

NAFTA and Its Implications for International Trade in the Cultural Sector

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“Just as culture is a product of the history of a particular people, so, too, is cultural policy an historical product. All the factors and conditions that have shaped collective memory come home to roost in what a nation defines as the proper scope of cultural policy and how it goes about making and implementing it.”

Introduction

To explore policy frameworks for international cultural exchanges by focusing on NAFTA may seem excessively confining, for that trading bloc encompasses only three of the world’s approximately 200 countries. Nevertheless, the experience of the North American Free Trade Agreement, which began in 1994, exemplifies many of the problems and possibilities of international cultural interactions on a global scale. And since Canada and Mexico are, respectively, the largest and next largest trading partners of the U.S., how they choose to deal with us in this, as in other areas, is of special consequence.

The experience of this cultural *ménage à trois* provides, moreover, a microcosm of the range of international cultural policies that the symposium title refers to as a “maze.” Navigating this maze is sometimes frustrating and sometimes rewarding. For those who are not fainthearted, the rewards can be considerable. Let us begin by disaggregating the bundles of policies that govern cross-border cultural transactions in NAFTA to glimpse the complexity of the larger world picture.

Four key dimensions of policy frameworks

In the first place, NAFTA experience exemplifies the fact that the framework of policy differs significantly from country to country, not always in the expected direction. Where in the governmental structure and how cultural policies are made, by whom they are instigated, where and how they are implemented, and the purposes they serve vary considerably from country to country. Even the level of government involved in the design and conduct of public policy in the arts and humanities differs from place to place. In Mexico, for example, what the central government decrees is the “controlling legal authority,” so to speak; only in recent times have a few state and municipal governments begun to take a more active role in the cultural sector, where nongovernmental organizations (NGOs) are still relatively few. In Canada, where the central government exercises protective and stimulatory functions, the provinces and municipalities play a major role as they do in the U.S. There, though less than in the U.S., NGOs play a role as well. As such matters vary from time to time within the same country, there is no substitute for acquiring country-specific information when anticipating some form of cultural exchange with foreign partners.

In the second place, cultural policy everywhere embraces a variety of streams of cultural production and consumption, but not always the same mixture. Each policy arena (filmmaking, publishing, visual arts, performing arts, heritage institutions, etc.) has its particularities of organization and structure. What serves well enough in, say, cross-border academic study programs has little bearing on the trade in books or traveling exhibitions of art. Along with differences in industry organization come differences in the dynamics of the cultural industries involved and in the way they are impacted by public policies—policies that vary from industry to industry, in any case. Thus, not only is it important to round up country-specific information, but it also is essential to secure industry-specific regulatory information when setting out to develop cross-border transactions.

Further, the different branches of cultural production, even within the same country, may be quite disparate in character: in the ways they are institutionally organized and in the way they are influenced by policy. Thus, particular cultural undertakings may be:

- carried on by either firms or nongovernmental and not-for-profit organizations in a market context, which may, or may not, be modified by a regulatory/legal framework, or
- subject to direct government control and provision as an integral part of the public sector

Third, organizers and managers of cultural undertakings—whether in the commercial sector, the not-for-profit sector or the public sector—usually have their own preferences, and one must take account of the varying corporate or institutional policies within which decision makers in the exchange area operate. In other words, policy does not equate with public policy. Rather, the policy framework for international cultural relations includes governmental policies (of whatever provenance), corporate policies and the operating procedures of institutions such as museums, churches, universities and schools, philanthropic foundations, trade unions and ethnic associations, *inter alia*. Most often, moreover, institutional practice is linked with the professional norms and expectations held by key managers and other decision-makers. Thus, the *modus operandi* of each institution is the product of a complex structure of authority and delegated responsibility. In this mixture, customary institutional practices and professional norms may in some instances be the most important constraints on actual transborder cultural interactions.

