

WATER OVER THE BRIDGE: EXAMINING TRANSNATIONAL MUNICIPAL
NETWORKS OF AMERICAN AND CANADIAN LOCAL GOVERNMENTS
IN THE CONTEXT OF CANADA-U.S. BILATERAL ENVIRONMENTAL
RELATIONS WITHIN THE GREAT LAKES BASIN

By

Ireneusz W. Kusmierczyk

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Approved:

Professor M. Donald Hancock

Professor Marc J. Hetherington

Professor W. James Booth

Professor Florence Faucher-King

To my parents, Marta and Richard, and my brother Andrew
For your boundless love, encouragement, and faith

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ABBREVIATIONS AND ACRONYMS

| | |
|---------|---|
| AEP | American Electric Power Corporation |
| AMO | Association of Municipalities of Ontario |
| AOC | Area of Concern |
| BCC | bioaccumulative chemicals of concern |
| b/d | barrels-per-day |
| BELIEF | Building in Europe Local Intelligent Energy Forums |
| BP | British Petroleum |
| CAA | Clean Air Act |
| CAO | Commission for Oversight and Construction |
| CAPP | Canadian Association of Petroleum Producers |
| CCME | Canadian Council of Ministers of the Environment |
| CEAA | Canadian Environmental Assessment Act |
| CEMR | Council of European Municipalities and Regions |
| CEPA | Canadian Environmental Protection Act |
| CERI | Canadian Energy Research Institute |
| CGLRM | Council of Great Lakes Resource Managers |
| COA | Canada-Ontario Agreement |
| COA MOC | Canada-Ontario Agreement Memorandum of Cooperation |
| COR | Committee of the Regions |
| CRS | Congressional Research Service |
| CWA | Clean Water Act |
| CWSRF | Clean Water State Revolving Fund |
| EIA | environmental impact assessment |
| ELPC | Environmental Law and Policy Center |
| EPA | Environmental Protection Agency (US) |
| EU | European Union |
| FCM | Federation of Canadian Municipalities |
| GAO | General Accounting Office |
| GATTEL | Office of the Tagus River Crossing in Lisbon (POR) |
| GHG | greenhouse gas |
| GLSLCI | Great Lakes and St. Lawrence Cities Initiative |
| GLWQA | Great Lakes Water Quality Agreement |
| HQW | High Quality Waters |
| IAQAB | International Air Quality Advisory Board |
| ICLEI | International Council for Local Environmental Initiatives |
| IDEM | Indiana Department of Environmental Management |
| IJC | International Joint Commission |
| IWI | International Watersheds Initiative |
| IWQC | Indiana Water Quality Coalition |
| IWRM | Integrated Water Resources Management |
| JPAC | Joint Public Advisory Council |
| MAFRA | Ministry of Agriculture, Food and Rural Affairs (CAN) |

| | |
|--------|---|
| MARN | Ministry of Natural Resources (POR) |
| MEP | Member of European Parliament |
| MF | Ministry of Finance (POR) |
| MNR | Ministry of Natural Resources (CAN) |
| MOE | Ministry of the Environment (CAN) |
| MOPTC | Ministry of Public Works, Transport and Communication (POR) |
| NAAEC | North American Agreement on Environmental Cooperation |
| NAALC | North American Agreement on Labor Cooperation |
| NAEWG | North American Environmental Working Group |
| NAFEC | North American Fund for Environmental Cooperation |
| NAFTA | North American Free Trade Agreement |
| NCG | non-central government |
| NEP | National Energy Policy |
| NGO | non-governmental organization |
| NPDES | National Pollution Discharge Elimination System |
| OMC | Open Method of Coordination |
| ONRW | Outstanding National Resource Waters |
| OSRW | Outstanding State Resource Waters |
| PADD | Petroleum Administration for Defense District |
| PCB | polychlorinated biphenyls |
| PNWER | Pacific Northwest Economic Region |
| POGG | Peace, Order and Good Government |
| PRI | Policy Research Initiative |
| RAP | Remedial Action Plan |
| RECITE | Regions and Cities for Europe |
| SAB | Science Advisory Board |
| SEA | Single European Act |
| SNA | sub-national actors |
| SODES | St. Lawrence Economic Development Council |
| SPA | special protection area |
| SPP | Security and Prosperity Partnership |
| TMN | transnational municipal network |
| TSS | total suspended solids |
| UBC | Union of Baltic Cities |
| UCLG | United Cities and Local Governments |
| UN | United Nations |
| WQB | Water Quality Board |

The water crisis is essentially a crisis of governance.

-The United Nations World Water Development Report

The time is fast approaching when water can no longer be viewed in isolation by one institution or any one group of professionals without explicit and simultaneous consideration of other related sectors and issues and vice versa.

-Asit K. Biswas, Stockholm Water Prize recipient

The 21st century will be the century of the city, but this fact has not yet been fully appreciated.

-Michael Harcourt, Chair, Prime Minister's External Advisory Committee on Cities and Communities, Canada.

CHAPTER I

INTRODUCTION

Geography is destiny. In his masterpiece, *Europe Between the Oceans*, the distinguished archeologist Barry Cunliffe writes that in human history “geography provides the stage with all its constraints and opportunities” (Cunliffe 2008, viii), and that it is the complex interaction of humans with their environment that provides the content of that history. In North America, geography brings Canada and the United States face-to-face across a shared 9,000 kilometer border, provides much of the content of the domestic and bilateral relations that bind them across the 49th parallel, and suffuses these relations with their central motif which is the indelible tension between economic and environmental aims. In terms of the economy, Cunliffe observes that “geography determines that natural resources are not evenly distributed” (26), and it is this innate imbalance which drives the social, political and economic interactions between the two countries, finding its most forceful expression in the free trade era, and the establishment of the North American Free Trade Agreement (NAFTA), which has increased cross-border trade between Canada and the United States fifteen-fold within the last three decades (Brunet-Jailly 2008, 109). Much of that exchange is driven by what is the largest energy trade relationship in the world based on Canada’s seemingly endless natural resources and the United States’ seemingly endless demand. At the same time, the fact that half the border cuts across three-hundred shared water basins composed of lakes and rivers has also thrust the

two countries together into environmental cooperation to protect these watersheds from the air and water pollution emanating from increasing industry, transportation and other fossil-fuel based activities. That the first permanent joint institution established by Canada and the United States was the International Joint Commission (IJC), created a century ago by the Boundary Waters Treaty of 1909 to settle and prevent disputes emanating from the use of transboundary water bodies, illustrates the importance of the environmental dimension to these bilateral relations. Hence, no dynamic has solidified and simultaneously strained these relations more so than the increase in economic trade and the increased concern over management of shared ecosystems coming under growing pressure from transboundary pollution and other derivatives of a globalized North American economy. As a result, in short, no other dynamic has catalyzed closer cross-border linkages and integration than the environmental-economic nexus.

This observation is supported by the fact that cross-border linkages in North America are concentrated around flows of trade (see Figure 1) and shared ecosystems (see Figure 2) leading to the formation of four distinct clusters or cross-border regions where those linkages are thickest and most intense (Policy Research Institute, 2005). In addition to serving as a catalyst for these bilateral relations, more than ever, geography is prompting the United States and Canada to re-consider, adapt, and re-scale the structures which govern their flow. This is particularly evident in the sphere of bilateral environmental policy due to a growing understanding of the fundamental mismatch that exists between geography and the political institutions erected thus far to manage the numerous shared ecosystems at the border. The two societies,

proceeding from a territorialized understanding of nature, have historically sought to impose governance systems that are territorially fixed upon natural resources like lakes and rivers that are fluid and governed by hydrological laws which transcend socially-constructed political boundaries (Norman 2009) and exceed the scope of state sovereignty and the capacity of any one level of government (Lopez-Gunn 2009).

