industrial production, such as Quebec, British Columbia and Manitoba, are much less emissions-intensive (Simpson 2007, 23-26; Hardy 2012).

The need to reduce greenhouse gas production has been on the international agenda since at least 1992, when the Rio de Janeiro 'Earth Summit' produced the United Nations Framework Convention on Climate Change. The commitments made at that time to stabilize GGEs were largely voluntary. Five years later, the international consensus had firmed up to the point that an international meeting in Kyoto, Japan, set binding targets for reductions in GGEs, applicable to all industrialized countries. When Canada signed the Kyoto Protocol, it agreed that by 2010 it would reduce its GGEs to a level 6 below its output in 1990.

The Kyoto agreement was to take effect only when it had been ratified by a sufficient number of countries. Although the US Clinton administration had signed the 1997 agreement, the Bush administration announced in March 2001 that it

would not seek ratification in the Senate. The Canadian government did ratify, in December 2002, and the protocol finally took effect in 2005. In the meantime, the federal, provincial, and territorial governments all sought to implement the Kyoto commitments. However, as detailed below, Canadian governments found it exceedingly difficult (if indeed they ever had the political will) to make significant progress. Shortly after its election in January 2006, the newly-elected Conservative government (in a minority parliament) announced that the Kyoto targets were not realistic and that Canada would not be able to honour its commitments after all.

In December 2011 the Harper government (by then in a majority parliament) took the further step of actually withdrawing from the treaty (Environment Canada 2011). In the meantime the federal government has been seeking a new international consensus on what it sees as a more realistic approach, with binding commitments not only from all industrialized countries but also from the developing world. The government has also moved to regulate emissions by Canadian industry on a sectoral basis, implementing these if possible through equivalency agreements with the provinces (Environment Canada 2007a, 2007b).³ In 2009 Ottawa declared a new target of reductions – this time to reduce GGEs to 607 Mt by 2020, which would be 17 below 2005 emissions (and, according to one analysis, the equivalent of a 3 reduction from the 1990 base) (Bramley 2009).

To date this target has not been accompanied by a detailed plan on exactly how (including through what regulatory means) the target could be achieved, and for some time the federal government declared that it was waiting until the details of a national GGE reduction regime in the US become clearer (McCarthy 2009b). More recently, and in light of the failure of national legislation for a carbon pricing regime in the US, the Government of Canada is at various stages of development and regulatory approval for national regulatory standards on a sectoral basis, aligned with US national standards where possible. These include completed or proposed standards for emissions from renewable fuels, passenger automobiles and light-duty trucks, heavy-duty trucks, and the electricity sector (the latter aimed at phasing out coal production), as well as proposed regulation of the oil and gas production sector. Meanwhile, as detailed below, several provinces have taken the lead with their own, in some cases more stringent, GGE reduction targets and related measures.

During the decade and a half between the Rio summit and Ottawa's latest position statement, climate change issues were dealt with extensively through domestic intergovernmental relations. Under the joint auspices of the CCME and the Council of Ministers of Energy, intergovernmental coordinating committees worked on a national action plan, released in 1995. According to Winfield and

3 Emission targets based on industry intensity aim to reduce the amount of emissions per unit of production, but do not aim to reduce emissions overall.

Macdonald (2008), this plan amounted to little more than seeking voluntary reductions of emissions and promising a variety of incentive programs to conserve energy. Meetings intensified in the lead-up to the international meetings in Kyoto, and the provinces agreed with the Chrétien government on the modest target of reducing emissions to the 1990 level by 2010. However, the prime minister unilaterally deepened Canada's commitment not once but twice, breaking ranks with the provinces (although Quebec did support tougher targets), first to 3 below the 1990 level, then to 6 below it. While Chrétien was apparently moving to maximize Canada's influence in bridging the gap at Kyoto between the EU and other industrialized countries, his actions soured the intergovernmental mood in Canada. Back home, meeting privately with the other first ministers in January 1998, he was forced to admit that he had no plan for achieving Canada's tougher Kyoto targets, and that he would consult with them further before ratifying the protocol, if indeed Canada were to ratify it at all (Simpson 2007, 61).

