Democratic Deficits and the Demise of the Security and Prosperity Partnership of North America: The Role of Civil Society

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Draft chapter for *North America in Question: Regional Integration in an Era of Economic Turbulence*

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February 2010
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By August 2009, at the North American Leaders’ (NAL) summit in Guadalajara, Mexico it was clear the Security and Prosperity Partnership of North America (SPP) had died a quiet death. While the “Three Amigos Summit” had survived the transition from U.S. President George W. Bush to Barack Obama, with Obama meeting in Guadalajara with his counterparts Stephen Harper and Felipe Calderón, the SPP had disappeared from their agenda. The only apparent reference to the SPP was the word “process” in the last sentence of the summit declaration: “We will continue to work through this North American Leaders’ Summit process, in an inclusive and transparent manner, for the common benefit of the people of Mexico, Canada and the United States (North American Leaders 2009, our emphasis). One telling indication of the loss of commitment to this process was the solemn declaration on the official U.S. government SPP website (www.spp.gov) that “this website is an archive for SPP documents and will not be updated.” With this statement, a process that had begun four years earlier with high hopes of deepening North American integration through wide-ranging multi-sectoral regulatory harmonization, seemed to grind to a halt.

Civil society groups were jubilant about the SPP’s demise, and quickly claimed credit for stoking widespread unease and the growing criticism of the process that had accelerated over its last year. Having begun as a fairly informal, ad hoc process for coordinating the priorities of participating governments under security and prosperity agendas, the SPP had quickly become a lightning rod for criticism for its perceived non-transparent and undemocratic characteristics. Groups involved in transnational collaboration against North American integration initiatives, such as the Council of

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1 We thank Blayne Haggart for his research assistance, and also acknowledge the financial support of the Social Sciences and Humanities Research Council as well as the Canadian Embassy faculty research grant program, Washington, DC.

2 We have found no similar statement or acknowledgement of the demise of the SPP on the Canadian or Mexican foreign affairs websites. Canadian NDP trade critic Peter Julian suggests that it was the Obama administration that decided to pull the plug on the SPP initiative, and that the Canadian government refrained from commenting for diplomatic reasons (Interview, Ottawa, January 2010).
Canadians (COC) and Common Frontiers in Canada, Public Citizen and Global Exchange in the U.S. and and RMALC in Mexico, celebrated the end of the SPP process. Stuart Trew, the Trade Campaigner for the COC declared, “the NAFTA-plus agenda died at the latest North American Leader’s summit…we killed it and we should be singing that from the rooftops” (Trew 2009). Meanwhile, the trinational Task Force on Renegotiating NAFTA, composed of progressive legislators from Canada, the U.S. and Mexico, credited civil society group mobilizations and campaigns with helping to defeat the SPP (Julian 2009).

The demise of the SPP, the impact of civil society groups, and the possible role for civil society in consultations on the future of North American integration, raise important questions about governance, democracy and citizenship in the region. While we remain circumspect about the direct and measurable effects of civil society protest campaigns on the demise of the SPP, we feel the SPP represents an important case study for considering how North American regional integration remain plagued by a democratic deficit, as the case invites consideration of the failure of a mode of regional governance that lacks legitimacy, transparency, and consultation, and of the possible future democratizing role to be played by a more robust engagement of civil society actors. The North American Free Trade Agreement’s (NAFTA) “institutional vacuum” (Clarkson 2009) was well known even before the creation of the SPP, exhibiting a political model that eschewed democratic participation in favor of shallow, ineffective regional governance in the labour and environmental side agreements. Yet, the obvious appearance of exclusivity and secrecy that characterized the SPP decision-making process, which was limited to small groups of business elites in consultation with bureaucracies in the respective countries, further inflamed legislative political opposition as well as civil society outrage over the sense of having become “imaginary citizens” (Council of Canadians 2006) without the ability to provide input into deep integration discussions.

Our goal therefore in this chapter is to interrogate what the failure of the SPP illustrates about the source of and actors for change in the North American region, including concerns over democracy and citizenship. This exploration is politically necessary and normatively important in the context of extreme economic turbulence,
growing populist unease and protectionist pressures and mounting cross-border problems such as environmental degradation, drug wars and illegal immigration. In the face of such challenges, we find it at a minimum counterproductive and more seriously damaging to the welfare of the citizens of this North American region not to consider how one might best confer greater legitimacy on institutions and processes of regional governance. As discussed in the introduction to this volume, insights from both the “new regionalism” school and debates over the intersection between global governance and civil society are helpful in our analysis.

First, the “new regionalism” approach is helpful insofar as it expands the parameters of analyses of regional integration beyond economic concerns to include a more pluralistic understanding of who the relevant actors are in regionalization. Specifically, this approach includes a concern with how these actors may undermine or enhance integration initiatives. In the case of North America, it is well known that business leaders allied with supportive legislators have been key promoters of continental integration initiatives as far back as the mid-1980’s debates over the CUSFTA (Langille 1987) and through discussions of the evolving SPP (CCCE 2004; Council on Foreign Relations 2005). But a major part of the story of North American integration has been the civil society opposition waged through national and transnational campaigns against it over a twenty-year pattern of contentious political activity (Ayres and Macdonald 2009). In fact, there are multiple meanings and ideas of what North America—especially after NAFTA “means”. We are missing a significant part of the story of how North America has been constructed if we focus solely on increased trade and investment flows brought about by NAFTA to the exclusion of those visions of North America civil society groups have developed through information exchange, conferences, speaking tours and protest campaigns.