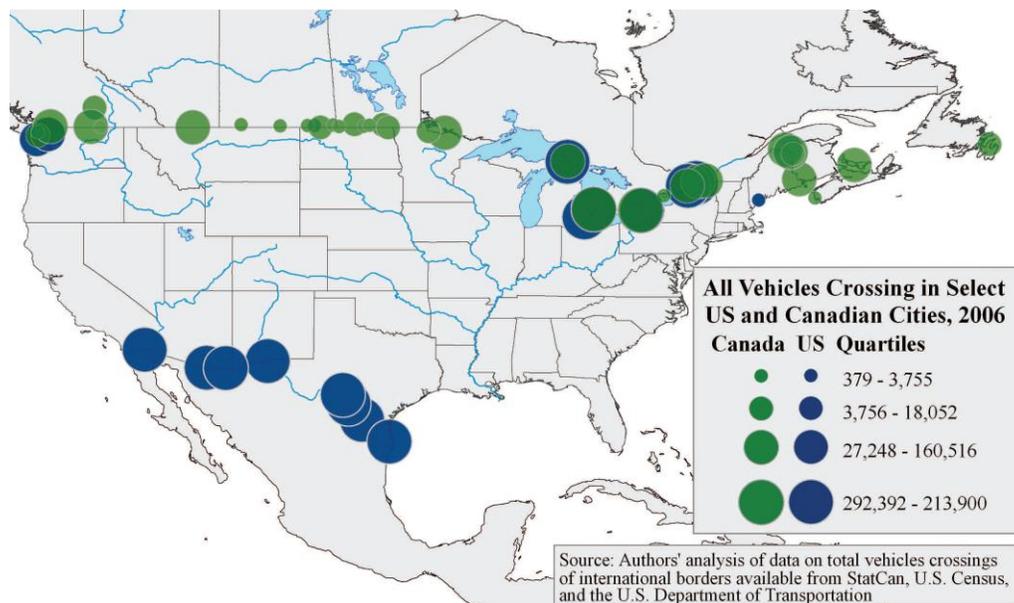


Figure 1: Trade and Traffic Flows in U.S.-Canada border

Source: Austin et al. 2008, 13

Our conceptualization of transboundary water governance has long been mired in what Agnew (1994) termed the *territorial trap*, which is a Westphalian conceptualization of the state and sovereignty as territorially bounded and hierarchical, based on the conceptual separation of domestic and international affairs, and on the conceptualization of the state as a container of social and political-

United States-Canada Shared Ecosystems and Cross-Border Regions

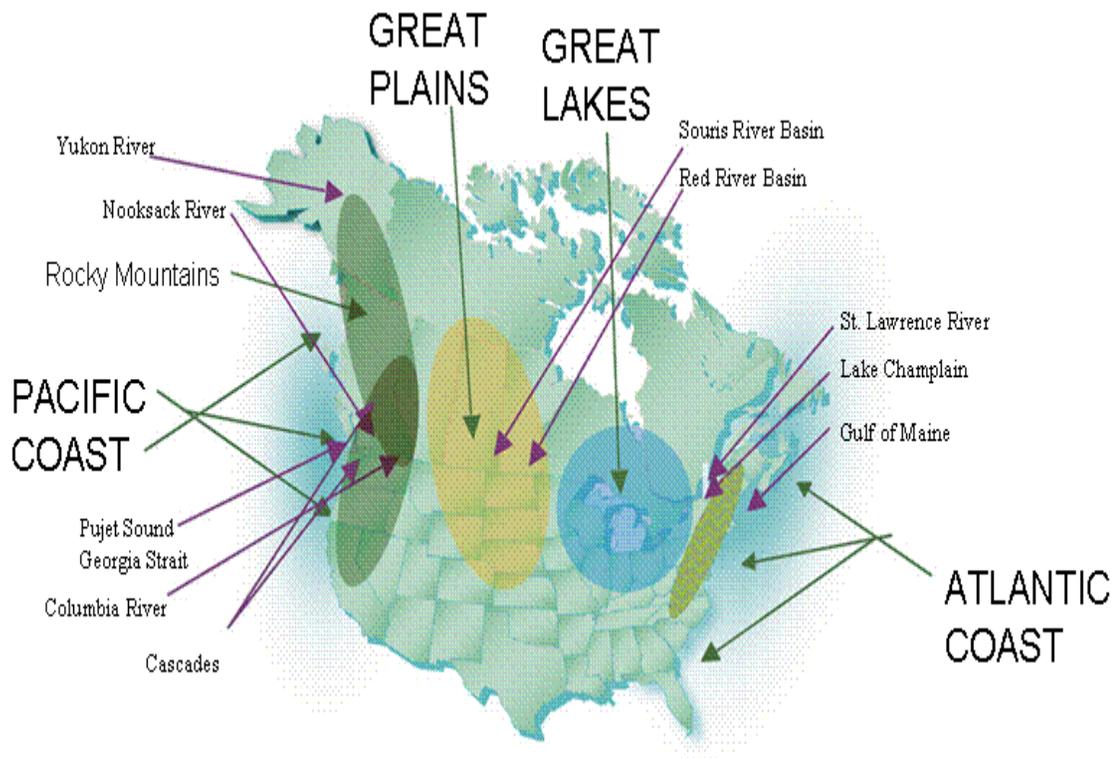


Figure 2: Four Cross-Border Regions
Source: Policy Research Institute, Canada, 2008, 3

-processes (Agnew 1994, 1995, 1999). Consequently the dominant paradigm for transboundary water governance has been a state-centric, hierarchical, federal-to-federal model, reflected for example in *regime theory*, which espouses top-down management of transboundary water-issues through international agreements, protocols, compacts and global conferences that minimize or ignore non-central-state actors. It is often termed the ‘cascade model’ because sub-national actors are portrayed as the passive recipients of policy direction from on high (Bulkeley and Betsill 2003).

Essentially we are now slowly realizing that the principle of ‘spatial exclusion’ (Agnew 1995) underpinning our long-held conceptualization of the state is incongruent with transboundary water issues that are inherently too complex and interconnected—affecting agriculture, industry, energy, and health policy—and too fluid—affecting the local, regional, national and global scales—to be addressed by any single jurisdictionally bounded organization, institution, or regime (Biswas 2004). To illustrate, a single governmental agency such as the Environmental Protection Agency (EPA) is ill-equipped to protect the interests of American port communities on the St. Lawrence River whose drinking water is affected by effluent from Canadian paper mills, whose reliance on fisheries for subsistence is threatened by invasive species introduced by international ocean freighters from Asia and Latin America, and whose dependence on the shipping industry makes them sensitive to global processes such as global warming which alter the levels of the waterways.

Only within the last decade have we become alive to the fact that watersheds simultaneously interact with processes at all levels between the local and global and thus begun to comprehend the need to develop a comprehensive, holistic, multi-scalar approach to watershed management (Conca 2006). Hence, we are witnessing a paradigm shift from top-down, state-centric models of transboundary watershed management to an Integrated Water Resources Management (IWRM) approach with a clear emphasis on collaboration, de-centralization, and a *new localism*, based on the assumption that local community involvement improves the decision-making process (Corry and Stoker 2002; Biswas 2004).

As a result of these changes in our perception of natural resources and their management, we have witnessed over the last two decades the democratization of water governance and a proliferation in the quantity and variety of governance instruments being applied to transboundary water governance. Lopez-Gunn (2009) argues,

This realization or shift in the perception of groundwater as a common resource and as a flow rather than a stock also has subtle - yet crucial institutional implications. It shifts the focus towards a process-oriented outlook on managing a common flow through appropriate institutional frameworks, such as networks operating at multi-scalar levels, including international, regional, national and local partnering opportunities between international institutions, state, private and civil society, NGOs, communities, individuals and epistemic communities (42).

These changes have sparked a new period of institutional innovation and rescaling as the United States and Canada increasingly adapt their political structures in order to accommodate their geography, and not vice-versa.

One of the hallmarks of this period of democratization and innovation is the re-scaling of environmental governance downwards. A growing variety and number of sub-central governments and non-state actors are interacting across the border in order to manage the environment and balance the tension at the heart of the relationship between Canada and the United States. Analyzing the number of transboundary water governance instruments (i.e. treaties, memoranda of agreement, organizations) created per decade across the Canada-U.S. border between 1900 and 2007, Norman and Bakker (2009) concluded that “the majority of instruments created since the 1980s were conceived and implemented at the sub-national level” (106) as part of a clear trend toward greater sub-national (provincial/state) and local (sub-

state/sub-provincial) participation in cross-border environmental policymaking (See Figure 3).