In any case, the Chrétien government continued to be committed to a joint implementation strategy to deal with the climate change issues. After the Kyoto meeting, the intergovernmental process was stepped up considerably with the addition of a well-staffed federal secretariat and extensive involvement of non-governmental 'stakeholders' at 16 separate 'tables' to discuss more specific matters such as vehicle emissions, electricity production, and emission trading. Over a period of three years, this process eventually produced a 'National Implementation Strategy and Business Plan', signed by all the parties except Ontario and released in October 2000. The plan laid out broad principles, spending commitments, and voluntary undertakings, but established no specific provincial or sectoral targets for achieving the Kyoto commitments, nor any binding regulatory process for reducing emissions. In the words of one prominent account, it was 'a roadmap to nowhere' (Simpson 2007, 67).

Once the US had signaled its intention to withdraw from Kyoto, the Alberta government announced its opposition to Canadian ratification and withdrew from the intergovernmental process. The federal government went forward on its own to ratify the agreement in 2002, to announce industry GGE reduction targets, and to begin regulating those targets. By 2008, however, after two changes of government (and two minority parliaments), it became clear, as noted, that Canada could not meet its Kyoto target and the debate began to move to 'post-Kyoto' strategies. In the meantime, the provinces – like the states in the US – took the initiative in pursuing a variety of measures on their own.

In all this one fact has always been clear: on-the-ground implementation of international commitments on GGE reductions requires the participation of all levels of government. Every government itself is responsible for a certain amount of carbon and other emissions through its own administrative operations. The provinces and territories have control over natural resources and their management, as well as all major electricity producers, while local governments can influence

land use and urban development, transportation use, and other consumer behaviour. All governments have at their disposal important fiscal and regulatory instruments that they can use to induce emission reductions in the society and economy at large. The provinces clearly have the right to regulate GGEs in the industry sectors within their jurisdiction; but could the federal parliament pass a Canada-wide scheme? As noted, recent Supreme Court judgments have upheld federal legislation such as the *Canadian Environmental Protection Act* that could be used to regulate GGEs (Elgie 2009). It seems that both the Martin and Harper governments have contemplated this option (Marshall 2007). Yet for all the reasons noted above (national unity constraints, regional differences, and a commitment to act collaboratively rather than unilaterally) – and also, perhaps, because it remains unclear how far federal legislation could go before it provoked a constitutional challenge – Ottawa has chosen thus far not to pursue that route.

In any event, the jurisdictional problem is secondary to the economic and political challenges of deciding what to do, how far to go, and how fast. Each of the following issues has been the focus of major contestation in Canada: Should Canada accept the United Nations Intergovernmental Panel's view on the causes and effects of global warming? Should it take a bold approach along the lines of Kyoto? Should it oppose Kyoto as overly damaging to the economy? Or – in light of the integration of our economy with that of the US – should it simply follow the American lead? What should Canada's share of emission reductions be? Should Canada be granted some leeway as a world energy producer, passing the carbon burden onto consumers? Or are we morally obligated to lead the way because, on a per capita basis, we are among the world's top GGE producers?

The competing answers to these questions have been partly ideological, pitting the green movement against business, and in Canada have revealed some significant differences between the Conservative party and its centre-left opponents – the Liberals, the New Democratic Party, the Bloc Québécois, and the Green party. The current Conservative party has roots in both the Progressive Conservatives and the western-based Reform and Alliance parties. The former, when last in power under Mulroney, had a relatively progressive record on environmental issues. However, the latter were hostile to the climate change agenda and highly suspicious of proposals for a carbon tax as harking back to the disastrously centralizing National Energy Program of 1980.

The Harper government, elected in 2006 with a preponderance of seats in western Canada, initially reflected that Reform-Alliance position, but had to deal with at least a temporary resurgence of public opinion in favour of tougher measures to reduce GGEs. While still committed to an intensity-based and sectoral emissions policy, and focused now on post-Kyoto international negotiations, the Harper government has been inching towards a tougher approach. It has announced its commitment to a new target, as noted above, at reducing GGEs to 17% below 2005 levels by 2020 – a target which the government maintains will still require

considerable sacrifice on Canada's growing economy and population, comparable to the costs of reductions set at much deeper targets in Europe, where economic and population growth is not as robust (McCarthy 2009a).