Moreover, while there is a vast literature on the subject of what we have called North American contentious politics, there have been fewer analytical attempts to weigh the damage caused by the democratic deficit in North American regional governance. An important counterfactual question emerges: what might civil society groups outside of business circles, if invited to contribute, have brought to the table in discussions over the future of the North American region? What have civil society groups actually proposed
in reaction to NAFTA and the SPP, and why have they not been able to more fully participate in deep integration discussions? How might a more transparent and inclusionary process of civil society engagement enhance the legitimacy of North American governance at a time when ironically collaboration around issues of mutual concern by Canada, the U.S. and Mexico—regional governance—is arguably most needed? In our attempts to reflect on these questions, we question the democratic characteristics of decision-making processes but are also not so naïve as to instinctively idealize “civil society” actors as democratic forces. But we are interested in what Keck has called their potential for “discursive representation” (Keck 2004: 45), which in our opinion would enhance the “legitimacy game” (Van Rooy 2004) of North American regional governance discussions and initiatives. Civil society groups frequently lack the economic resources held by political or business actors, but they do promote ideas, norms and voice the concerns of their stakeholders, representing, as Keck points out, “positions rather than populations, ideas rather than constituencies” (Keck 2004: 45).

In the first section of this chapter, we briefly review the literature on global governance, democratic deficits and the trend toward “complex multilateralism” present in many forms of regional and global governance. In the second section, we provide an assessment of how we feel democratic deficits have manifested themselves across North America in the post-NAFTA era. We examine the role played by civil society groups around the NAFTA side agreements on labour and the environment, as well as the emergence of the SPP in the post-September 11 context, and examine the structures of representation that were or were not produced. Based on secondary literature, government documents, parliamentary debates, and interviews with several senior Canadian government and business officials, we examine the mechanisms created for consultation within the SPP process. We argue that the unique institutional architecture of the SPP created a fundamental inequity between the form of representation offered to elite-level business, through the creation by the three governments of the North American Competitiveness Council (NACC), and the more limited, diffuse, and informal forms of consultation that might potentially have been available to non-business civil society actors. This institutional inequity naturally fueled concerns by non-elite actors about the transparency, accountability, and democratic nature of the SPP process. Finally, we
suggest that the ‘legitimacy game’ might be better played across North America with a more fuller inclusion of civil society participants in discussions about the future of governance, economic integration and cross-border collaboration in the region.

Global Governance, Civil Society and Democratic Deficits

Negotiations involving trade and investment rules and regulatory harmonization—as well as the resulting agreements and institutions—continue to be dogged by questions over transparency, legitimacy and accountability (Scholte 2002; Held and Koenig-Archibugi 2005). Essentially, what some see as the appropriate transnational functions of multilateral forums and regimes have with increased frequency clashed with what others see as the legitimate responsibilities of national democratic governments and the aspirations of their citizenry. Analytically, what has been referred to as the older “club model” (Keohane and Nye 2002) of multilateral negotiations has been progressively delegitimized by a post-Cold War process of “complex multilateralism” (O’Brien et al 2000). International negotiations today are less likely to be dominated by a limited number of powerful states, but rather are frequently shaped by a wide-ranging network of civil society organizations, new information technologies, the intrusion of social concerns into deliberations as well as rising states in the developing world demanding a role in “policy making” as opposed to the more traditional “policy taking.”

In fact, an extensive literature has developed documenting the changed international environment that has supported the participation and increased influence of NGOs into processes of global and regional governance since the end of the Cold War. Differently conceptually referred to as a “power shift” (Matthews 1997), “international deregulation” (Haas 1995), or “complex internationalization” (Tarrow 2005), research has highlighted the increased propensity for NGO involvement in international affairs and policy-making previously under the control of states alone. The explosive growth in NGOs (Sikkink and Smith 2002) and their mobilization around international policies and new international institutions has paralleled the continuing shift in power both inside states from parliaments to the executive and to the bureaucracy and outside states as
institutional power has diffused from the national to regional and supranational levels (Della Porta and Tarrow 2005: 1).

Arguably, the emergence of new political opportunities at both the regional and international level, including but not limited to the multiplying number of new activist targets in the newer trade and investment regimes, has encouraged the innovation in forms of NGO and civil society cross-border activism. Thus, we have over the past decade as well a parallel development conceptualized variously as the rise of “global civil society” (Wapner 1996; Steffek, Kissling and Nanz 2008), transnational social movements (Smith, Chatfield and Pagnucco 1997) or transnational advocacy networks (Keck and Sikkink 1997). The penchant then for NGOs and civic groups to mobilize and collaborate across borders has been linked to the emergence of a multi-level political environment (Tarrow 2002; Sikkink 2005). Policy making is occurring at national, regional and international levels, and new resources, leverage and opportunities are emerging for activist networking, targeting and challenges to elites, as the new policies and institutions become key points for contention and claims-making. The United Nations (UN), the EU and the World Trade Organization (WTO) have become well-known focal points for transnational protest and networking, with NGOs targeting UN conferences, WTO Ministerials and EU policies (Gordenker and Weiss 1996; Willetts 1996; Clark, Friedman and Hochstetler 1998; Imig and Tarrow 2001).