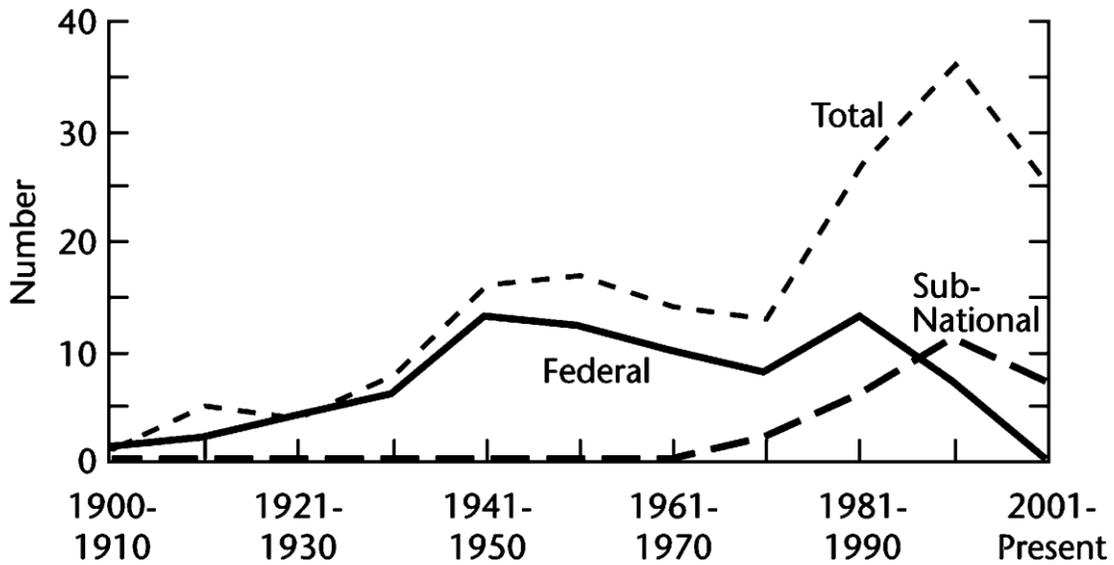


Figure 3: Number of federal and sub-national governance instruments created per decade (1900-2007)

Source: Norman and Bakker 2009, 105

Consequently, in his study, “The Canada-U.S. Relationship at the Turn of the Century”, Alan Schwartz (2000) observed that “there is a complex web of interactions on many levels” (223). Although we have attained a more sophisticated appreciation of this complexity, our understanding of *who* participates in the bilateral environmental relations between Canada and the United States, remains incomplete. Until the 1990s, bilateral relations between the United States and Canada were predominantly understood to be the exclusive domain of federal governments, due in large part to a strictly formal, constitutionally defined understanding of jurisdictional authority in international affairs (Carroll 1983). Gradually, scholars peeled back, and peered below, the layer of the nation-state to find a thick, intense web of sub-national

cross-border interactions between provinces and states (Munton and Kirton, 1996; Alper 1997; Rabe 1997; Smith 2002). Subsequent investigations uncovered intricate networks of cross-border exchanges, a kind of micro-diplomacy not confined to the public sector but including non-governmental organizations and industry. Munton and Kirton (1996) and VanNijnatten (2003), for instance, found that epistemic communities composed of scientific and technical experts from government, non-governmental organizations, and industry were prerequisites for the day-to-day operation of the bilateral relationship as well as critical components for successfully completing intermittent high-profile environmental negotiations.

Yet, despite the more nuanced appreciation of the multilevel character of bilateral environmental relations between the United States and Canada inclusive of a greater array of actors, our relative understanding of the role *local government* plays within this mesh of relations remains a blank space. To paraphrase an observation made by Daniel Latouche (1988), of all government actors, local governments have been the slowest to receive recognition as a bona fide international actor, in part because their potential contribution to theory building and policymaking has been considered negligible (29). The lack of formal-constitutional recognition of local government in the United States and Canada has meant that local governments have traditionally been depicted as inconsequential actors in bilateral environmental policymaking and predominantly ignored. In most minds, they remain ‘bit players’ (Graham et al. 1998, 1). In 2005, for example, the Policy Research Institute sponsored by the Government of Canada conducted a survey of 110 Canadian and American leaders in the public and private sector to record perceptions of cross-

border linkages between the two countries and found that cities were perceived to be the least useful actors in promoting cross-border linkages, far behind provinces and states, think-tanks, the research community, non-governmental organizations and even chambers of commerce.

The purpose of this dissertation is to correct these unbalanced perceptions by presenting evidence of the ever-increasing policy repertoire of American and Canadian local governments, one that goes far beyond responsibility for local streets and sewers and which takes them beyond the boundary of their city limits, and even beyond the limits of the nation-state, focusing on their expanded participation—empowerment—in cross-border environmental management within one particular region—the Great Lakes basin. This dissertation seeks to add to the thin body of literature that directly acknowledges the increasing *capacity* of local government in transboundary environmental management (Allee 1993; De Loe et al. 2002; Frame et al. 2004; Priscoli and Wolf 2009), defined as the degree to which actors can *participate* in and *influence* governance, or decision-making, processes (Norman 2009).

At the turn of the millennium, local governments around the Great Lakes lacked a seat at the decision-making table and were virtually invisible in the major bilateral environmental agreements and institutions that formed the structure of Great Lakes environmental governance. Today, local governments work alongside their federal, provincial and state counterparts within a wide range of forums such as the bi-national International Joint Commission and the sub-national Council of Great Lakes Governors, reviewing major international agreements such as the Great Lakes

Water Quality Agreement (GLWQA), and setting priorities and outlining strategies to meet their goals for the basin. In addition, for the first time local governments are being invited to take part in formal governance structures, such as the Canada-Ontario Agreement (COA) which implements major bilateral water agreements on the Canadian side of the border. Furthermore, the first meetings between federal, sub-national, and local governments via a newly established, and previously non-existent, trilateral forum for cooperation were held in the fall of 2009.

What is striking about this transformation is the degree of internationalization of these non-central-state actors. Local governments are bypassing their own national governments in conducting their own foreign policy. For example, Canadian local governments are using the American court system to pressure American industries to adhere to American environmental standards while referring specific complaints not to their own federal government, i.e. Environment Canada, but to the United States Environmental Protection Agency (EPA) and other American institutions. In one recent case the City of Toronto filed an *amicus curiae* brief in 2005 with a United States court, joining the U.S. federal government, eight states, and twelve non-governmental organizations in an environmental lawsuit against American Electric Power Corporation, one of the largest operators of coal-fired plants in the United States. Toronto's participation in the lawsuit was notable not only for the fact that it contributed to the largest pollution reduction settlement by a utilities operator by testifying on the health and environmental costs of transboundary air pollution from American coal fired plants, but it was the first time a Canadian local government utilized an American court system in this manner to conduct its own foreign policy.

In addition, American and Canadian local governments operate beyond the Great Lakes basin and are in constant communication with other local governments across the globe through, for example, their membership in the International Council for Local Environmental Initiatives (ICLEI), a network of close to 500 cities from over 40 countries headquartered in Toronto, Canada, or through collaboration with the Union of Baltic Cities (UBC) headquartered in Gdansk, Poland, a network of over 100 Northern European cities from ten countries, to plan and coordinate the voluntary implementation of tougher carbon emission standards and water conservation measures than their own national governments are adopting. This internationalization of local government stems from a broader trend referred to as *glocalization* (Swyngedouw 1997), which is a neologism describing the intensifying combination of local and global interactions brought about by advances in transportation and communication so that communities no longer define themselves spatially but socially (Wellman 2002) and thus operate on multiple scales.

While dedicating part of the dissertation to describing their expanded capacities as individual local governments, this dissertation will focus specifically on the development, behavior and role of one particular mechanism for cross-border interaction, the *transnational municipal network*, which is an institutionalized form of cross-border cooperation between local governments. This dissertation will focus on the only example of a regionally defined transnational municipal network in North America, and the only network whose membership is confined to North American cities. This network, the *Great Lakes and St. Lawrence Cities Initiative*, institutionalizes cooperation between American and Canadian mayors from over sixty

cities within the Great Lakes basin and operates from a secretariat located on the shore of Lake Michigan in the city of Chicago. This organization finds itself at the heart of the environmental economic nexus, with an explicit mission to secure the economic vitality of the basin by preserving the environmental integrity of the Great Lakes. Combined with a commitment to social equality, these three principles comprise the organization's 'triple bottom line'.

Thus, one can say, that the regular traffic of bilateral relations between Canada and the United States composed in large measure of issues of trade *and* water are now passing over a newly established bridge that is the Great Lakes and St. Lawrence Cities Initiative, which connects the full range of stakeholders, the different levels of government, non-governmental organizations, industry and citizens, and integrates the trade and environmental communities that have traditionally operated on separate shores.