Fourth, what is implicit in the foregoing should be made explicit as another dimension of the policy frameworks. Just as culture is a product of the history of a particular people, so, too, is cultural policy an historical product. All the factors and conditions that shape collective memory come home to roost in what a nation defines as the proper scope of cultural policy and how it goes about making and implementing it. Of special relevance is how historical circumstances have produced, or failed to produce, some notion of national cultural identity as a public good (a common product consumed by all members of the nation), one that also is a merit good (a product that confers values beyond what the market ratifies and thus calls for public investment or regulation).

On this score, for example, long-standing cultural affinities between the U.S. and Canada come into play: in the foundational culture transplanted from the British Isles, language, political system, legal traditions, the shaping force

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of westward migration and a common grounding in history—even similarities in the multiple ethnicities that have come to compose the national civic fabric. (Even Francophone Canada derives from an historical tradition that is reasonably familiar to many Americans.) So strong are these affinities that talent has historically moved back and forth across the border in near invisibility. Canadian cultural policy thus appears designed to assert and maintain a distinctive identity amidst circumstances that might otherwise render it indistinct.

In contrast, both Canada and the U.S. have always stood apart from the historical processes that have formed today's Mexico and its richly complex cultural patrimony. Neither the flow of tourists southward into Mexico nor the matching counterflow of workers, both legal and undocumented, northward have altered in a major way the deep-seated contrasts that differentiate the U.S. and Canada from Mexico. Sheltered from Anglo-America by its language, its deeply textured cultural tradition and its distinctive history, Mexico has been largely motivated in its cultural policy, through most of the 20th century, by the objective of coalescing the body politic around symbols and representations of heritage that foster common understandings and attachments—and that showcase, for the rest of the world, the ornate historical corridor through which the country has traveled to the present.

Both Canada and Mexico, however, stand in contrast to the U.S. in that their mechanisms of cultural policy vest relatively greater responsibility in the public sector (though not only the central government in Canada) than in the commercial and not-for-profit sectors; in neither Canada or Mexico is cultural policy so readily, and consistently, trumped by trade policy as it is in the U.S. so far as international relations are concerned.

Besides the foregoing factors, one needs to keep in mind the point made by Wyszomirski in another context: namely, that “cultural policy” often takes shape, in whole or in part, as a fallout or spillover from policy-making in other fields. Such was the case, for example, when the Roosevelt administration of the 1930s, primarily to generate jobs, copied Mexican experience in employing artists to paint murals on public buildings or, for that matter, when Mexico used arts patronage didactically to publicize the government's particular ideological project. Canadian cultural policy measures, in turn, aim, like the Mexican and U.S. policies, at fostering the national creative industries, but they also are used to constrain cross-border transactions in cultural products to safeguard a “public good,” national identity, in the face of overwhelming cultural influences from the U.S.—and to respond protectively to private producer interests in the cultural sector.

Recognizing the highly variable nature of all levels and sources of policies in the real world, we must be ever mindful of the need to look at the particularities of each stream of transactions in international cultural relations if we are to avoid the Scylla of banal generalization on the one hand and the Charybdis of *sui generis* relationships on the other. Small wonder, then, that the organizers of this symposium elected the metaphor of a maze, for the policy territory tends to be labyrinthine indeed.

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National and subnational rules and regulations: Canada

At first glance, the national policy face that Canada presents would seem to suggest a relationship fraught with difficulties for its major trading partner. Starting with the Canadian/U.S. Free Trade Agreement of the late 1980s, Canada adopted a defensive posture *vis à vis* the U.S. by inserting a clause that specifically exempted the cultural sector from the liberalizing commitments of the treaty. Later Canada tried, unsuccessfully, to persuade the Mexican government to do likewise when the North American Free Trade Agreement was being negotiated. That agreement did, however, reiterate Canada's "cultural exemption" and therefore seemingly protected the previously established Canadian position.