Despite the moves made in some international forums toward more consensual and inclusive modes of consultation and decision-making, democratic deficits remain a characteristic of many global and regional regimes, a condition which continues to plague this now widely established arena of civil society activity. The concept of democratic deficit captures the sense shared by many publics around the world of having lost control of their economic and political destinies, with processes of representation and democratic accountability undermined by global and regional integration pressures (Tanguay 2009). Again, a core concern critics focus on when identifying democratic deficits within governance structures is the question of “representivity” (Van Rooy 2004) and whether citizens beyond their elected elites have much opportunity to shape international debates and policy directions. How accountable are processes of global and regional governance to citizen concerns and anxieties—how do elites work ensure that “input legitimacy” is
taken as seriously as “output legitimacy” (Scharpf 1999). Perhaps more relevant to the discussion herein, how might the enhanced participation of civil society actors in regional policy making such as that which has characterized the NAFTA and SPP era, contribute to greater sense of ownership of shared North American problems and greater legitimacy for the concept of a shared North American community? As this chapter illustrates, North American elites from both the public and private sectors have, to their peril, ignored issues of public diplomacy, legitimacy and democracy, instead entrenching a model of governance that lacks measures to generate accountability, participation, and public support.

**North American Governance After NAFTA: The Emerging Legitimacy Gap**

The genesis of the project of North American integration involved new modes of interaction between state and business elites designed to reverse protectionist policies while attempting to finesse the lack of enthusiasm on the part the populations of the three countries for this project of liberalization. In many ways, the decision of the Canadian government to pursue a bilateral free trade deal with the United States was the result of the reorganization of Canadian business under the ideological leadership of the Business Council on National Issues (BCNI). The role of big business as a privileged interlocutor of government in trade policy was institutionalised during the subsequent negotiation of NAFTA in which the creation of the International Trade Advisory Committee (ITAC) and Sectoral Advisory Group on International Trade (SAGIT) built in a mechanism for consultation with business on a wide range of trade issues. These mechanisms, modeled on the US trade policy system, were also copied in Mexico (Macdonald 2002b; Winham 1992).

In response to this elite-led process, the NAFTA negotiations sparked the early round of NGO cross-border strategizing and coalition-building, modeled after the late 1980s mobilization against the Canada-United States Free Trade Agreement (CUSFTA) by the nationalist and social activist coalitions in Canada (Ayres 1998). Civic groups such as the COC, the U.S.-based Alliance for Responsible Trade (ART) and the Citizen’s Trade Campaign (CTC) and the RMALC spearheaded national coalition-building against the negotiations and also connected across borders to share strategies for opposing the
deal (Massicotte 2003; Dreiling 1999). Mexican and Canadian groups found opportunities within the U.S. political system to target the U.S. Congress and lobby against the accord, while the negotiations provided a convenient target for transnational mobilization as well as educational campaigns in the three NAFTA states. Thus, even though opportunities for formal consultation with non-elite actors were very limited, by its very nature, the negotiation of a high-level, public international treaty created a very prominent target for debate and contentious political activity both inside and outside formal political institutions. This bifurcation of forms of political representation between elite and non-elite groups, we argue, entrenched political divisions regarding the North American project and created an insider/outsider dichotomy that would be difficult to overcome.

In the years following NAFTA’s implementation, moreover, civic groups continued to target NAFTA and exploit the newly emergent multi-level political opportunity structure. National actors and coalitions continued to target domestic political opportunities: the CTC lobbied the U.S. Congress against renewal of the so-called Presidential “fast-track” negotiating authority, while RMALC and the Zapatista Army of National Liberation exploited cracks emerging in the decades long political hegemony held by the Institutional Revolutionary Party (PRI) to mobilize for reforms on behalf of constituencies threatened by NAFTA’s neoliberal prescriptions. NAFTA also encouraged protests along the Mexico-U.S. border and stimulated broader sectoral collaboration between union, women’s and environmental groups in the three NAFTA states (Carr 1996, Cook 1997; and Macdonald 2002a). Despite widespread skepticism about the side accords, civic groups from the three NAFTA states exploited regional political opportunities from the citizen-petition mechanisms built into the NAFTA labor and environmental side-accords to raise international awareness of labor or environmental abuses or to built solidarity around particular grievances highlighted in one of the NAFTA states (Compa 2001; Tollefson 2002; Stillerman 2003; and Graubart 2008). Although these mechanisms lacked enforcement capacity, they did still provide some openings for input and debate by non-elite actors into, as well as opportunities to publicize the weaknesses of the records of the three governments on labor and environmental issues.
The Architecture of the SPP: An Evolving Democratic Deficit

While NAFTA seemed to some extent to produce the sorts of multilevel opportunity structures found elsewhere across regional and global governance schemes, the more recent SPP process appeared deliberately designed to limit and perhaps even reverse the minimal steps towards a more consultative system of North American governance. The SPP unfolded as an expansive initiative between the executive bodies of the three NAFTA states. Lacking the legislative backing given NAFTA, the SPP was designed to alleviate U.S. security concerns in the post-September 11 era regarding the U.S.-Canadian and U.S.-Mexican borders while pursuing a broad-based package of multi-sectoral regulatory harmonization. In particular, the SPP was promoted by Canadians and Mexicans as a way of ensuring that U.S. security concerns did not lead to the restriction of their access to the U.S. market won during the CUSFTA and NAFTA talks. The SPP envisioned a model of regional integration and convergence of a space of “market-oriented harmonization” with “very little in the way of state role or infrastructure” imagined (Gilbert 2007).

