Including North America in Comparative Regionalism Studies: Researching the International Actorliness of Lightly vs. Heavily Institutionalized Regions

A striking feature of the comparative literature on world regions is North America’s general absence from the bulk of its vast scholarly output. This is not to say that North America lacks its own academic literature. Rather, it is the case that the scholarship on the political or economic, cultural or military dimensions of North America’s integration – whether conceived as the United States' dual bilateral relations with its two geographical neighbours or whether thought of as one trinational entity – has not been written within the parameters of Europe-generated comparative regional analysis.

This academic black hole is understandable for two reasons. Scholarship on the US-Canada and US-Mexico relationships was carried out not just in isolation from each other but in isolation from the analysis of the evolving European region. Second, the way that regions were conceptualized in the predominantly European literature excluded North America from even being considered a candidate for analysis. If in order to qualify as a legitimate world region, a grouping of countries had to have supranational institutions which could generate policies and issue regulations that, in turn, could be enforced in the member states with any disputes being arbitrated authoritatively in a collective court, then the continental mass identifiable on global maps as “North America” did not rate the expenditure of world-regionalism scholars’ professional energies. Our case for North America as a candidate for comparative analysis with other regions is based on much less demanding entrance criteria.

This paper accordingly argues that, through the use of less exclusive conceptualizations for what can be considered a region, North America can fruitfully be included among those regions available for comparative analysis, whether this scholarship is derived from deductive, institutionally inclined scholarly traditions or inductive, political-economic academic schools. For this analysis, even two countries which have significant levels of political, socio-cultural, or

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economic integration can be considered a "region" -- notwithstanding whether it is formalized by institutions and treaties or is completely informal.

Addressing scholars who have specialized in regions that have been recognized in the comparative literature, our text will begin with a description of the North American continent's two historically differentiated regions that were constituted by the United States of America's very different relationships with its neighbour to the north and his neighbour to the south. We will proceed in Part II by reviewing how the North American Free Trade Agreement (NAFTA, 1994) created something akin to a "constitution" whose features can be compared with that of any other region along primarily institutional lines. The succeeding section addresses how a more dynamic understanding of North America's evolving integration or disintegration can be developed and then compared with that of other regions’ developmental progress or regress. Part IV focuses on a specific case of norm and institution diffusion whose analysis can shed further light on the similarities and differences between North America and such other regions as the EU, Mercosur, or the Pacific Alliance. We conclude with some methodological considerations that derive from this analysis.

I. The Pre-History of North America's Two Regionalisms
Since the end of the 19th century, while Canada have integrated in economic, social, and cultural terms with the United States' economy, societal organizations, and entertainment industries, its colonial and postcolonial ties with Great Britain, its autonomous parliamentary system, and its decentralized federalism resulted in little apparent "regionness." Over the decades, many bilateral institutions were established which managed such common functional issues as the levels and water quality of the rivers and lakes bisected by the US-Canada border (the symmetrical and binational International Joint Commission, IJC). In less parochial dossiers, common ideological positions concerning global political challenges -- notably the Cold War – led Canada to favour its sectorally specific integration in such overarching US policy systems as the bilateral, profoundly asymmetrical, North American Air Defence Command (NORAD, 1957) which included the US-made weaponry and US-trained personnel of the Royal Canadian Air Force in the Pentagon’s anti-Soviet manned aircraft and unmanned missile control systems.

A less overtly bilateral, more visibly multilateral example of Canada's de facto regional integration in its neighbour’s policy systems was its participation via the multilateral North Atlantic Treaty Organization (NATO, 1949) in the trans-regional air-, sea-, and land-defences against the perceived Soviet threat to the territorial integrity of the western Europe. Canada's semi-autonomous participation in the G-5 Summit in 1975 reflected a similar extension of its high bilateral integration, since the US Secretary of State Henry Kissinger wanted a compliant Canada to offset Europe's predominance in an organization which was then granting membership to Italy.