In addition, the federal government has essentially harmonized national vehicle emission standards with those adopted by the Environmental Protection Agency in the US (in turn adopting the California standard). This approach has apparently been endorsed by almost all provinces. Liberal leader Stéphane Dion proposed an ambitious plan for a carbon tax in June 2008. The plan came under considerable criticism during the general federal election campaign in the fall of 2008, when the Conservatives attacked the plan, for among other things, threatening to dampen economic growth and development during the global financial crisis (Harrison 2012). The Liberals have since dropped the carbon tax proposal, but along with the NDP and Bloc Québécois, they continue to advocate a comprehensive carbon pricing scheme, such as emissions trading. Following the spring election of 2011 in which the Conservatives were returned with a majority, partisan debate centres on the Conservatives' overall international policy and on the various sectoral regulatory proposals.

As for the provinces, a recent Suzuki Foundation report describes them as 'all over the map', reflecting various combinations of regional interests and ideological values. The provincial governments' positions on climate change in general have reflected the intensity of their emissions (see for basic data comparing Canadian provinces and territories) (Marshall 2006). Alberta, Ontario, and Saskatchewan were slow to get on board and indeed resisted the initial Kyoto bandwagon, while Manitoba and Quebec had less to lose and embraced the Kyoto agenda early on. British Columbia, initially hostile, has since 2006 become one of the leading provinces in terms of climate change policy (Harrison 2012).

Provinces that are major hydrocarbon producers – chiefly Alberta but also Saskatchewan and Newfoundland and Labrador – have been anxious lest GGE reductions put a halt to the burgeoning petroleum-based growth of their economies. In Ontario, where stricter emissions controls would have serious implications for the auto industry and the costs of reducing coal-fired electricity production would be high, the neoconservative Mike Harris government (1995–2002) was skeptical about global warming in general and hostile to the Kyoto process. Even the Liberal government of Dalton McGuinty has been cautious; it has supported a North American proposal, as discussed below. Other provinces such as Nova Scotia and Prince Edward Island depend heavily on fossil fuels for electricity generation. And all provinces worry about their general economic competitiveness if the regulation of carbon and other emissions in Canada is substantially more stringent than it is in the United States.

Table 2: Population, Economic and Environmental Data For Canadian Provinces

	Population	GDP per capita (\$ Can)	Estimated GGEs 2008 (Mt)	Estimated GGEs/capita (Mt)
Canada	31,241,000	38,495	721.0	
Newfoundland and Labrador	500,610	35,243	9.39	18.4
Prince Edward Island	134,205	28,106	2.05	14.9
Nova Scotia	903,090	30,883	19.6	21.0
New Brunswick	719,650	29,900	17.9	23.9
Quebec	7,435,900	33,856	81.7	10.7
Ontario	12,028,895	40,346	190.0	15.0
Manitoba	1,133,510	32,708	21.2	18.0
Saskatchewan	953,850	36,749	72.0	72.9
Alberta	3,256,355	54,075	234.0	69.5
British Columbia	4,074,385	35,041	62.3	14.4
Yukon Territory	30,195	-	.39	12.6
Northwest Territories	41,055	-	1.29	12.6
Nunavut	29,325	-	1.29	17.7

Sources: Statistics Canada and Environment Canada

Still, across North America, provincial and state governments have taken it on themselves to fill what they have apparently perceived as a policy vacuum in their respective federal capitals. In 2007 Quebec introduced a narrowly-based tax on carbon fuels; in June 2008 Quebec signed a pact with Ontario to establish an interprovincial system by January 2010;⁴ and a month later British Columbia became the first jurisdiction in North America to implement a broad-based carbon tax – despite opposition from Ottawa. In addition, Quebec, British Columbia, Manitoba, Ontario, and Quebec joined with seven US states on a project called the Western Climate Initiative, aimed at setting regional goals for reducing greenhouse gas emissions (GGE) and establishing a regional system.⁵ Unfortunately, in 2011 all the US states except for California withdrew from the scheme. Many observers believe that carbon taxes and regimes are the most effective policy instruments for deep and long-term reductions in carbon emissions (Simpson 2007). And even the provinces with the most to lose from carbon tax or regulatory regimes are putting major efforts into alternative approaches based on new tech-

4 Under a " system, government sets an overall limit, or cap, on total emissions, but allows polluters to trade emission credits among themselves.

5 See website at <http://www.westernclimateinitiative.org>, accessed August 15, 2009.

nologies. Both Alberta and Saskatchewan, for instance, have ambitious plans to use carbon capture and storage to substantially reduce their emissions.