Evidence presented in this dissertation of the viability of the Cities Initiative challenges previous findings that local actors in North America are unable to institutionalize their cross-border relations. Brunet-Jailly (2004) concludes that a 'competitive-city paradigm' permeates cross-border relations in North America predicated on intense market pressures that precludes local governments from establishing and sustaining institutionalized forms of cross-border cooperation. Norman (2009), in her analysis of transboundary water governance along the United States-Canada border, concludes that "although local actors are genuinely attempting to engage in transboundary governance, they encounter limited success due to inadequate resources and restricted capacity" (141) and that "local actors are less able

to transcend the border than their nation-state counterparts” (141). The emergence of a viable transnational municipal network in the Great Lakes challenges these conclusions. The Cities Initiative is the clearest manifestation of the increased policy capacity of American and Canadian local governments.

The Cities Initiative also exposes the limitations of Norman’s methodology. Norman limits her investigation into ‘local actors’ to non-governmental organizations and First Nations while ignoring local government. This practice is reflective of a wider trend in the study of transboundary water governance (Alper 1996; Schwartz 2000; Fall 2000) of lumping local governments and community organizations together while emphasizing the latter. This dissertation makes the case that local governments, and especially transnational municipal networks, must be studied on their own terms otherwise their distinct nature and behavior is obscured.

Transnational municipal networks have been studied almost exclusively in the context of the European Union (Heinelt and Niederhafner 2005; Kern 2007; Kern and Bulkeley 2009) or in the context of global networks such as the International Council for Local Environmental Initiatives (Bulkeley and Betsill 2003). The Cities Initiative is the first, purely North American example of this phenomenon, and this is the first study of the role of a regionally defined transnational municipal network both within the Great Lakes and within the context of broader bilateral relations between Canada and the United States. Hence, this dissertation is also the first to take the opportunity to study North American and European transnational municipal networks in comparative perspective.

Two important findings emerge from this comparative analysis. It is demonstrated that the mode of transition which transformed cities from inward-looking domestic actors into transnational ones, though showing similarities in Europe and North America, also has its differences which must be taken into account. In addition to different modes of transition, North American local governments find themselves in a political environment defined by different political opportunities and constraints than cities belonging to the European Union. Foremost in this category, the lack of a robust, overarching supranational superstructure, like the one found within the European Union, conditions the behavior and structure of North American local government cross-border cooperation in important ways that distinguishes these networks from their European cousins.

In addition to outlining the differences between North American and European transnational municipal networks, this dissertation sets out to address common questions related to both. These include, what precipitated local governments to institutionalize their cross-border relations? How do transnational networks govern themselves internally? Do they behave like public or private actors or both and to what effect? What role do these networks play externally, for example, in policymaking? Are local governments simply participating in policymaking, or can they actually influence the process and the outcome?

There are several compelling reasons, besides updating the record, for bringing local government bilateral environmental cooperation into the spotlight. First and foremost, contrary to previous expectations, a realization is slowly growing that environmental challenges will not be solved at the international level or through

the cooperation of federal governments alone. As Betsill and Bulkeley (2006) argue with regards to climate change, “it is increasingly clear that nation-states will be unable to meet their international commitments for addressing climate change without more explicit engagement with sub-national action” adding that especially in the area of airborne pollutants, for example, “the local is the most appropriate political jurisdiction for bringing about any necessary reductions in these emissions” (141).

Cities potentially have the greatest impact in addressing most environmental challenges, not just climate change, for the simple fact that three-quarters of the developed world now lives in urban regions, which makes them major consumers of energy and emitters of pollution but also sites with the greatest potential for positive change. In their study, “The Carbon-Neutral Individual”, Michael Vandenberg and Anne Steinemann (2007) calculate that individual Americans, through everyday transportation and household energy use, contribute roughly one-third of all carbon emissions in the United States, a proportion that exceeds even total industrial emissions. They conclude that tremendous reductions in pollution can be achieved through small behavioral changes of individual citizens that have a monetary benefit and requires little effort, what they term “low-hanging fruit”. Since six-out-of-ten Americans live in the 100 largest metropolitan centers, local governments, as the government closest to individual citizens, are arguably the best placed governments to influence their behavior and make a dramatic positive environmental impact by enacting by-laws, implementing urban planning, organizing information and outreach programs with regards to ‘low-hanging fruit’ such as recycling, engine idling, home insulation and heating etc.

Cities not only have influence over their inputs and outputs through their control over land-use planning, transportation supply, energy management, and wastewater treatment, but they have extensive expertise to offer federal governments and international regimes in environmental conservation, prevention, mitigation and remediation. With regards to other contributable resources, in terms of dollars-and-cents, American and Canadian local governments around the Great Lakes cumulatively spend \$15 billion annually on basic water quality management in the basin (GLSLCI 2008). Simply put, it is time for a reappraisal of local government policy capacity in cross-border environmental cooperation around the Great Lakes so that our perceptions are commensurate with their contributions.

Another compelling reason for analyzing local government is that their increased participation in environmental governance around the Great Lakes has the potential to improve accountability within water governance structures, adding an extra layer of oversight to an otherwise deteriorating regulatory system in the United States and Canada. A recent article published in the New York Times on September 13, 2009, entitled “Toxic Waters”, found that violations of the Clean Water Act have risen at a steady pace across the country, and that between 2004-2009, factories and plants have violated the Clean Water Act 506,000 times by over 23,000 companies (Duhigg, 1). The report states that, “tap water in parts of the Farm Belt, including cities in *Illinois*, *Kansas*, *Missouri* and *Indiana*, has contained pesticides at concentrations that some scientists have linked to birth defects and fertility problems” (Duhigg, 2). One in ten Americans, meaning thirty-one million people, have been exposed to drinking water “that contains dangerous chemicals or fails to meet a

federal health benchmark” (Duhigg, 2). Sixty-percent of polluters were deemed to be in ‘significant noncompliance’ which means that the discharges of cancer causing agents such as copper, lead, zinc, chlorine and selenium into water systems were not being measured or reported.

More troubling, and reflective of the moth-eaten regulatory system in the Great Lakes and the country, less than three percent of Clean Water Act violations resulted in fines. In an internal memo sent by the current EPA administrator Lisa Jackson to her enforcement deputy, she noted that “in many parts of the country, the level of significant noncompliance with permitting requirements is unacceptably high and the level of enforcement activity is unacceptably low” (Duhigg, 4). The significance of local government mobilization effectively as oversight agents is a critical development in the light of recent comments by Minnesota Congressman James Oberstar that “the EPA and states have completely dropped the ball. Without oversight and enforcement, companies will use our lakes and rivers as dumping grounds—and that’s exactly what is apparently going on” (Duhigg, 4). The weakened regulatory structure illustrates the negative consequences of the decentralization of North American water policy and the retrenchment of both federal and state governments from water management. As former EPA administrator William Reilly states, “unless the EPA is pushing state regulators, a culture of transgression and apathy sets in” (Duhigg, 8), while Matthew Crum, an employee of West Virginia’s Department of Environmental Protection, observes, “if you don’t have vigorous oversight by the feds, then everything just goes limp”. In such a context, the mobilization of local government as additional oversight agents, as catalysts for the

improvement of accountability structures within the water governance system, takes on a new imperative.

The Great Lakes region is a natural laboratory for analyzing how local governments participate in the management of the economic-environmental nexus at the heart of bilateral relations between Canada and the United States, and presents somewhat of a *difficult case*, because nowhere in North America is the relationship between energy, economy and the environment so intertwined, the public and private interests of each sector so concentrated and the stakes so high. The region, which includes Indiana, Illinois, Michigan, Ohio, Wisconsin and parts of Minnesota and New York, as well as the province of Ontario and part of Quebec, has been for over a century the center of North American economic development. It is the birthplace of the oil, steel, auto and aviation industries and, according to the Brookings Institute, is the “primogeniture of the world’s carbon economy” (Austin et al. 2008, 2). As a country, it would be considered the second largest economy in the world, containing almost half of the total manufacturing jobs and one-third of the population of both countries (Austin et al. 2008, 7). The \$500 billion worth of annual trade between the region’s provinces and states represents 62.3 per cent of all trade between Canada and the United States, a third of that passing across the Windsor-Detroit border alone (Austin et al. 2008, 10). As the continent’s economic engine, it is also one of the largest consumers and producers of energy, with large concentrations of coal-fired electric plants and the largest concentration of nuclear power plants in North America. At the same time, the heavy industrial production and energy consumption poses serious environmental challenges which threaten the integrity of the Great

Lakes, the largest fresh water resource in the world containing 95 per cent of the United States' fresh surface water. The environmental footprint also manifests itself in simmering cross-border conflicts in the form of transboundary air and water pollution which has led to the highest rates of respiratory, neurological and other pollution related diseases in both countries. In such a high-stakes game one would expect federal as well as provincial and state governments to keep the management of the economic-environmental nexus free of interference from local government and other external actors by minimizing their role.