The point is that what one might call the “old North America” had evolved since the outbreak of World War II as a significantly integrated binational entity which demonstrated not simply a very high level of economic integration but also a shared ideational Weltanschaung along with significant international actor capacity. these characteristics were not conceptualized in the regionalism literature – as “regionalization,” “regionality,” or "actorness" respectively -- does not
contradict the point that a phenomenon was evolving in English and French-speaking North America that could have been analyzed, and this paper argues productively analyzed, in a comparative-regionalism conceptual framework.

Although Mexico's socio-economic systems were far less overtly and certainly far less willingly integrated in those of their long-resented northern neighbour, a case can also be made that its bilateral, but more conflictual, relationship with the United States could have been analyzed along similar grounds as Canada's. Whatever overtly, anti-gringo economic and rhetorical nationalism articulated government policies under the authoritarian rule of the Revolutionary Institutional Party (Partido Revolucionario Institutional, PRI) from the 1930s to the end of the 20th century, there is no question that poor, third-world Mexico was highly integrated with the United States in at least two significant dimensions. Notwithstanding its highly developed web of state-driven, import-substitution-industrialization (ISI) policies that attempted to control imports and restrict foreign (aka US) direct investment, Mexico's economy had always been highly integrated with that of the United States in terms of both trade and investment. This spoke to considerable economic regionalization.

In the northern half of Mexico that was conquered and annexed by the United States in 1848, Mexico-US societal integration had deep roots in the Spanish-speaking population that continued to live north of the Rio Grande. Despite their significant cultural distinctiveness as Latin Americans, Mexican workers found employment in the United States in numbers that steadily increased throughout the 20th century. Here too one could find evidence of some political "regionalism" in the binational programs put in place by the two federal governments in order to facilitate the movement of manpower across the US-Mexican border. At the socio-political level as well, cross-border cooperation between citizens, civil-society organizations, and local governments evolved when such common environmental challenges as declining groundwater levels called out for jointly undertaken, if asymmetrically financed governance. Again in contrast with Canada, international actorness was not the rule but the exception. Following German submarines' torpedoing two Mexican ships, the government gave some short-term naval and air support to the United States in World War II.

The rationale for offering this background to North America’s regional characteristics is to make the claim that the United States' set of two bilateral relationships with its neighbours could have been analyzed in both its own terms and also comparatively using the conceptual categories developed by European scholarship. But given their rather vague, sometimes ambiguous connotations, a case can also be made that the regionalism-regionalization-actorness notions are not ideally suited to making careful comparative analyses of different regional types. Rather, the next section will develop the argument that unpacking the analytical potential of the notion “constitution” can provide more valuable intellectual dividends.

II. NAFTA as the Constitution of the New North America
Generally understood, an organization’s constitution lays out a set of principles that prescribe how it is to function and assigns rights plus obligations to its members. In the case of a state, the norms and rules (whether codified in written texts or established historically by convention and
custom) have to be interpreted by courts when clashes occur over their meaning. A constitution in a contemporary liberal democracy generally demonstrates nine principal attributes.

-1 It expresses the will of a would-be community to establish some kind of order for its constituents.

-2 It entrenches certain norms that are inviolate, that is above the reach of any politician to alter with a simple legislative act. Following a civil or foreign war, the victorious side often tries to lock in rules to defend its interests by embedding them in a constitution which will be difficult for its successors to alter.

-3 It sets up the rules of the political game by establishing decision-making (executive) and law-making (legislative) institutions that will have authority over the territory and establishes the governmental (administrative) structure needed to apply the laws and regulations they create.

-4 At the same time that it establishes institutions and enables them with powers, a liberal constitution also constrains them by setting limits to what they can do in exercising their powers.

-5 As the corollary to limiting government, a state constitution establishes the specific rights enjoyed by and the obligations required of its citizens, whether individually or collectively.