These varied provincial initiatives are pointing the way ahead for their own jurisdictions. This is appropriate, since policy responses to climate change must be tailored to local and regional conditions. This much competitive federalism can deliver. However, it will not be enough – nationally or globally – if the sum of provincial efforts does not add up to a national response at least as significant as Canada's share of the global problem. According to research undertaken for the National Roundtable on Environment and the Economy, carbon reduction initiatives proposed or underway across the provinces will not, unless significantly upgraded, enable the provinces to meet their various targets and thus by extension, will not sufficiently contribute to meeting the Harper government's 2020 targets. Indeed, counting initiatives underway or planned against the national target, all public policy actions would take Canada to only approximately 54 of its 2020 goal (Navius 2012). Moreover, some worry that a piecemeal, province-by-province approach is unlikely to be either consistent or comprehensive. There is a real risk that a patchwork of schemes would fracture the Canadian marketplace in ways that would make it significantly more difficult to operate competitively.

Meanwhile the regional tensions continue to mount with the perceived effects of the oil sands projects (mainly in Alberta) taking centre stage. The airing of interprovincial conflicts at the Copenhagen summit in December 2009 became an embarrassment for many Canadians when at least four provinces set out their own separate GGE strategies, most at odds with the stated federal position. More recently, the Alberta and Ontario premiers have sparred in the media about the broader effects of the oil sands developments and the extent to which they are harmful or beneficial to the overall Canadian economy.

It is conceivable that the Canadian intergovernmental process – spurred on by the competitive processes just outlined – could achieve progressively more substantive results. Unilateral or arm's length federal action is also conceivable, likely after consultation with the provinces and territories. Like the debate over free trade in the 1980s and 1990s, the climate change issue may ultimately be finessed without a major federal-provincial showdown (Brown 1991). This seems even more likely to occur if public opinion drives all governments to act more substantively and more quickly as the global economy recovers. Certainly the jurisdictional issues will be easier to resolve if there is a stronger political consensus in the country as a whole.

Conclusion

The environment is of increasing concern to Canadians, and is an important part of our identity. However, Canadians do not always agree on standards of

environmental quality or the social and economic trade-offs they are willing to make to deal with major environmental problems. Federalism only adds to the difficulty of addressing environmental concerns, since different regional interests must be accommodated and multiple levels of government share responsibility for dealing with various types of environmental issues. The environment is, in *de facto* terms, a concurrent, overlapping responsibility among our governments. The challenge therefore is for governments to get their act together. However, they attempt to do so within a prevailing political culture of federalism that privileges local and provincial autonomy and decentralized responses to most issues.

Intergovernmental mechanisms for addressing environmental issues are well-established, but – as usual with the Canadian version of “executive federalism” – their effectiveness is limited by the length of time it takes to reach agreement and by the fact that outcomes are frequently diluted and compromised. Thus, one major response to the difficulty of developing an adequate national policy is what one may call competitive federalism, in which the federal, provincial, and territorial governments simply go ahead with their own solutions. This competition can have the effect of encouraging – or shaming – other jurisdictions into following suit. But on the climate change file, these solutions are coming rather late and have yet to make their full impact. Whatever the case, competitive, piecemeal policy is no substitute for comprehensive, binding, and consistent policy. Canadians may increasingly expect fairness, equality, and consistency on matters that are Canada-wide in scope. Unfortunately, Canadian federalism makes the latter very difficult to achieve.

The climate change file is not the first major environmental issue in Canada to illustrate the effects of these aspects of Canadian federalism, but it does so with great clarity. It is the epitome of a multilevel governance challenge: from the rules hammered out in the United Nations International Convention on Climate Change and the Kyoto protocol, right down to the policies adopted by the local municipality to cut back on carbon use. In the context of foreign policy, it tests the federal government’s authority to enter into and ratify treaties, and underlines its apparent inability to implement such treaties in areas of provincial responsibility. The fact that there is still no substantial consensus on climate change, let alone comprehensive regulation, twenty years after the Rio summit, makes it hard not to suspect that the executives of the various Canadian governments have simply been hiding behind their ineffective intergovernmental machinery and blaming each other for their failure to act.

Even so, it would be unfair to lay all the blame at the feet of federalism. Climate change and what to do about it remains a deeply contested issue in Canada. Very substantial economic, social, and political interests and values are at stake. Reaching a strong national consensus is bound to take time. In the absence of a stronger consensus, it is all the more difficult for governments to summon the political will to sort out the practical details of how best to proceed among the various legal re-

sponsibilities and political mandates. Thus governments are responding to their own needs with a mixture of partly coordinated and partly competing efforts.

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