That both agreements also contained language in which the U.S. reserved the right to retaliate for any "protective" or restrictive cultural measures seemed a surefire guarantee of continuing controversy. What is more, the flag of cultural sovereignty has been hoisted by the Minister of Canadian Heritage at the several meetings of what might be called, for want of a better term, an International Cultural Caucus, a group that includes Mexico. This organization of cultural ministers has held a series of meetings, in Stockholm, Ottawa and Oaxaca to develop common positions on culture akin to the national policies of France, Canada and Sweden. Inspired by the vision expressed in the 1995 report "Our Creative Diversity" of the UNESCO World Commission on Culture and Development, the group took the report as the impetus for reestablishing the cultural caucus¹. The U.S. was formally excluded, ostensibly because it has no minister of culture; Mexico, which has no minister of culture either, is an active participant in the caucus. Within Canada, both the Ministry of Canadian Heritage and its counterparts in the provincial governments have actively fostered the development of Canadian culture in all its aspects, aided by an assortment of other official and semiofficial cultural organizations. Given such a posture, the policy ramparts that have been built would appear to constitute formidable barriers to cross-border cultural transactions.

Nothing could be further from the truth. Hence, the Canadian case demonstrates the importance of looking beyond national statements to the other factors that condition the policy framework. Despite restrictive policies in such fields as publishing and book distribution, and despite a leaning toward broadcast quotas for Canadian music and reserving a portion of screen time for Canadian motion pictures, other cultural exchanges are about as easy to effect as interinstitutional transactions within the U.S. Even in some potentially ticklish areas a restrictive posture in trade is more apparent than real. It is not clear that the ownership of bookshops matters much when readers can order from electronic distributors or download complete texts from the Internet. Moreover, despite the rise of international media conglomerates in publishing, the number of general and niche publishers remains large, and desktop publishing, publishing on demand and other new trade practices mean that specialized small publishers, accessible by national writers, are not necessarily headed for extinction, thanks to economies of scale.

By the same token, restrictions on television and radio broadcasting are attenuated by the capacity of many Canadians, who live relatively near the border, to receive U.S. stations, receive programming from satellites and cable (or the Internet) or download music from the Internet. When compact disks can be ordered from electronic distributors, restrictions have greatly lessened

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¹ In point of fact, the Stockholm meeting was not the first for this group; the initial meeting had taken place in Mexico in 1982. The World Conference on Cultural Policy, as the meeting was styled, had no immediate follow-up, owing to the onset of the debt crisis which triggered a decade or so of severe economic and political difficulties in many countries.

practical meaning and, further, any “national reserve” policy is undercut when, in low-tech fashion, people can readily shop on the other side of borders that are easily crossed (just as Americans purchase pharmaceuticals in Canada) or order wares from mailed catalogues. The increasing frequency with which films are shot in Canada indicates that cultural protectionism counts for little when, in addition to the promotional attractions blandished by provincial and national governments, foreign film-makers are being lured to Canada by the powerful inducement of the exchange rate.

Moreover, nothing in NAFTA or its bilateral predecessor agreement, hampers programs to preserve cultural patrimony by restoring and protecting historic structures and districts, nothing impairs the ordinary functioning of museums, libraries and other heritage institutions, and nothing diminishes the operations of conservatories, acting schools, art institutes, writers colonies or any other means of forming the human capital employed in the cultural industries. A considerable repertory of measures exists for state- and municipal-level authorities—in Canada, as in the U.S. and Mexico—to use to foster cultural production over a wide range of industries so long as national treatment prevails. Since part of the output of the cultural sector, broadly viewed, consists of nontraded goods (live performances, real fixed assets such as museums) or goods that only enter into international exchanges at the discretion of institutional custodians (museum holdings, library collections, productions by touring companies), regional trade agreements may not, in and of themselves, carry much risk of being crowding out in many fields of cultural production and consumption.