Did the architects of the SPP process seek to overtly undercut the emergence of openings for citizen engagement, if not reduce traditional domestic political opportunities for civil society debate and leverage within political institutions? We argue that the lack of avenues for non-business civil society participation and representation in the SPP process (Anderson and Sands 2007; and Ackleson and Kastner 2006) created the appearance of deliberately crafted “shallow governance” (Ayres and Macdonald 2006), which failed to support the principles of democratic accountability purportedly evoked by the SPP (Gilbert 2007). In an era when other models of regional or global governance were being reshaped to meet the demands of transparency, accountability and representation put forth by coalitions of NGOs and domestic civic groups, the SPP seemed designed to avoid the messy—albeit more democratic—political confrontations and consultations attending the last ten years of trade and investment summitry.

Our research largely confirms the views of the critics that the SPP process gave business representatives disproportionate influence over the trilateral process, while non-elite views were largely excluded. It is important to emphasize that this lopsided
consultation process was not inevitable, but was the result of a series of forces: a dynamic of path dependency in which the lean institutional structure established under NAFTA tended to foreclose future opportunities for broadened consultation processes; the temporary transcendence of political forces committed to a narrow view of the integration process as a market-led phenomenon, the 9-11 attacks which led to the predominance of security concerns and attempts to discursively link “security” and “prosperity”, and the polarization of views around North American integration that led civil society actors to seek rejection or renegotiation of NAFTA, not inclusion in the existing negotiation process. In this context, non-elite actors were easily cast by governments as obstructionist, unconstructive and ideological, while business was perceived as providing pragmatic and constructive advice. This dichotomous dynamic acted to foreclose alternative visions of the integration process.3

After the September 2001 attacks, rethinking of the North American relationship continued in elite circles, without substantive input from non-business civil society actors. One high-level report was published in April 2004 by the Canadian Council of Chief Executives (CCCE, formerly the BCNI, a major actor in the promotion of free trade with the United States in the 1980s). The CCCE, a high-level business association comprising 150 leading Canadian businesses, had established the North American Security and Prosperity Initiative (NASPI) in 2003 to “develop a strategy for shaping Canada’s future within North America and beyond” (CCCE 2004: 1). The NASPI report highlighted not only Canada’s continued heavy reliance on the U.S. economy, but also emphasizes the need, in the light of emergence of “fierce competitors” like China, India and Brazil, for “[d]eveloping a winning strategy in this competitive global environment” (CCCE 2004: 1). The NASPI report suggests that in this context, the Canadian strategy for managing its future within the North American continent should be based on the following five pillars: “reinventing borders; regulatory efficiency; resource security; the North American defence alliance; and new institutions” (CCCE 2004: 2; emphasis in

3 Interviews to evaluate elite views of the development of the SPP process and the nature of consultation processes were carried out in January and May 2008 with senior officials from the main Canadian ministries responsible for the SPP process, and with the Canadian Council of Chief Executives (CCCE), formerly the Business Council on National Issues (BCNI). All government officials requested anonymity, and we have not identified the government ministry in which they were based because the small number of individuals involved. Follow up interviews with civil society actors occurred in January and February 2010.
original). Although new institutions were one of the NASPI’s recommendations, the report distanced itself from the “big idea” proposal and emphasized that the “goal of our strategy is not a single big agreement leading to big new supranational institutions”. (CCCE 2004: 5)

The CCCE report may have inspired another prominent report, that of the Independent Task Force on North America, convened by the U.S.-based Council on Foreign Relations, and chaired by John Manley, Pedro Aspe, and William Weld. Their report, titled “Building a North American Community,” included such ambitious recommendations as “the establishment by 2010 of a North American economic and security community, the boundaries of which would be defined by a common external tariff and an outer security perimeter” (Council on Foreign Relations 2003, xvii). North American governments, particularly the United States, were not ready to adopt the most ambitious elements of these proposals. However, the recognition of the need for action on the challenges being laid out by business did result in the SPP. A CCCE representative reflected on the “juxtaposition of a pretty ambitious set of ideas, perhaps what was metaphorically called the Big Idea back then,” with “a set of 300-plus micro initiatives, a highly incremental program collected across departments of all three governments” (Interview, Ottawa, May 2008)

Similarly, the NASPI document referred to a report prepared for the CCCE by former trade negotiator Michael Hart which pointed out that Canada and the United States “already work together through a vast network of formal and informal ties, and the key issue is where to strengthen this network” (CCCE 2004: 5). The CCCE report noted that continental initiatives like a NAFTA Secretariat and consolidation or reform of the existing dispute settlement mechanisms was worth exploring, but “given the rising tide of protectionist sentiment in the United States, significant expansion of the NAFTA or of NAFTA-based institutions seems unlikely in the short term” (CCCE 2004: 19). Hart’s vision of an ambitious and far-reaching, but decentralized, informal, flexible and low-key strategy, was remarkably similar to the eventual emergence of the SPP “institutional lite” structure. The Council did recommend the development of a strong network of relationships between elected representatives in the three countries, as well as ties
between business organizations, and coordination with subnational governments. Notably lacking was any mention of the need to consult or engage with civil society actors beyond business, nor indeed of the need to develop a strategy to convince the broader public of the merits of these proposals.