-6 Norms, limits, and rights are dead letters unless there is a judicial function to interpret the constitution’s texts in the light of conflicts over their meaning.

-7 Legal judgments are in turn stillborn unless the constitutional regime includes mechanisms for the enforcement of the courts’ judgments and to ensure the observance of all laws and regulations.

-8 Constitutions are initially legitimized by some form of solemn ratification process.

-9 Finally, they need procedures for amending or abrogating them in response to systemic changes.

By the time that trade liberalization was making its way onto the agenda of all three countries in the late 1970s we can see that both the Canadian-American relationship and the Mexican-American relationship had taken on some of the properties of constitutionalized orders.

-1 Even if Canada was merely one-tenth the size of the United States in population and GNP, there was a general consensus that the two countries were the best of friends who willingly dealt with each other on the basis of good-neighbourliness. Even between Mexico and the United States, a level of mutual acceptance, seasoned with considerable mutual distrust and disdain, had stabilized the pairing.

-2 The US relationship with Canada had developed a set of norms that, for instance, forbade politicians in one country from publicly criticizing those in the other. In the US relationship with
Mexico, this behaviour pattern was inverted: Mexican politicians would denounce the Gringos in public but -- wink, wink -- work hand-in-hand with them behind closed doors.

-3 Decision-making institutions, whether executive, legislative, or administrative, were limited to functionally specific bodies such as the IJC or its Mexican equivalent.

-4 Limits on how far the US government could go in coercing its two smaller counterparts were culturally understood or informally negotiated.

-5 Rights also existed implicitly. US officials generally gave Canadian interlocutors favoured treatment. Concerning obligations, Canadian governments were expected not to pass laws, regulations, or other measures that might have a negative impact on the economic prospects of American TNCs’ branch plants. Inversely, Mexican laws and regulations strictly restricted the rights of US firms to participate in the economy, whereas actual practice accepted US enterprises, if under some nominal Mexican control.

-6 No judicial function was available in either the old or the new North America outside diplomatic negotiation and/or the recourse to international conflict resolution settlement for boundary quarrels (International Court of Justice) or trade disputes (General Agreement on Tariffs and Trade).

-7 Similarly neither the old nor the new North America had enforcement mechanisms outside direct intergovernmental retaliation.

-8 These two implicitly constitutionalized relationships were legitimized by politicians' rhetoric, whether amicable to the North or testy to the South.

-9 They were either amended intentionally (Prime Minister Mackenzie King and President Roosevelt established a Permanent Joint Board of Defence in 1941) or unilaterally (President Nixon declared in the Canadian Parliament in 1972 that the United States' special relationship with Canada had come to an end.)

**NAFTA as the New North America’s Explicit Constitution**

Following this analytical model, we can now identify the specific constitutional features of the new North America that was brought into being by NAFTA.

-1 The three countries' will to negotiate, ratify, and implement trade and investment liberalization spoke to a high level of consensus among each country's elites who negotiated and promoted the accord. On the streets, dissensus rather than consensus prevailed as civil society organizations, which looked to government for administrative or monetary support, protested against what they understood as a treaty that would permanently constrain their elected governments from ruling in their interests.

-2 NAFTA's norms imposed a sea change on the two peripheral states' approach to economic policy-making. “National treatment” for investors (the obligation that federal, provincial/state, and municipal governments treat foreign companies no differently than they do domestic ones)

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brought to an end both Mexico's ISI policies and Canada's efforts to generate an industrial strategy that would promote domestic enterprise.

-3 *Institutionally* speaking NAFTA did very little to re-constitutionalize North America. Its *executive* functions were limited to the periodic meetings of the three countries' trade ministers in a North American Free Trade Commission which had neither an address nor personnel and which could only make recommendations that the three governments should take a particular action. Its *legislative* capacity was null. Its *administrative* function was limited to each government having an office that kept track of the trade and investment disputes that fell under the Agreement’s six dispute settlement processes.