Organizational Framework

The organizational framework employed to analyze expanding local government policy capacity has been developed by Hoberg (1997), Harrison (2000) VanNijnatten (2003), and Norman and Bakker (2009) which holds that environmental bilateral relations between Canada and the United States must account for cross-border relations occurring at all levels of government, and that this account must include an examination of both formal and informal relations. Consequently, this dissertation will employ a multilevel governance framework which sees authority being dispersed away from the central-state both vertically, to supranational and sub-national actors, as well as horizontally to non-governmental organizations and other societal actors as well as across borders through both formal and informal channels. Accounting for informal governance structures is critical since the expansion of sub-national and local government policy capacity in North America stems almost

exclusively from an informal basis (Norman and Bakker 2009) and this has significant consequences for the behavior of transnational municipal networks.

Chapter Two provides a literature review which traces the evolution of our understanding of bilateral relations and the role of sub-central-state actors within them. The chapter will demonstrate how a *multilevel governance* framework allows us to understand the processes shaping bilateral environmental relations in North America, namely, the reorganization of the state, the re-scaling of policymaking and the internationalization of non-central state actors. Chapter Three will outline the methods that were used to collect and organize data.

Chapter Four will outline how formal authority relating to cross-border environmental cooperation is dispersed within the American and Canadian federal systems. The evolution of formal intergovernmental relations between the federal and sub-national governments is traced in order to demonstrate that the expansion of local government policy was precipitated by the gradual re-balancing and re-scaling of formal relations between federal, state and provincial governments and, in particular, the adoption of a more participatory, collaborative model of intergovernmental relations on both sides of the border that together have led to the opening of political opportunities, the appearance of functional imperatives for local government mobilization, and the stirring of local political entrepreneurialism.

Chapter Five will analyze how the Great Lakes and St. Lawrence Cities Initiative governs its internal and external relations and present what is novel about this particular actor. Fundamentally, what distinguishes transnational municipal actors from all others is the fact that they govern their internal and external relations

as non-state actors, yet as a constellation of individual local governments they remain anchored to the hierarchical federal structure and remain governed by the inherent hierarchical intergovernmental power relations in which they are supremely subordinate. The fact that the network's authority is derived almost entirely from informal structures, yet it must operate from a position of weakness within the shadow of hierarchy (Scharpf 1997) of a federal structure, endows the member cities of transnational municipal networks with a sense of their own tenuousness and vulnerability and this understanding dictates how the Cities Initiative conducts its relations with other actors in the basin and how it balances the economic-environmental nexus. This vulnerability pushes the network to act as a catalyst for closer integration, eschewing conflict in favor of cooperation, building new platforms of communication between all levels of government while strengthening existing accountability structures within the governance system. Furthermore, the lack of a supranational superstructure like the European Union with institutions outside the federal structure that could provide transnational municipal networks with political and financial support to test its authority further means that the Cities Initiative is especially concerned with maintaining positive relations with higher levels of government.

Nonetheless, despite the tenuousness of its formal standing, local governments, largely through the Great Lakes and St. Lawrence Cities Initiative, have successfully embedded themselves within the informal governance structures around the Great Lakes and within networks which include all levels of government, industry and non-governmental organizations. Through these informal networks, they have

acquired policy capacity and broken the bounds of their formal constitutional jurisdiction, while at the same time, that policy capacity is increasingly becoming institutionalized in an increasingly formal basis.

The Sixth Chapter will address a fundamental question raised by Peters and Pierre (2004) about the informal basis of multilevel governance in general, and the informal basis for the expansion of local government policy capacity, which is “to what extent informality entails inequality?” (23). In other words, although it is well demonstrated throughout the dissertation that local governments, largely through the Cities Initiative, have acquired a seat at the decision-making table in environmental governance around the Great Lakes, the question remains whether local governments and transnational municipal networks can actually influence the outcome of the policymaking process? Can they affect environmental management around the Great Lakes? The general assumption is that local governments are bit players, passive, captives of industry, and that their attempts at cooperation are thwarted by centrifugal forces of intra-city competition. In short, although increasingly present, local governments are expected to remain ineffectual actors.

The case study presented in this chapter addressing this central concern centers on local government opposition to the expansion of refinery capacity at the British Petroleum refinery in Whiting, Indiana. The British Petroleum expansion represents a difficult case in the sense that local governments were not expected to oppose a project of this scale and import, one that was painted as a matter of national security, and one that was backed by immense political and financial investments by federal, state, and provincial governments, industry, and supported by public opinion

which supported the increase in refinery expansion in order to find relief from record gasoline prices by bringing more supply online. Furthermore, the refinery expansion represented significant local and regional investments in an otherwise economically depressed area, precious investments which local governments would not otherwise be expected to delay or endanger. Nonetheless, contrary to these expectations, local government and the Cities Initiative mobilized and successfully opposed the expansion, resulting in decreased discharges of pollutants into Lake Michigan and, most importantly, led to the instigation of a significant regulatory review by the State of Indiana of its permit process, thereby improving the accountability structure around the Great Lakes.

Chapter Seven will draw conclusions from the original research contained in the preceding three chapters, and outline the direction for future studies, as well as provide suggestions for improving environmental management around the Great Lakes.

Finally, a word about what this dissertation will not include. Norman (2009) cautions against the pitfall of what Brown and Purcell dub (2005) the *local trap* in which it is assumed that “organization, policies and action at the local scale are inherently more likely to have desired social and ecological effects than activities organized at other scales” (Brown and Purcell, 607). Rather, this dissertation joins a major thread emerging within the political ecology literature which posits that “there is nothing intrinsically desirable about the local scale” (Brown and Purcell, 608) and that “the characteristics of a given scale or scalar arrangement cannot be assumed a priori; rather the social and ecological outcomes of any particular scalar arrangement

are the result of the political strategies of particular actors, not the inherent qualities of particular scales” (609). Hence, this dissertation will refrain from making any claim that there are inherent benefits in the inclusion of the local scale in transboundary water governance, but instead will operate from the premise that “scales and scalar relationships are the object and outcome of political struggle” (Brown and Purcell, 620). A corollary of the rejection of these a priori assumptions is that, as will be demonstrated, it is not the rescaling of the governance architecture itself which empowers local governments, although it does provide favorable conditions in which enterprising local governments may empower themselves.

CHAPTER II

LOCAL GOVERNMENT CROSS-BORDER RELATIONS IN A MULTILEVEL GOVERNANCE FRAMEWORK: A LITERATURE REVIEW

Introduction

On March 16, 2006, Richard M. Daley appeared before the United States Senate Environment and Public Works Committee in his capacity as Mayor of Chicago and the Chairman of the Great Lakes and St. Lawrence Cities Initiative to discuss the *Great Lakes Regional Collaboration Strategy to Restore and Protect the Great Lakes*, a significant document released in 2005 that sets priorities, objectives and strategies for environmental management in the basin, and lays the groundwork for the forthcoming bi-national review of the Great Lakes Water Quality Agreement. The *Strategy* resulted from months of effort on the part of the *Great Lakes Regional Collaboration*, a network which brought together 1,500 members from the federal, state, provincial and local governments of Canada and the United States as well as representatives of First Nations, non-governmental organizations, and industry, in meetings held in cities across the basin in Rochester, Toledo, Traverse City, and Duluth. In discussing the contributions of local government to the *Strategy*, Mayor Daley submitted two documents to the Senate Committee. The first was a list of the 48 cities from the United States and 37 cities from Canada who, as members of the Cities Initiative, had deliberated on and formed common positions that were represented in the *Strategy*. The second document was a letter from David Miller, the Mayor of Toronto and the Canadian Chair of the Cities Initiative, supporting the

testimony of the mayor of Chicago and presenting to the Committee a very brief update on the work taking place on the Canadian side of the border (For GLSLCI Member-City Map see Figure 4 and Member-City List see Table 1).