That said, the UNESCO convention on cultural property allows countries to prevent the export of certain types of goods, while other arrangements allow for the repatriation of certain goods that had previously been exported, such as special indigenous artifacts that ended up in foreign museum collections, but those measures may be invoked equally by Canada, the U.S. and Mexico, and in any case apply to only a limited range of cross-border cultural transactions. In other fields, cross-border cultural transactions may be inhibited, insofar as they are, by language preferences and language competence (in Francophone Canada) or by a simple lack of market knowledge and traveling expense. Those may be taken as “normal” factors raising transaction costs rather than as public policy expressed in an official trade regime, and the inhibitions posed by language competence are, in fact, negligible.

Hence, in some areas interaction is comparatively easy, if not as frequent as one might expect. Students and faculty travel back and forth; interlibrary loans can be readily arranged; podium exchanges and touring musical groups are not uncommon; the American Symphony Orchestra League has close relations with its Canadian counterpart; and so on. Professionals from Canada and the U.S. attend many of the same professional meetings and read the same journals, and museum staff in each country know a lot about the collections of the others and draw on them for reciprocal lending to put together new exhibitions. Here as in other cultural fields, managers, staff and workers share the same professional norms and expectations. Readers in the U.S. are familiar with Canadian writers, and vice versa, while the same holds true in music, films, videos and other cultural products. From a host of associations built upon shared tastes and interests—not to mention ease of communication and travel—have come a substantial accumu-

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lation of the social capital on which border-spanning relationships most effectively rest.

True, interaction may sometimes be constricted by institutional policies that have only indirect connections to national policy, as when union rules (in either country) discourage the employment of musicians, actors and suchlike, but these are restrictions that apply equally to internal transactions. Consequently, despite the formally restrictive cast of Canadian cultural policy, conditions on the ground are generally quite conducive to cross-border cultural traffic—as one would expect, since communications and transport infrastructure are as well developed north of the Canadian-U.S. border as south of it.

Further, trade flows, an important vector of transmitted cultural information and shared preferences, are voluminous, each country being the major trading partner of the other. Since per capital income levels are similar in the two countries, the composition of demand for cultural products and the intensity of that demand facilitate exchanges in all three sectors: the public, the commercial and the not-for-profit. The sheer volume of uninhibited border crossings, moreover, ensures that lack of reciprocal knowledge plays a minor role.

As professional norms, training and expectations are virtually indistinguishable on either side of the frontier, museum operating procedures and the practices of performing arts companies in Canada differ little, if at all, from those of their U.S. counterparts. As in other areas of cultural exchange, the transparency of transactions is such that it is about as easy to arrange for products to move across the frontier as it is to deal with institutions in more distant parts of the same national territory. The Art Gallery of Ontario in Toronto, the National Gallery in Ottawa or the Musée des Beaux Arts in Montreal, for example, probably have more in common with the major U.S. museums than any of them have with small institutions in outlying parts of the national territory. Meanwhile, provincial and municipal heritage institutions in both countries share very similar institutional missions, outlooks and capacities.

Considering the general permeability of the border, one is almost driven to conclude that the most consequential hurdle to even greater cross-border interaction, from a U.S. point of view, might be the taste for the exotic that sometimes guides international transactions in the cultural field. Quebec may advertise itself as a “Europe” to which American tourists can travel without crossing an ocean, but the substantial and unique charms of Quebec notwithstanding, Americans visit and work there without the inconveniences and discomforts normally associated with exotic cultures and locales. And since most urban Quebecois are bilingual, even language serves more as a bounded comfort zone than as a significant handicap in exchange.

National and subnational rules and regulations: Mexico

Mexico, which declined to argue for a cultural exemption when NAFTA was negotiated, exemplifies the countries that have over the years developed an active and reasonably comprehensive cultural policy, one that is administered chiefly, though not exclusively, by the national state. Interestingly, while it was only in 1959 that the DeGaulle government established a ministry of culture to fashion an explicit and comprehensive cultural policy, Mexico had begun more than 30 years earlier to employ culture systematically as an

“Protect the technology industry from modern day pirates at home and abroad: both those who violate copyrights and those who loot by litigation.”