-4 *The limits* on what member states signatory governments could regulate were either derived from NAFTA's general norms as explained in (2) above or were specified by the detailed rules laid out in the Agreement's individual chapters that, in the example of energy, forbade Canada from charging a higher price for its petroleum exports to the United States than what Canadian consumers paid for oil and gas.

-5 Being an economically focused document, the *rights* that NAFTA created were for foreign investors who were given greater powers vis-à-vis signatory governments than those enjoyed by domestic investors. At the same time, *no obligations* were specified for foreign corporations.

-6 NAFTA's *judicial* clauses created the regional organization's only significant institutional capacity. 

   *In reverse order of importance, the provisions for settling disputes concerning energy policy and financial institutions have never been activated and so can be considered stillborn.*

   *The settlement of disputes provided for in the NAFTA side agreement on labour can also be considered out of service, given that the North American Commission on Labour Cooperation has closed its doors.*

   *The dispute-settlement process contained in the NAFTA side agreement on the environment was carefully designed to be ineffectual. Even when the Commission on Environmental Cooperation delivers a final verdict, it is merely advisory.*

   *So too is Chapter 20's process for resolving disputes between the respective signatory governments about the meaning of NAFTA’s text. When, after years of obstruction by Washington, a Chapter 20 panel found the United States at fault for not meeting its NAFTA obligation to allow Mexican trucks access to the American market, the US government's failure to respect the ruling signaled that this judicial function was also unworkable – at least in important cases affecting major American interests.*

   *The judgements of binational panels established by Chapter 19 to rule on anti-dumping (AD) and countervailing duty (CVD) determinations were supposed to be binding and have in fact been respected by the three governments on smaller issues. But the long-drawn-out series of NAFTA panel rulings over American AD and CVD determinations against Canadian softwood lumber imports and Washington's ultimate refusal to comply with the judgements that found it at fault have also signalled that this judicial process does not work when a major US interest is at stake.*

   *The major exception to this general obituary for North America as an institutionalized region was the Agreement’s Chapter 11 on investment which established broad new norms*
protecting transnational corporations’ investments from host governments’ regulations and, equally important, created a private international arbitral regime which enabled TNCs to seek compensation for financial damages they claimed had been caused by host governments’ measures.

These constitutional facets of NAFTA are inextricably intertwined. By establishing the rights of foreign transnational corporations not to have their interests jeopardized by host-government measures, NAFTA ipso facto established limits on what all the governments can do in regulating for the public good in the fields of environmental protection, human rights, social policy, and labour relations. A regulation constraining corporate behaviour can provoke private international judicialization of an investor-state dispute launched by a foreign TNC on behalf of its domestic subsidiary.

-7 A Chapter 11 ruling by an investor-state arbitral body is the only facet of North America's signature organization that carries with it enforcement capabilities, because these rulings can be enforced in domestic courts. Otherwise, neither the old nor the new North America had enforcement mechanisms outside the traditional weapon of direct inter-governmental retaliation.

-8 As a continental constitution, NAFTA is legitimized by the business press and government rhetoric that sings the praises of free trade. This official legitimacy is contested at the level of civil society by those organizations that oppose its policy fallouts.

-Technically speaking, NAFTA can only be amended following the three countries negotiating changes that are then ratified by their respective legislatures. In fact, the three executives established the Security and Prosperity Partnership of North America (SPP) in 2005 and added a North American Competitiveness Commission (NACC) in 2006 without either institution being ratified by any of the three legislatures. The SPP and NACC came to an unheralded end due to the solo decision of the incumbent US president to ignore these embryonic trilateral institutions. This short drama underlined how vulnerable was North America's 1994 institutions to the whims of its members’ political leadership.