While there was much continuity between the recommendations of Canadian business and the eventual design of the SPP process, there was also discontinuity. In particular, the main emphasis of the CCCE report was on bilateral Canada-US relations, although it advocated a “steady strengthening over time” of the trilateral North American partnership (CCCE 2004: 24). In contrast, the framework for the SPP was formally trilateral, presumably because of the political difficulties in selling a purely bilateral approach in Washington, although it was not an approach that went far beyond the “dual bilateralism” that characterized much of the North American relationship under NAFTA (Golob 1999; Pastor 2004). The SPP process was framed by the institutionalization of annual summits of leaders from the three countries, ensuring high-level support and ongoing political attention to the process. The slogan used by officials to refer to the trilateral/bilateral process is “three can talk, two can act” (Interviews, Ottawa, May 2008).

Toward the end of the period 2001-2004 there was a desire to continue the momentum built up in this process in order to counter pressure from Congress to implement programs like the eventual Western Hemisphere Travel Initiative. The solution was to “bump it up a level” to the level of ministers and leaders, above the bureaucratic level (Interview, Ottawa, May 2008). As neo-institutionalists suggest, the institutions established in an earlier period tend to shape the choices available to policymakers at a later stage, reflecting the dynamic captured by the term “path dependency”. NAFTA’s lack of high-level institutions as possible sites of contestation, debate and discussion, made the subsequent development of such institutions unlikely.

The goal of the SPP was thus not to create new commissions or organizations but to task existing organizations with the process, and to require annual reporting on the issues to the Leaders’ Summit, which pushed the issues higher up the list of bureaucrats’

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4 The last recommendation of the report was “private sector engagement”, in the form of the appointment of a “private sector advisory group to support its new Cabinet Committee on Canada-United States Relations” (CCCE 2004: 29).
priorities. The decision to pursue the existing SPP institutional structure was also based on the perception of a lack of political will to adopt higher levels of institutionalization, both because of sovereignty concerns in the three countries, but also because of the awareness of the likelihood of political protest against a more expansive initiative (Interview, senior government official, Ottawa, January 2008).

The SPP process was characterized by a rather informal, ad hoc design, and went through several phases. Initially, after the Waco summit, governments had six months to consult with all government departments and develop a series of recommendations for governments about priorities on their bilateral and trilateral agendas (Interview, Ottawa, May 2008). These priorities were broken down into two areas, security and prosperity, although it became increasingly clear as time went on that there was an overlap between the two areas. Over 300 priorities were identified in the first report to the ministers. (Interview, May 7, 2008). Nine working groups were established under the prosperity agenda, and ten under the security agenda, and these working groups were charged with “outreach with a variety of stakeholders within each country” (Beaudoin 2007). These stakeholders were defined on the U.S. government’s website as located “in the business sector, state and local governments, and non-government organizations” (White House, 2005).

In line with Michael Hart’s recommendation to the CCCE, the SPP working groups were merely an incremental phase in the further development (and the limited trinationalization) of existing cross-border governmental relations, and varied across issue area. While some of these were based on existing bilateral groupings around certain long-standing policy issues, others were created at this time on a rather arbitrary basis. (Interview, Ottawa, May 2008).

At the second North American leaders’ summit in Cancún in 2006, the incoming Canadian Prime Minister Stephen Harper advocated the reduction of the broad range of over 300 priorities identified after Waco to only five, a suggestion that was accepted by

6 The nine prosperity working groups were: e-commerce and ICT; energy; environment; financial services; food and agriculture; health; manufactured goods and sectoral and regional competitiveness; movement of goods; and transportation. The 10 security working groups were: traveler security; cargo security; border facilitation; aviation security; maritime security; law enforcement; intelligence cooperation; bio-protection; emergency management; science and technology (www.psp-spp.gc.ca/overview/working_groups-en.aspx, accessed on 6/3/2008).
the other leaders (Interview Ottawa May 2008). Business leaders had expressed frustration with the unfocused nature of the 300 priorities. According to a CCCE representative: “in a sense I think that the governments turned around and said, okay you guys, we can see that these 300 initiatives are kind of all over the map and it’s hard to even keep track of them, let alone make progress on them. You guys think you know what the priority issues are, then come together and tell us. And I think that’s what led to the NACC” (Interview Ottawa, May 2008).

After this point, the SPP took on a more targeted and streamlined approach, with business advice directly incorporated into the process. This constriction of the agenda for discussion may have reduced even further the opportunity for stakeholder consultation since not all of these areas of renewed emphasis were subjects of working groups that, at least theoretically, could have carried out consultation on those topics.