Republican Party Platform, 2000

instrument of statecraft, in pursuit of aims enunciated in the Revolutionary Constitution of 1917.

With this charter as a base, a brilliant Minister of Education began in the 1920s to fashion a cultural policy that quickly caught the attention of the Western world and even inspired the U.S., in the subsequent decade, to try its hand at state patronage of the arts. The reins of cultural policy are still held by the Ministry of Education, which develops and implements policy through three subsidiary institutions: the National Institute of Fine Arts, the National Institute of Anthropology and History, and the National Council for Culture and the Arts—each of which, in turn, oversees a network of state-based institutions that cover the republic. Still other official institutions populate the national cultural stage in film production, marketing of native crafts, cultural broadcasting and government-run publishing houses. Some of the universities, UNAM in particular, and the National Center for the Arts, a research and instructional center, also figure in the picture. What was for years almost the sole national television company, Televisa, was privately owned but such a close partner of the ruling political party that it was for all practical purposes an adjunct of the state apparatus and a mouthpiece for government.

Thanks to the growth of the Mexican economy, there have appeared increasing numbers of privately established museums, universities, schools, publishers, television and radio companies, recording companies and other cultural industries. There also has come into being a growing host of businesses that have cultural programs of one sort or another, alongside a number of civic organizations formed for cultural purposes.

Though a modicum of decentralization is in evidence, the national cultural system remains one in which the state controls the commanding heights through the institutions of the official cultural sector. And though privatization and modest deregulation have been applied to the national economy, bureaucratic regulations and procedures still clutter most transactions in the cultural sector, apart from the cultural industries. At auctions in New York of paintings by modern Mexican masters, for example, prices carry a heavy discount when the paintings are still in Mexico, as export of such objects is prohibited by laws that, unchallenged by NAFTA, are intended to protect the nation's extraordinary cultural patrimony. Further, as the current economic recovery proceeds, the official means of encouraging cultural production will almost certainly be enhanced.

The view of the state as primary custodian of the country's culture continues to enjoy widespread support among members of the Mexican intellectual community, who have shaped national cultural policy from its 20th century inception. Mexican intellectuals and many others in the cultural sector harbor lingering doubts and anxieties about what across-the-board liberalization might mean for the future of Mexican cultural production. If the mandarins who have traditionally made policy in this field have been temporarily marginalized by the priority accorded economic liberalization, one cannot assume that it will always be that way.

Once the Mexican economy is firmly back on its feet and the inter-country linkages built by NAFTA have been consolidated to a point that the basic architecture of the agreement cannot be undone, it is altogether conceivable that Mexican policymakers would be emboldened to assert more forthrightly a new means of investing a protective function in national cultural policy. A hint of what the future holds may surface at the International

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Cultural Caucus meeting in Greece as the participants continue elaborating a “new international network to promote and protect cultural diversity.”² Meanwhile, institutional practices, attitudinal predispositions, professional norms and the organizational and physical infrastructure of the cultural sector function pretty much as they have historically, which is to say with centralized decision making, not a great deal of transparency and, at the practical level, a number of habitual procedures that can hamper international cultural exchanges, particularly those attempted at an unofficial level.

Exchanges of exhibits between museums in Mexico and the United States or Canada, for example, can be complicated in unanticipated ways. If the Mexican museum that is involved in the exchange is a state-run institution, its scope for authorized negotiation may require approval from above, possibly at a ministerial or subministerial level. Decisions customarily made at the curatorial level in the U.S. or Canada may routinely have to be bumped upstairs for resolution, even to levels above the directorship of the museum. Certain national treasures may not be sent out of the country when one presidential administration gives way to another. Pre-Columbian objects from official collections ordinarily may not be shown abroad in exhibitions that include similar objects from foreign private collections.