It is our view that this unpacking of the notion, "constitution," allows us to compare pre-liberalization, convention-governed North America or North America as overtly constitutionalized by NAFTA with other regions, whether they be highly or lightly institutionalized, few- or many-membered, symmetrical or asymmetrical, in the global North or the global South, and at whatever stage of integration or disintegration they may have achieved.

III. From Static to Dynamic: North America’s Integration and Disintegration Tendencies
Although institutional comparisons generally start with static considerations of the similarities and differences distinguishing the entities under analysis, they can be made dynamic once changes are observed to have occurred over time. In the case of the new trinational North America, the shock of “9/11” provoked a particularly noteworthy sea change whose consequences can be documented statistically and followed behaviourally.
The data suggesting NAFTA’s effect on the three economies’ integration were eloquent. Trade and investment flows grew significantly after NAFTA’s implementation with the result that the North American continent’s share of global GDP grew from 25 to 31 per cent between 1994 and 2001. Following the stringent anti-terrorist, border-security measures put in place by Washington along its northern and southern land boundaries to achieve a maximum possible defence against any individual terrorist and possible munitions, these trilateral trade and investment figures plateaued. In the context of many countries from the global South emerging as major economies, North America's stagnation led to the continent’s share of global GDP falling back from 31 to 25 per cent from 2001 to 2012.² [Pastor] These figures suggest that, while North America’s level of economic integration remained high, it did not increase and, in the light of the emerging economies’ successes, the continent’s global weight actually declined.

Somewhat paradoxically, while Washington’s abrupt shift to a national-security policy paradigm brought a halt to the continent’s continuing economic regionalization. The United States' globalizing, neo-liberal trade-liberalization paradigm might have reasserted itself had another drastic reality not intervened. The self-induced US sub-prime financial crisis did not just reverberate around the world; it provoked political pressures for Washington to detach itself from such globalizing realities as out-sourcing jobs and reassert its economic autonomy. Economic nationalist measures that may not have violated the letter of specific NAFTA clauses, but they violated the Agreement's integrationist spirit. Made-in-the-USA measures caused firms that had been servicing the US market in integrated supply chains to relocate in the United States.

Facing an economically more isolationist giant across their borders and suffering the fallout in their economies from a home-made financial crisis over which they had no control (Mexico's -4.7 per cent fall in GNP in 2009 was the worst in the western hemisphere³), Mexico and Canada themselves made efforts to diminish what they now considered to be their excessive dependence on the North American market and diversify their clientele overseas, Canada by building giant pipelines to pump Alberta’s tar-sands oil to the Asian market, Mexico by turning back to Latin America with a new regional organization of like-minded neo-liberal governments branding themselves as the Pacific Alliance.

Because of the Canadian government’s reluctance to work cooperatively with its Mexican counterpart when dealing with Washington, the North American region’s security system developed along the lines of the continent’s pre-NAFTA dual-bilateralism model. In terms of the European regionalism school’s basic distinctions, the United States’ total-security thrust promoted a different kind of inter-governmentally institutionalized regionalism based on its two neighbours having to conform with their neighbour's anti-terrorism security-policy demands for strict border and immigration controls. But the resulting measures, which erected border barriers to the trans-border flows of people and goods, had a distinctively disintegrative effect on the region’s regionalization.

The point of sketching the major traits of North America’s contradictory evolution in the 2000s is to make the simple point that this major continent is as valid an entity for comparative

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regionalism studies as any other. And, given the United States’ dynamically evolving importance as the North’s most powerful player, one can even assert that a scholarship which continues to disregard the North American reality can hardly be considered global in its grasp.

IV. Diffusing Norms and Institutions: One Case for weighing NAFTA’s Inter-Regionalism

Pursuing this argument internationally leads us to the proposition that, even when there is no institutionalized requirement for North America’s three governments to act in unison in their foreign relations, the comparison of this region's "actorness" with that of other regions can generate significant findings. A striking illustration of this point can be found in Mexico, Canada, and the United States' negotiations of trade and investment agreements with third countries.