*The NACC: the Core of the Democratic Deficit*

The ad hoc, technocratic and decentralized nature of the SPP working groups made it difficult for them to serve the function assigned to them of outreach and consultation with a wide range of stakeholders. It seems likely that in some policy areas, like the environment, where a greater tradition exists of consultation with non-business actors, more consultation occurred (vanNijnatten 2007: 675), while in many others, particularly in the area of security, broader consultation was non-existent. The fact that these consultations literally occurred behind closed doors, without any public record, makes it difficult to evaluate this process. Perhaps more seriously, however, the process suffered from the more fundamental problem that non-business stakeholders appear to be consulted, if at all, only on the technicalities of implementation of the SPP agenda, and did not have any input into the broader design of the process. As well, as Debora vanNijnatten notes in the area of the environment, “the lack of legislative scrutiny effectively closes off one potential avenue whereby environmental concerns might be

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7 The five identified priority areas were: enhancing the global competitiveness of North America; safe food and products; sustainable energy and the environment; smart and secure borders, and emergency management and preparedness. The “competitiveness” emphasis involved a commitment to implementing a “regulatory cooperation framework” and an “intellectual property action strategy”, developing an economic work plan to facilitate trade in specific sectors, and conducting an analysis of free trade agreements subsequent to NAFTA (Joint statement 2007).
While the SPP process was designed to bypass legislative scrutiny and operate below the public radar, it was probably the creation of the NACC that raised the most red flags, igniting pre-existing concerns about public disempowerment associated with globalization. The NACC was created at the suggestion of President Fox, since Mexico at that time was grappling with increased threats to its economic competitiveness from the Asian economies. By this point, all three governments were led by leaders from the political right, who accepted as given the idea of market-led growth (vanNijnatten 2007: 667).  

The decision to create the NACC was in line with this neo-liberal perspective, as well as with the decision at that meeting to narrow the range of priorities identified by the bureaucrats to more strategic areas. The leaders asked the business leaders who had been invited to the meeting for strategic advice on the general direction of North America in a more competitive global environment. The composition of the NACC, in fact, varied by country. While Harper chose ten leading CEOs (appointing d’Aquino from the CCCE as the leader of the Canadian secretariat), the Mexicans chose heads of business associations as well as CEOs, while the U.S. designated individual companies as participants, often represented by VPs responsible for Latin America (Interviews, Ottawa May 2008). The NACC was clearly situated in a privileged position vis-à-vis other civil society actors, having been created and selected by governments, and invited to present directly to the leaders at meetings in Montebello and New Orleans, in contrast with other civil society leaders who were excluded from these meetings. 

A CCCE representative noted that the process was partly shaped by an attempt to avoid the U.S. legislative process:

…whoever advises the U.S. government, there is legislation that underpins it, and that legislation is passed by Congress. And the SPP and all the initiatives that had

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8 One senior government official noted that a “quality of life” pillar was suggested but that it was difficult to “grab onto”: “The Liberals have signed onto Kyoto, the Americans not, how do you really engage in it?” (Interview, Ottawa, 5-2-08). After that point, other priorities were identified that might be identified as fitting under “quality of life”, like food safety.

9 One senior official commented, “The advice of the NACC was really important because it was created by the leaders – this advice is part of the equation and factored into decision-making but in the context of advice from other actors. For example, food and product safety was identified in Montebello as a major priority, it was never identified by the NACC” (Interview, Ottawa, May 2008).
been suggested by us and by others would have required tremendous legislative change. And so, the thinking was, in order to achieve quick, short-term improvements along the border or on the regulatory front or in other areas, were there ways to come up with incremental initiatives that would require administrative change as opposed to legislative change (Interview, Ottawa, May 2008).

Government officials seemed to agree that there was a “branding problem” with the SPP, and difficulties in articulating publically the purpose of the process, especially given the context of a “doubting public and media”, Democratic control of the U.S. Congress in Washington, traditional labour concerns about globalization, and NGO/civil society suspicion of U.S. intentions (Interview, Ottawa May 2008). One senior official also noted the problems of explaining the esoteric details of issues like food dye standards to the average person. Another official stated, regarding the question of consultation:

there were consultations from the start with the usual stakeholders. We have always said that this is the responsibility of government departments responsible for specific issues. There is consultation on specific issues rather than the merits of SPP. We think that the merit is in the outcome. [Another government official] and I have met with stakeholders – NGOs, the CLC, CCPA – first in late January early 2006 before the Ottawa ministerial meeting – We told them you can knock on our door and talk with us. You can ask to be directed to specific groups dealing with specific issues. They have never done this. ..We had another session recently with [NDP trade critic] Peter Julian and 12 NGOs. We extended the offer again. We never had any follow up to that. If you want to influence the agenda, you have to be heard on the specific, rather than going too broad (Interview, Ottawa May 2008).

Another senior official stated,

Listening to the NACC members when I’ve had the privilege to do so, they’re all talking about very practical things. They’re concerned about the border, like Mr. Ganong of Ganong chocolates, his stuff gets held up by the food and drug administration for months and he never gets an
explanation. Meanwhile, he’s lost a contract. But they’re not talking about metaphysical issues, they’re talking about very practical things. And I think that civil society thinks that there’s this metaphysical conversation going on and it’s actually quite meat and potatoes and if they could deconstruct their agenda into meat and potatoes, they would have all the access that anybody has (Interview, Ottawa, May 2008).