Figure 4: GLSLCI Member-City Map 2009
Source: www.glslicities.org

Mayor Daley’s testimony in front of the Senate as a delegate of a transnational municipal network institutionalizing cross-border cooperation between American and Canadian local governments that took part in an expansive multilevel, multi-stakeholder, and bi-national collaborative policymaking network illustrates the complexity of environmental policymaking around the Great Lakes. However, two interdependent and complimentary processes can be teased out of this tangled policy mess.

Table 1: Member-City List 2009

| | | | |
|---|---|--|---|
| <p>ONTARIO</p> <ol style="list-style-type: none"> 1. Ajax (town) 2. Archipelago (twnp) 3. Blue Mountains (town) 4. Bruce County 5. Carling Township 6. Chatham-Kent 7. Cobourg 8. Collingwood 9. Cornwall 10. Durham Region 11. Georgian Bay (twnp) 12. Goderich (town) 13. Halton Region 14. Hamilton 15. Huron-Kinloss (twnp) 16. Kingston 17. Midland (town) | <p>ONTARIO</p> <ol style="list-style-type: none"> 18. Niagara Falls 19. Niagara Region 20. Nipigon (twnp) 21. Parry Sound 22. Penetanguishene (town) 23. Port Colborne 24. St. Catherines 25. Sarnia 26. Sault St. Marie 27. Tay (twnp) 28. Terrace Bay (twnp) 29. Thunder Bay 30. Tiny (twnp) 31. Toronto 32. Wasaga Beach (town) 33. Welland 34. Windsor <p>ILLINOIS</p> <ol style="list-style-type: none"> 1. Chicago 2. East Chicago 3. Evanston 4. Highland Park 5. Waukegan | <p>QUEBEC</p> <ol style="list-style-type: none"> 1. Beaconsfield 2. Becancour 3. Chateauguay 4. Montreal 5. Montreal-Est 6. Quebec Metropolitan Community 7. Repentigny 8. Rimouski 9. Salaberry-de-Valleyfield 10. Sorel-Tracy 11. Trois-Rivieres <p>INDIANA</p> <ol style="list-style-type: none"> 1. Gary 2. Whiting <p>MICHIGAN</p> <ol style="list-style-type: none"> 1. Ferndale 2. Ferrysburg 3. Grand Haven 4. Grand Rapids 5. Marquette 6. Muskegon 7. Spring Lake (village) | <p>MINNESOTA</p> <ol style="list-style-type: none"> 1. Duluth 2. Grand Marais <p>OHIO</p> <ol style="list-style-type: none"> 1. Sheffield Lake 2. Toledo <p>WISCONSIN</p> <ol style="list-style-type: none"> 1. Ashland 2. Bayfield 3. Milwaukee 4. Racine 5. Superior <p>NEW YORK</p> <ol style="list-style-type: none"> 1. Rochester <p>PENNSYLVANIA</p> <ol style="list-style-type: none"> 1. Erie |
|---|---|--|---|

Source: www.glslcities.org

First, the swarm of actors, both state and non-state, interacting across multiple levels and across national boundaries, in varying combinations, reflects the democratization of transboundary water management. It has been argued that this phenomenon is a hallmark of global processes that are partially ‘hollowing out’ the state as traditional power bases are eroded (Pierre 2000) and political power is dispersed away from the central-government upward to the supranational level and downward to the sub-national and local level.

Second, within this democratization of the policymaking process, we see evidence of the internationalization of non-central governments (NCG), in this case, involving the internationalization of *local government* in the form of a transnational municipal network, the Great Lakes and St. Lawrence Cities Initiative. External relations have traditionally resided outside the constitutionally defined jurisdiction of local government hence the institutionalization of cross-border municipal relations can be interpreted as the loosening of those constitutional fetters and an assertion of local power vis-à-vis the state. Local governments have seized the opportunity presented by the reorganization of the state in order to widen and exercise their political freedom, and the transnational municipal network has been an integral vehicle in that process.

Thus, the reorganization of the state and the internationalization of local government are two intertwined processes transforming the mode of bi-national environmental policymaking around the Great Lakes. This chapter will begin by describing how our understanding of the internationalization of local government has evolved, followed by how our understanding of bilateral relations has grown to include a role for sub-central actors such as local governments within the study of transboundary water governance. Finally, a *multilevel governance* framework will be applied to advance our understanding of the changing role of non-central state actors in policymaking within an evolving and re-organizing nation-state moving away from a centralized, closed model of decision-making.

The Internationalization of Local Government and Transnational Municipal Networks

The internationalization of local government has unfolded in three ways, either through engagement in issues with a foreign policy dimension as individual local governments, as part of temporary alliances, or as members of long-term, institutionalized cooperation. For example, starting with the first form, the City of Oakland waded into international nuclear non-proliferation debates by passing a resolution banning city investments in companies involved in the manufacture of nuclear warheads which was eventually struck down by *United States v. City of Oakland* (1990). Illustrative of temporary alliances, during the 1980s, hundreds of local governments joined a large-scale divestment movement protesting South African apartheid thereby pressuring the Reagan administration to adopt the Comprehensive Anti-Apartheid Act of 1986 (Shuman 1986; Love 1986). Over 700 local governments have adopted targets set by the Kyoto Protocol when the United States federal government refused to ratify the international agreement on climate change. Sister-city and Twin-city projects institutionalized cultural and economic cooperation. Emblematic of deeper institutionalization of local government internationalization, in the second half of the twentieth century, local governments began joining a burgeoning list of regional and global municipal associations that have transformed them into global actors, such as the United Cities and Local Governments (UCLG), the largest international association of local governments comprising over 1000 members across 120 countries, the World Federation of United Cities, the International Council for Local Environmental Initiatives (ICLEI) and the Great Lakes and St. Lawrence Cities Initiative. The institutionalization of the

external role of local government has gained considerable international recognition most recently in the ‘Cardoso Report’¹, presented to the United Nations Secretary-General in 2004, containing two proposals which recommended that “the General Assembly should debate a resolution affirming and respecting local autonomy as a universal principle” and that “the United Nations should regard United Cities and Local Governments as an advisory body on governance matters” (United Nations 2004, 18). This is a significant development considering local governments have traditionally lacked legal standing or presence in the eyes of international law and international institutions.

For the most part, political science was quite slow in recognizing the internationalization of local government. One can reach as far back as *Port Cities in our International Relations* (1935), an address by then Secretary of State, Cordell Hull, to mark the beginning of the conversation. Historians (Braudel 1977) have of course examined the foreign adventures of local government, but Duchacek’s (1986) work symbolized the start of the systematic study of municipal external relations within political science at a time when Alger (1990) observed that “mainstream political science research on international relations has almost totally ignored cities” (494). Duchacek established three categories of ‘trans-sovereign activities’ including (1) *Cross-border Regionalism*: interactions between local and sub-national governments that are regionally confined (2) *Transregional Paradiplomacy*: interactions between non-central governments which are not geographical neighbors, but whose national governments are (3) *Global Paradiplomacy*: interactions between non-central governments in non-contiguous nations. Although it may appear that

¹ Report of the Panel of Eminent Persons on United Nations–Civil Society Relations,

transnational municipal networks fit neatly into the *cross-border regionalism* category, that observation is not entirely true. For example, the Cities Initiative collaborates with global organizations such as the Union of Baltic Cities and the International Council for Local Environmental Initiatives. Hence, the categories are not mutually exclusive. The more significant problem with Duchacek (1986) and subsequent analyses is that they focused almost exclusively on the paradiplomacy of region-states or sub-national governments (Balthazar 1993; Ohmae 1993; Keating 1999 and 2004; Hocking 1999) to the neglect of local government.

The research that did surface on local government external relations could be grouped into three broad categories. The first dealt with general descriptions of the changing role of cities in the context of global changes, for example, in response to transformations within the nation-state (Bilder 1989; Alger 1990; Hocking 1993; Hobbs 1994; Keating 1999; Amin and Thrift 2005), in response to the wave of democratization at the end of the Cold War (Jacob et al. 1995), the transformations within international law (Blank 2006), and in response to globalization (Friedman 1986; Hambleton et al. 2002; Savitch 2002). Cities were shown adopting new tactics such as city branding (Hudson and Hawkins 2006; Anholt 2007), or setting up information bureaus in foreign capitals (Duchacek 1990), in order to attract mobile investment and labor that had become unmoored from the limitations of territorial fealty and national borders. At the same time, they were seen as sites for the mobilization of grass-roots social movements which challenged the Washington consensus (Castells 1983). A lot of attention was paid to exceptional cities, or so-called 'world cities' (Friedman 1986) 'global cities' (Hall 1984; Sassen 1991) and

‘information cities’ (Castells 1994), which acted as nodal points in the flow of global capitalism due to their enormous concentration of resources.