At first glance, no regionness can be seen in the ways that the three governments have negotiated their economic agreements with other countries after 1994. Not only have they dealt separately with other countries. They have done so at different times and, sometimes, with significantly different results that even jeopardized North America’s “regionness.” Consider the following three cases.

-When Mexico negotiated the free trade agreement with the European Union that it signed in 2002, it established its own specific tariffs with Europe that would make it more difficult should it wish in the future to combine with Washington and Ottawa to form a customs union with harmonized tariffs for all three countries. In other words, Mexico's integrating bilaterally with Europe had an implicitly disintegrating effect on its integration in trinational North America.

-When the United States negotiated a Central America Free Trade Agreement, it gave the signatories better access to the American textile market than it had granted Mexico in the NAFTA negotiations. Following its strenuous lobbying, Mexico was given the same terms as CAFTA countries, but only after making other concessions. Once Washington took over the leadership of the Trans-Pacific Partnership (TPP) negotiations, it was reluctant to have Mexico and Canada join it at the table. It was only after they had lobbied for many months and had accepted the concessions that Washington had demanded they make in advance that its two neighbours were allowed to join the negotiating process. In other words, the United States' integrating bilaterally with Central America or multilaterally in the Pacific also had an implicitly disintegrating effect on its integration with its two contiguous, putatively and specially “North American” neighbours.

-When Ottawa opened negotiations with Brussels for a Comprehensive Economic and Trade Agreement, it was openly competing (rather than collaborating) with Washington to be the first to bring home a trade- and investment-liberalizing agreement. In this way, Canada's attempt to integrate further but bilaterally with Europe had an implicitly disintegrating effect on the trinational North America putatively founded by NAFTA.

These examples of the three capitals’ differing, sometimes mutually injurious approaches to their foreign economic policies clearly suggest that North America’s capacity for regional “actorness”
is so minimal that it can be written off as a world region in terms of its international presence. But such an inference is contradicted if one takes a second look at the evidence.

An analysis of the model bilateral investment treaties (BITs) of Canada (2004), Mexico (2008), and the United States (2012) shows that, as rule makers, the three countries have taken virtually identical positions on the norms they propose for protecting transnational corporations' foreign direct investments in host-economies and the arbitration institutions they support to enable a foreign corporation to initiate judicial proceedings against host governments concerning allegations that their measures have jeopardized a TNC’s subsidiary's profit expectations.4

Furthermore, the investment chapter in the recent framework trade and investment agreement (the Acuerdo Marco de la Alianza del Pacífico) signed by the Pacific Alliance (PA), in which Mexico plays a dominant role, reveals that, in terms of investment protection, the PA does not significantly diverge from either NAFTA or the three countries’ individual Model BITs. The standards of treatment (for example, National Treatment, Most Favoured Nation, the definitions of expropriation and compensation) written into NAFTA, the Model BITs, and the Pacific Alliance’s Acuerdo Marco agreement all offer relatively high levels of investment protection, and the clauses share near identical wording. We can infer from this ideational consensus that Mexico, Canada, and the United States do indeed share a common position. This turns out, in comparative-regionalism terms, to give North America a de facto, if unnoticed, “actorness” on the world stage.

We now apply this issue to the question of North America’s suitability as a case for comparison with other regions. Externally, regions are typically compared in terms of their overt “actorness” insofar as they, as opposed to their individual member-states, negotiate agreements that diffuse international trade and/or investment norms and institutions with each other’s governments.