Given the complexity and opacity of the decision process in Mexico, timelines may not accord with the standard for northern neighbors, there may be official limits set on the time objects may circulate abroad, and various conditions, sometimes aimed (understandably) at reciprocity, may be attached to the transaction. Slippage in agreed schedules is not infrequent, and discussions of art exchanges often range over a variety of other complicating factors—environmental aspects of exhibition venues, security arrangements, museum representation at incoming customs clearing, return shipping conditions, and so on, to say nothing of apportionment of the insurance costs, which tend to be higher than for shipments within and between the U.S. and Canada. On past occasions, divergence expectations regarding what constitutes reciprocity in exchanges have further disturbed the pace of negotiations.

All those factors are in addition to differing conceptualizations of particular exhibitions, disparities in the ability to finance catalogues and difficulties on each side of ascertaining collection holdings across the border. Divergent capacities to mobilize corporate sponsorship and other funding may further ruffle interinstitutional relations. At a more mundane level, accounting for income, outlays and contributions, where shared expenses and budgeting are involved, may have to reckon with the fact that customary practices in the U.S. and Canada differ from those of Mexican institutions. And when difficulties arise over agreed specifications, including deadlines, Anglo-American institutions may discover that the enforcement of contractual obligations becomes an unanticipated variable and that dispute resolution procedures can become ambiguous.

Large multinational corporations have devised ways of dealing with such problems. Not so most museums and performing arts groups, particularly smaller institutions that are less experienced in international exchanges and vulnerable to various types of slippage in cross-border dealings. Hence, despite the formal openness of Mexico to cross-border cultural transactions under NAFTA, the way ahead can be complicated by situational factors that raise transaction costs considerably above what they would be in more normal

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² The most recent surfacing of this set of issues came shortly after the October meeting in Oaxaca, on the second of November 1999, at the General Conference of UNESCO in Paris. On that occasion a roundtable of ministers of cultures was convened to prepare recommendations to the General Conference.

exchange patterns. It is scarcely reassuring that even some major museums in the United States have had to resort to diplomatic intervention to rescue projects from the snares that lurk in the institutional territory on which cultural exchanges are negotiated and implemented.

A guide for the perplexed

Some general caveats can be drawn from the foregoing overview as a way of developing guidelines for international cultural exchanges. Let us enumerate them briefly.

First, that disaggregation—of the type of cultural exchange envisaged and of the policy source (central or regional or local government, commercial firm, industry organization or independent sector institution)—is of the essence. Nothing substitutes for getting as clear a view as possible of the particulars of each case. In some instances, cross-border transactions are no more complicated than domestic exchanges. In others, hurdles both governmental and nongovernmental, visible and unexpected, may push transaction costs to punishing levels. That is particularly likely when significant institutional asymmetries are involved. And what affects one stream of cultural exchanges may not shed much light on exchanges in a different set of products. Each must be examined carefully on its own terms.

Second, national policy objectives and the structures through which policy is implemented can highlight some of the exchange territory, but other factors come into the picture as well, for example, intercountry differences in institutional capacity, national economic conditions, episodic political variables. Pervasive trade liberalization programs notwithstanding, we are a long way from enjoying equivalent freedom of decentralized decision making and discretionary authority in the cultural institutions of many countries.

Third, beyond the policy framework and the sundry contextual elements suggested above, heed must be paid to more elusive factors: the affective/emotional/symbolic nature of cultural policy issues, which run right into not-always-completely-articulated concerns with cultural autonomy or sovereignty, the integrity of the national cultural fabric and the perceived threat of globalization and homogenization. Within countries, there may be tensions—and hence different policy currents—between the perceptions and objectives of policy elites on the one hand and those of the general population on the other. Which ones come to the fore in the design and implementation of policy at a particular time and place tends to be circumstantially determined, so there is no getting around the need for careful investigation of the particulars of each contemplated exchange.

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