The second group of studies concentrated research around the concept of city diplomacy, which focused on the participation of local government in policy areas once considered beyond the realm of local government, such as fostering north-south relations and economic development (Hewitt 1996; Proctor 2000; Bontenbal 2009), international conflict prevention (Bush 2008) and peace-building (Galtung 2003). Most of this research spotlights the work of individual local governments, or temporary alliances, in isolated issues such as the divestment movement that was directed against the authoritarian regime in Burma (Guay 2000).

The third group of literature focused on institutionalized forms of international local government cooperation and was predominantly concerned with city-to-city connections such as ‘twinning’ or ‘sister city’ exchanges (Zelinsky 1991; van den Berg et al. 1996; Jones and Blunt 1999; Vagale 2003). Very little attention was being paid to other, distinct, manifestations of institutionalized external relations such as transnational municipal networks.

The handful of studies into transnational municipal networks that have been undertaken analyze international networks, such as the Cities for Climate Protection program (Bulkeley and Betsill 2003), comprised of member cities from around the world, or regional networks confined to a particular geographic region. The latter include ‘catch-all’ transnational municipal networks, such as the Council of European Municipalities (Heinelt and Niederhafner 2005), or single-issue networks such as the

Climate Alliance and the Energie-Cities (Kern and Bulkeley 2009). What they all have in common is they have focused exclusively on European networks.

The exclusive focus on transnational networks in the European context and as a European innovation has a basis in the long pedigree of transnational municipal mobilization stretching back to the 13th century in the form of the Hanseatic League. The Hanseatic League was an alliance of trading cities along the coast of Northern Europe, stretching from the Baltic Sea to the North Sea, governed by its own set of laws and institutions that provided order and protection from outside threats. Continuing that legacy in the post-second-world-war era, the first ‘twin cities’ were established in Europe and have since mushroomed to somewhere in the neighborhood of 30,000 twinning arrangements (Ewen and Hebbert 2007).

There is a body of literature that points to the distinctive character of the development of European social organization (Crouch 1999), involving a dramatic move away from formal, enclosed styles of government (John 2001) towards a system of multilevel governance, especially under the European Union (John 2000), and the adoption of greater pluralism in power relationships (Benington 1994) which favors the autonomy of cities (Barnasco and Le Gales 2000). Multilevel governance is defined as “a system of continuous negotiation among nested governments at several territorial tiers—supranational, national, regional, and local” (Marks 1992, 211) and the concept will be explored more in-depth as the chapter progresses. These observations undergird subsequent research demonstrating that networks of municipal government have flourished under the European Union (Le Gales, 2002).

However, even in this European context of advanced multilevel governance, Kern and Bulkeley (2009) state that,

while the role of local authorities in European integration has been discussed more frequently in acknowledgement of the growing multi-level character of European governance (John 2000; Le Gales 2002), the emergence of TMNs [transnational municipal networks] has been widely neglected. Most studies which mention such networks do not focus on them (John 2000, 888; Marshall 2005, 680-1), but tend to consider them solely in terms of their role as lobbying agencies (Bennington and Harvey 1998; Ward and Williams 1997, 440) and pay little attention to their internal dynamics (310).

Research into the internal and external dynamics of these networks has been limited to three studies (Heinelt and Niederhafner 2005; Kern 2007; Kern and Bulkeley 2009). Hence, analyzing the Great Lakes and St. Lawrence Cities Initiative is significant not only because it contributes to a very limited body of research on transnational municipal networks, but because it provides a completely new perspective. Research into North American transnational municipal networks has thus far been non-existent. This dissertation represents the first cut.

The lack of research on North American transnational municipal networks can be partly attributed to the fact that the Great Lakes and St. Lawrence Cities Initiative, the first and only example of such a network, was established rather late, in 2003, compared with the establishment of the first European transnational municipal network, the Council of European Municipalities and Regions (CEMR) in 1951. The delay in the emergence of transnational municipal networks can be further attributed to the delay in the expansion of local government policy capacity, which is attributed to the late adoption of a multilevel system of governance in North America. Chapter Four of this dissertation, *Breaking the Formal Bounds of Federalism*, demonstrates

that only within the last decade or so have North American intergovernmental relations moved away from a closed system of intergovernmental relations in which higher levels of government jealously guard their constitutionally defined jurisdictions to an emphasis on the quality and openness of the policymaking process which has opened up new, mostly informal, avenues for local government participation in decision-making. In addition, as argued earlier, the slow recognition of transnational municipal networks also results from the persistent bias against local government in the study of intergovernmental, international, bilateral relations as well as in the application of multilevel governance.

The growing acknowledgement of local governments as credible external actors extends the natural progression of International Relations away from state-centric, realist perspectives defined by Morgenthau's *Politics Among Nations* (1948) and Arnold Wolfers' *Discord and Collaboration* (1962), which viewed the nation-state as a self-contained billiard-ball, "a closed, impermeable, and sovereign unit, completely separated from other states (Wolfers 1962, 19), towards a more complex perspective which sees sub-national actors, non-governmental and intergovernmental organizations participating in a complex web of interdependent cross-border interactions above and below the level of the nation-state (Keohane and Nye, 1972). The collapse of the Berlin Wall and the end of the Cold War brought to the foreground scholarship which argued that national borders were becoming obsolete and that new scales of geopolitical organization were emerging which were breaking the bounds of traditional formal federal structures (Ohmae 1990). Thus, not only

were more actors more free to interact domestically across multiple scales, but they were now more free to interact across multiple scales *and* across national boundaries.

A debate emerged between those who argued that “the absolutes of the Westphalian system”, such as a territorially fixed state and territorially defined authority, were “dissolving” (Mathews 1997, 50), and those contending that “the state is not disappearing, it is disaggregating” (Slaughter 1997, 185). The former pointed to the rise of *transnational* relations involving nongovernmental actors and the emergence of hybrid authorities composed of state and non-state actors where nongovernmental organizations take on formerly public roles as definitive of the new world order which challenges the role of the modern state and questions its very existence (Mathews 1997; Keck and Sikkink 1998). The latter pointed to *transgovernmental* relations between agencies and government sub-units across borders as “rapidly becoming the most widespread and effective mode of international governance” (Slaughter 1997, 185), thus conceding that states were undergoing a transformation while maintaining their relevance as ultimate gatekeepers. The *transnational v. transgovernmental* debate signaled that new units of analysis above and below the level of the nation-state had become entrenched mainstream components of serious International Relations. The state was no longer conceived of as a billiard ball, but rather as a ‘snowflake’ with all its complexities worthy of attention (Fordham and Asal, 2007).

In addition, the *transnational v. transgovernmental* debate further crystallized the conceptual division between state and non-state actors, which was unfortunate because it obscured the emergence of a third-type of actor—a hybrid of state and non-

state qualities—brought about by the internationalization of non-central state governments. As Hocking (1996) points out, with regards to non-central governments, these two mutually exclusive terms “do not do justice to the distinctive qualities of a category of actor which combines, in the case of federal systems, some of the features of the state—territory and a degree of residual sovereignty—with those of distinct ‘polities’ within their political settings” (40). Hocking emphasizes the ‘unique status’ of non-central governments as ‘hybrid actors’ “transcending Rosenau’s ‘two worlds of world politics’, the ‘state centric world’ of the nation-state and the ‘multicentric world’ of non-state actors” (40).

While Hocking focuses on the general term of ‘non-central governments’, Blank (2006) analyzes the legal status specifically of local governments, but in the same manner adroitly stresses “the unique duality of localities—being state agents on the one hand, and voluntary human associations...on the other” (874) while also arguing that “localities have been extremely resilient because they have managed to recompose themselves as non-state actors” (935). Blank points to the recognition of local governments contained in the Cardoso Report as proof that “this reconfiguration of local governments into non-governmental organizations has been so successful” (935).