The European Union’s mix of supranationalism and inter-governmentalism makes a particularly interesting case in that the Commission has long had competence for negotiating trade agreements, while its member-states negotiated investment agreements bilaterally with other countries. The Treaty of Lisbon (2007) marked a watershed in this respect, given that the European Commission acquired -- and member-states lost -- the competence for negotiating international investment agreements. Whether the fallout from this upward transfer of authority turns out to be integrating, as a neo-functionalist would expect, remains to be seen. The integration gains made from the single supranational negotiator putting together a foreign-investment protection agreement could be reversed by the discord and even the disunity generated during the members states’ individual ratification processes. If member-states react angrily at having lost a significant power, the resulting disputes and turf wars could offset the a priori, integrative effect of the EC’s new negotiating power with de facto, disintegrative consequences.

-Externally, regions can be compared as rule-makers insofar as they have collectively negotiated regional trade agreements with other regions or individual states. In the same respect, they can be compared as rule-takers when they, as regional entities, adopt on behalf of their member-states

4 Strictly speaking, as Mexico does not have a formal Model BIT, this analysis instead relied upon its more recently negotiated agreements with India, which was signed in 2007 and entered into force in 2008.
norms or institutions proposed by their negotiating partners. To the extent that a region negotiates these agreements at the expense of the autonomous economic diplomacy of its members, as is the case in the European Union since the Treaty of Lisbon came into effect, its regionalism is strengthened and its member states are ipso facto weakened. To the extent that the members of a regional grouping separately negotiate identical trade and/or investment agreements, as is the case of Mexico, Colombia, Peru, and Chile since the new Pacific Alliance was born, the region’s implicit actorness does not in itself jeopardize the members' autonomous economic diplomacy. In this respect, the Pacific Alliance is more like North America in its covert actorness but more like Europe in explicitly branding itself in terms of its members' proudly neo-liberal "like-mindedness."

Research methodology is not an issue in our argument. Existing research methods used to document the treaty-making activity of governments or to observe the workings of transnational business governance are perfectly well suited to comparing regions’ measures and actions. This suggests that two facets of foreign-investment protection’s norms and institutions offer paths for stimulating-comparative regionalism research.

In principle, regions can be compared as rule-makers not just in terms of the extent to which they have as collective entities negotiated foreign investment protection agreements but also in terms of whether the TNCs of their capital-exporting member-states have used private international investor-state arbitration to pursue capital-importing host states that are members of other regions.

In practice, documenting such a relationship between rule-making regions and rule-taking regions would be a formidable task beset by significant problems. For instance:
- No region is purely a rule-maker or a rule-taker, given that all regions, now including those in the global South, have member-states that have their own TNCs that control subsidiaries in other regions.
- Given their capacity to set up dummy offices in countries other than their home economy, it is often impossible to document the nationality of some trans-national corporations that use subsidiaries in a different region to launch investor-state disputes against host governments in a third region. A case in point is the giant US engineering firm, Bechtel, which shifted legal control of its water company operating in Cochabamba to an office in the Netherlands so that it could take advantage of the Holland-Bolivia bilateral investment treaty to make a claim for compensation against Bolivia's nationalization of its Bolivian enterprise.

To illustrate the difficulties posed by such research, we tried to document the investor-state cases launched against the founding members of Mercosur, Argentina, Brazil, Paraguay, and Uruguay. Brazil has had none, given that it has never ratified a BIT. Argentina has faced fifty under ICSID (the World Bank's International Convention for the Settlement of Investment Disputes) and five UNCITRAL (the UN Commission on International Trade Law) cases, of which one UNCITRAL can be traced to a Canadian company, twenty ICSID cases can be traced to US

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corporations, and no cases in either venue can be traced to Mexico-based firms. Paraguay has experienced three ICSID cases none of which can be traced to Canadian, American, or Mexico-based firms. Finally, Uruguay has had one, still pending ICSID case and one UNCITRAL case. Neither involved North American investors.

This mix of cases leads us to a negative finding: North America’s international actorness does not appear to extend to its trans-national corporate investors’ international litigation. Of course, North American corporations’ global behaviour can still be compared with the litigation behaviour of their counterparts’ from other regions.