This claim about the specificity and detail of business input is at odds with the claim that the NACC was created to give broad strategic advice about the future of North American competitiveness.

A CCCE representative echoed the government representatives’ reflections about the practicality of business advice, in contrast with civil society’s perceived obstructionism:

We don’t, obviously, dictate outcomes. If we did, we’d be making much more progress. But we can be constructive players in providing advice. We know that when that advice is … received, government has all sorts of different avenues by which it can test the feasibility or the desirability of taking action with other interest groups. There is not a body that meets every year with the North American leaders to oppose the SPP because why would you? (Interview, Ottawa, May 2008).

The Failure of “Integration by Stealth”

Despite official attempts to avoid public attention and debate claim that the SPP represented a form of “integration by stealth,” the last couple of years witnessed the escalation of public controversy around the process, particularly among right-wing groups in the United States. Brian Bow and Arturo Santa Cruz argue that we have seen a convergence of two forms of opposition to regionalism in the United States– the traditional interest-based opposition among groups like labour unions situated on the political left, and the emergence of an identity-based opposition movement located on the political right. Despite their political differences and the lack of ties between them, both groups’ critiques of the SPP focused heavily on the exclusionary and secretive character of the process (Bow and Santa Cruz 2009). The identity-based opponents of the SPP
were fuelled by long-standing xenophobic, isolationist and paranoid strands in U.S. political culture and alluded to high-level conspiracies. Prior to the 2008 elections, underdog Republican U.S. presidential candidate Ron Paul charged on a CNN-You Tube debate: “They’re planning on [taking] millions of acres…by eminent domain”. There’s “an unholy alliance of foreign consortiums and officials from several governments” promoting the idea. “The ultimate goal is not simply a superhighway, but an integrated North American Union – complete with a currency, a cross-national bureaucracy, and virtually borderless travel within the Union.(cited in Kovach 2007: 1).

At the same time, traditional civil society –based opponents of integration across the region expressed concern or skepticism about the SPP, especially in the absence of extensive information about the outcomes of the SPP negotiations. Moreover, with the lack of clear smoking guns, criticism centered heavily on the secretive and exclusionary nature of the discussions, and the apparent privileging of business interests through the creation of the NACC. Government representatives claimed, to the contrary, that ample opportunities existed for consultations with a wide range of stakeholders, in the myriad of working groups established in each country to support the broader process, and that extensive information was available to the public through the SPP website (www.spp-psp.gc.ca) (Beaudoin, 2007: 8).

A Council of Canadians document denounced the undemocratic character of the SPP process and called for the dissolution of the NACC:

The SPP fails to address this fundamental democratic expectation because it was expressly conceived to circumvent democratic debate, oversight and ratification, by Parliament, and to exclude direct, transparent consultation with the public. Our leaders then took the extraordinary step of inviting powerful corporations to have a direct role in drafting government policies by creating the NACC, an organization with little interest in improving democracy on the continent. (Trew 2007).

Similarly, in her testimony before the Canadian Parliamentary Sub-committee on Trade, Canadian Labour Congress (CLC) representative Teresa Healy challenged the initial designation of priorities for discussion and called for full public hearings and a vote in Parliament on the SPP, the abolition of the NACC, a review of the implications of further
security cooperation with the US for workers, especially immigrant workers, a review of processes of regulatory reform leading to hyper development of the tar sands and the downward harmonization of the tar sands and for an “open, transparent, and accountable” process leading to a “North American relationship built on democracy, human rights, and sovereignty” (Healy, 2007). Alberto Arroyo of the Mexican Action Network on Free Trade (RMALC) said that the SPP’s bypassing of the legislature was technically “a coup d’état, because the Executive Power approves things that are actually are the responsibility of the legislative power” (Alternatív@s, 2007).

Some supporters of NAFTA and/or the SPP also issued warnings about the dangers of the model of decision-making that had been adopted. Chris Sands from the Hudson Institute declared that the SPP “represented a much needed reform or update of the framework for economic integration” in North America. Nevertheless, he said, “the SPP has been a failure in two important respects: its limited transparency has fueled conspiracy theories that hold that the SPP is a plot to reduce national sovereignty in each country; and it has failed to allay public concerns, mainly in the United States, that NAFTA has hurt U.S. prosperity more than it has helped – despite the ample economic data which provides evidence to the contrary” (Sands 2009; see also Anderson and Sands 2007).

Even American University professor Robert Pastor, who has passionately promoted North American integration and a North American community, argues similarly that North America ran into problems under the Bush administration partly because the benefits of integration “have not been equitably shared with those who paid a price (2008: 91). Pastor argues that the Bush administration’s “incremental, quiet, business-based approach raised some legitimate concerns and provoked a nativist backlash. It was a mistake to allow CEOs to be the only outside advisers on deregulation and the harmonization of remaining regulations. Civil society and legislatures must be heard on these issues, which are less about business than about how to pursue environmental, labor, and health goals. More broadly, free trade is clearly not enough”(2008: 93).

In the light of widespread public concerns about the legitimacy of the SPP, it is not surprising that the initiative did not survive the end of the Bush administration.
During his presidential campaign, Barack Obama expressed concerns about NAFTA, particularly the weakness of the labour and environmental side accords, and pledged not to participate in the type of exclusionary and secretive international process represented by the SPP. Opposition to NAFTA and the SPP among Obama’s civil society supporters, particularly labour, as well as the success of grassroots campaigning by actors like the Citizens’ Trade Campaign, are likely to have had significant impact on his decision to quietly close down the SPP. It is less clear whether civil society can have an impact on the future shape of the North American region. So far, one response to the problem of selling the SPP to the public has been a shift away from a SPP “brand” to a “North American Leaders’ Summit” brand, which became apparent in the meeting in New Orleans. This move further distances civil society groups from discussion of key concerns.

Conclusion: North America’s Failed Record at the ‘Legitimacy Game’

This saga of ongoing civil society opposition to elite frameworks of North American integration, and these groups’ at least partial success in derailing those frameworks, reveal important lessons about the character of the process of regionalization. First, as suggested in the “new regionalisms” literature, theories of regional integration that ignore the role of non-state and non-business actors are clearly inadequate in explaining the nature and the dynamics of regionalization. In the absence of public pronouncements or direct evidence about the causes of the SPP demise, it is difficult to state definitively how important civil society actors were in this decision. These actors had little impact as long as neo-liberal leaders from right-wing parties remained in power in all three countries. The election of a Democratic Party leader in the United States, the region’s hegemon, however, was undoubtedly a decisive factor in the SPP’s fate. It seems likely, though, that civil society opposition played an important role in the Obama administration’s decision, both in terms of direct influence within the Democratic Party, as well as in shaping broader public opinion in the United States.

Beyond empirical issues of the weight of civil society actors in the process of regionalization, this case study raises both normative issues about the role of democracy
and citizenship in the North American region. As we indicate in the introduction to this volume, debates about trade and regulatory harmonization are not just dry technical issues, but raise important issues about how citizens are, and see themselves to be, included in ongoing processes of globalization. As Moore has argued, while many students of global governance embrace the opportunity for cross-border cooperation and coordination promised by such constructs as the NAFTA and SPP, they may overlook “historically grounded…economic divisions and disparities” and fail to appreciate the impact of enduring power relationships between across states (Moore 2008: 300). Ayres has previously argued that despite considerable cross-border civil society interaction and cooperation in the wake of NAFTA’s implementation, power relations under the accord remained essentially unchanged (Ayres 2004). We would suggest further that, based on the record of the SPP process, that that approach to regionalization reaffirmed the sorts of privileged political-economic relationships established under NAFTA,. The demise of the SPP suggests that this process was fundamentally flawed even in instrumentalist terms as a means of achieving its founders’ goals of deeper continental integration. The blatant privileging of big business actors over all others ultimately doomed the initiative. More tinkering with the NAFTA formula is unlikely to solve this legitimacy deficit, however, and, especially in the light of the economic crisis that has hit the region, North American integration is likely stalled for the foreseeable future.

The increased inclusion of non-state actors in mechanisms of global governance is not primarily the result of global governors’ democratic impulses, but rather their self-interested recognition of the alternative sources of information that these actors bring, and also represents an attempt to legitimize international organizations in the eyes of an increasingly skeptical public. Moreover, both government and business thus agreed that, based on previous experience, civil society actors would not present practical solutions to concrete problems, but would merely denounce the entire process. This reflects a tendency amongst political and business elites to question the democratic characteristics of civil society groups not formally elected to positions of political influence. Often, there is an assumption that output legitimacy—problem-solving effectiveness—is satisfied through the participation of elected officials and those appointed by them from the business sector to engage in international negotiations and policy-making. We would
argue that future discussions on North American issues should not be constrained by this limited view of governance beyond the state. Rather, we encourage greater consideration for the democratizing potential in wider civil society participation in regional governance processes.

In short, the SPP process did not create a North American regional governance structure that would provide robust multilevel political opportunity structures for civic activist groups. While the targets for civic influence purportedly multiplied—from NAFTA negotiations, to the NAFTA labor and environmental side accords, to a new and expansive set of negotiations and political-business actors in the SPP process—non-business civil society groups did not gain new political leverage to advance their claims within the ongoing SPP negotiations. Rather, what we do see continuing is twin processes of “domestication and externalization” (Della Porta and Tarrow 2005), as frustrated social actors vainly target domestic institutions with complaints over the SPP experience, while other Canadian, U.S. and Mexican groups continue to connect and mobilize across borders to share strategies and publicize their opposition to NAFTA and the SPP. Tarrow has warned that the sort of complicated internationalism epitomized by the failed SPP process has unpredictable trajectories, “creating arenas for conflict and cooperation that will not necessarily lead either to the triumph of global capitalism or to democratic outcomes” (Tarrow 2005: 28). Nevertheless, the tumultuous events of the past year: the election of Obama, Democrats’ control over Congress, and the eruption of the global financial crisis, may break the path dependency that has been established in the North American region, and create the conditions for path-changing decisions. Obama’s social democratic rhetoric, the rise of protectionist forces, and the very character of the current crisis suggest that new paths are necessary, and that new approaches to North American integration will be more inclusionary out of necessity.
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