Arbitration within North America under NAFTA’s Chapter 11 reflects the pattern of dual bilateralism observed above. Of the thirty-five NAFTA investment claims launched against Canada, only one was by a Mexican-based firm, while the remaining thirty-four were by United States-based claimants. Likewise, of the seventeen NAFTA claims to which Mexico has been a respondent, only one was filed by a Canada-based firm, while the remaining sixteen were brought to arbitration by American firms. The United States has responded to sixteen NAFTA claims by Canada-based firms and one by a trade association representing the Mexican trucking industry.

The recently formed Pacific Alliance, a non-contiguous region consisting of Chile, Colombia, Mexico, and Peru, displays a different pattern of regional investment disputes. Despite the fact that each member of the region is required to have signed an investment agreement with every other member, there has to date been only one intra-regional investment dispute claim. Empresas Lucchetti, S.A. and Lucchetti Peru, S.A. v. The Republic of Peru was brought forward by a Chilean investor. Meanwhile, states within the region have responded to nine claims by Canada and the US: four launched under the Canada-Costa Rica FTA (2002), one brought by

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US investors against Costa Rica under the CAFTA,\textsuperscript{14} one brought forward by US investors against Costa Rica through the ICSID protocol prior to CAFTA’s signing,\textsuperscript{15} and three brought against Peru under the US-Peru TPA.\textsuperscript{16} This is likely a reflection of the fact that investment flows both within NAFTA and between NAFTA and many Pacific Alliance states are more developed than those within the Pacific Alliance.

**Final Observations**

Our case comes down to three methodological propositions and three empirical suggestions.

**Methodological propositions**

First comes the logical affirmation that not just like, but unlike, entities can be compared. This means that, even if North America is very differently constituted from other regions, it can still be compared with them, shedding light on both in the process.

Second is the analytical position that fruitful comparative analysis requires clearly structured conceptualizations of the problematic under consideration: in other words, how regions are compared depends on the categories specified for the analysis.

Third, we need to acknowledge a separate category in the field of comparative analysis, that of implicit comparison through conceptual importing. Early examples of conceptual importing are the initial studies of NAFTA's low institutionalization, which were either implicitly or explicitly framed by an understanding of the European Community's supra-national bodies. A current example is two Canadian scholars importing for their study of North America's architecture the multi-level governance conceptualization developed by Gary Marks and Lizbeth Hooghe for analyzing the European Union’s policy networks.\textsuperscript{17}

**Empirical suggestions**

Although the basic distinction in the European literature between political *regionalism* and economic *regionalization* is valuable, the two concepts in themselves have little analytical power. Comparing how regions are *constitutionalized* provides a broader, more highly specified spectrum of categories on which the similarities and differences between two or more systems can be identified and discussed empirically.

Given that such comparisons are largely static, comparing how levels of integration and disintegration change over time can turn primarily static into more dynamic comparative analyses.

\textsuperscript{17} Greg Anderson and Brian Bow, eds., *Building without Architecture: Regional Governance in Post-NAFTA North America* (Oxford University Press: forthcoming).

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When specific instances of the inter-regional diffusion of and resistance to norms and institutions are compared, they can shed light both on variations in the specific diffusion processes under analysis and on the generally integrative and disintegrative dynamics of the regional groupings being studied.

We end with a general appeal. Not only is North America too big to ignore in its own terms. Its physical dimensions are strikingly similar to those of the European Union. Its three economies’ combined gross domestic product in 2013 of $19.9 trillion is slightly larger than the European Union’s 28 member economies’ combined GDP of $17.4 trillion, as is its three states’ combined population of 474 million slightly smaller than normal the European Union’s 28 member states’ combined populations of 506 million. Given that North America is the only other grouping in the global North that can be considered a region and that its institutional and behavioural characteristics are so different from those of the EU, we claim that it makes more rather than less valuable material for comparativists. In sum, the time has come to grant North America full membership in the rosters of comparative-regionalism scholars.

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