Although recognizing the duality of non-central and local governments, both Hocking (1996) and Blank (2006) do not provide an explanation as to what structural or behavioral characteristics qualify either of these actors as non-governmental. This dissertation clarifies the discussion in Chapter Five by positing that this duality manifests itself exclusively in transnational municipal networks. The general

assumption about the novelty of any form of network governance is that “the boundary between organizations and public and private sectors has become permeable” (Stoker 1998, 38), but the more striking curiosity about transnational municipal networks is that they behave simultaneously as both a state and non-state actor. They are registered as not-for-profit, non-governmental organizations, hence they govern their internal and external relations as non-state actors, as members of civil society, yet as a constellation of individual local governments they remain anchored to the hierarchical federal state structure and are thus themselves governed by the inherent hierarchical intergovernmental power relations of the federal state. Consequently, transnational municipal networks are institutions in which the boundaries between the public and private sectors are not only penetrated, but are *dissolved*. Hence, at least at the level of local government, civil society is no longer organized versus the state, as Hegel and Marx had conceived. Instead, the separation between the political state and civil society is transcended (Swyngedouw 2005, 1996). This duality of transnational municipal networks will be explored in more detail in subsequent chapters.

Canada-United States Bilateral Environmental Relations

By virtue of being a shared ecosystem, the environmental management of the Great Lakes falls under the rubric of Canada-United States bilateral relations and has been considered so since the Boundary Waters Treaty was signed a century ago. However, until the 1970s, general bilateral relations between Canada and the United States were treated as a ‘non-subject’ (Clarkson, 1973) by scholars of International

Relations. Stoett and Le Prestre (2006) explain that “the lack of heightened conflict between the two states made for boring study” (6), and that “Canada was condemned by many to be little more than a glorified American satellite and therefore it was unnecessary, even superfluous, to study the foreign policies of a state with such limited foreign policy latitude” (6). It took another decade before bilateral environmental relations entered the mainstream of scholarship with Carroll’s (1983) *Environmental Diplomacy*, and a decade after that until they were firmly entrenched through a dedicated volume of *The American Review of Canadian Studies* (1997).

Until the 1990s, environmental bilateral relations between Canada and the United States were studied mostly from the perspective of federal governments as scholars fixated on formal cross-border exchanges and major agreements such as the Boundary Waters Treaty, the Great Lakes Water Quality Agreement, the Air Quality Agreement, NAFTA and on high-stakes confrontations over acid rain, Pacific salmon and softwood lumber. The dominant paradigm at the time was Robert Putnam’s (1988) two-level game analysis, and *regime theory*, which separated the domestic and international arenas and placed an emphasis on treaty-making and points of ratification which focused attention on the federal government. Carroll (1983), exemplifying this state-centric paradigm, observed “[s]ince only governmental officials at the federal levels in both countries are constitutionally authorized to negotiate or make decisions in this area, these federal actors are naturally the central focus of attention” (3). These studies, employing a purely formal, narrow legal-constitutional reading of jurisdiction, disqualified non-central actors like local

governments *a priori* because the constitution did not afford them authority either in environmental policy or in external relations.

The bias minimizing local government was not limited to International Relations but was reinforced in the field of Intergovernmental Relations. Local governments were traditionally treated as the “constitutional orphans” (Valiante 2007, 1065) of federalism and consequently portrayed as passive policy-takers and overlooked as policy-shapers (Valiante 2007). At best, they were treated as ‘bit players’ in Canada (Graham et al. 1998, 1) while the “political invisibility of American cities” (Waste 1998, 21) went unchallenged. Even more recent literature reviews such as Cameron and Simeon’s (2002) “Intergovernmental Relations in Canada” still acknowledge this persistent bias by stating that, “this article has followed a standard Canadian pattern; municipalities have not figured greatly in our analysis” (69).

This bias was reinforced outside academia as well by judicial decisions and the dominant national discourse. In *Hines v. Davidowitz* (1941), a case that went before the United States Supreme Court, the ruling stated that “our system of government is such that the interest of the cities, counties and states, no less than the interest of the whole nation, imperatively requires the federal power in the field affecting foreign relations be left entirely free from local interference” (quoted in Shuman 1990, 169). This decision was reinforced two decades later by *Zschernig v. Miller* (1968). Constitutional scholars, such as Peter Spiro, criticized local governments on the pages of the Wall Street Journal for organizing a divestment movement targeting South African apartheid in an article titled “Get States and Cities

off Foreign-Policy Stage” (Spiro 1986). On the same subject, the chairman of the Senate Foreign Relations Committee, Senator Richard Lugar (R-Indiana), argued that “we cannot have individual states and cities establishing their own foreign policies” (Shuman 1986, 169). Some local governments censured themselves. For instance, the city of San Buenaventura, California, passed a resolution which states,

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Buenaventura that they will continue to devote their time and efforts to considering and resolving only those matters of local concern of which they have elected responsibility; and further the City Council will use whatever means available to dissuade those groups or individuals who request their assistance on matters of national or international concern (quoted in Alger 1990, 511).

The city joined the chorus of those drawing a thick line separating the local from the international, but globalization would soon reveal that the artificial dichotomy between ‘international’ and ‘domestic’ politics was untenable (Mansbach and Vazquez, 1981).

As the 1980s moved on, only a handful of comprehensive studies existed which examined the interactions occurring at the sub-national level between Canadian and American provinces and states (Swanson 1974; Swanson 1978; Munton and Kirton 1988; Duchacek at al. 1988; Duchacek 1990), in large part because institutional cross-border linkages were considered a relatively new phenomenon in North America (Brunet-Jailly, 2008). For example, Gerard Rutan (1988) examined the Pacific Northwest for these sub-national diplomatic relations only to discover that “there is little detectable...direct communication between the state and provincial governments” (166) and furthermore “there is no consistent desire for a relationship” (187). These observations reinforced the mainstream perception reflected again in

Carroll's (1983) observation that "U.S. states are not accustomed to dealing across international borders. Thus they have little history and little expertise in this area" (17).

It was not until Munton and Kirton (1996) documented over one-hundred agreements existing between provinces and states that more and more scholars became interested in looking for, and succeeded in identifying, the myriad of bilateral interactions taking place beneath the level of the nation-state. Subsequent analyses (Alper 1997; Rabe 1997) revealed that not only were these linkages expanding, but that they were being increasingly institutionalized, becoming more formal, and gaining respect. Kincaid (1990b) early on theorized that these relationships are not inherently inferior to federal bilateral relations while Leyton-Brown and Sands (1997) argued, "it would be a mistake to suggest the U.S.-Canada relationship was the exclusive preserve of policymakers in Washington and Ottawa. As the Pacific salmon dispute indicates state and provincial governments and a variety of other stakeholders play an important part in defining the timbre of relations" (163) between Canada and the United States.

As scholars peeled back, and peered under, the layer of the nation-state, they not only found a lively web of provincial and state relations, but they began discovering intense collaboration between these sub-national actors, the federal government, and thick networks of non-governmental organizations and industry which undergirded a significant proportion of cross-border exchanges (Munton and Kirton 1996). Special attention was paid to epistemic communities, which are networks composed of scientific and technical experts from both the private and

public sector deliberating on specific problems typically outside the formal machinery of government (VanNijnatten 2006, 55). Kirton (1997) went so far as to state that these epistemic communities were prerequisites for bilateral environmental relations at all levels, whereas VanNijnatten (2003) credited the epistemic community of air quality officials, scientists, and environmentalists with the successful negotiations of the Ozone Annex to the Canada-United States Air Quality Agreement, concluding that, “this epistemic community acted as the supports for the bridge being built via the binational negotiations” (117).

Upon second look, the Pacific Northwest, for example, appeared nothing like Rutan’s (1988) landscape, barren of cross-border linkages, but in fact revealed a multiplicity of linkages which are “rational, high-level and intense” (Smith 2002, 130) while most recent observers scanning the entire span of the 49th parallel surprisingly found “the thickness and intensity of links are greatest in the Pacific North West” (Brunet-Jaillly 2008, 114). These linkages include the British Columbia-Washington Environmental Cooperation Council created by their respective premier and governor, the Pacific Corridor Enterprise Council which promotes free-trade through non-profit organizations, the cooperation of Canadian and American non-governmental organizations working on transportation issues through the Cascadia Project, and perhaps best illustrated by the Pacific Northwest Economic Region (PNWER) which brings together numerous public and private sector actors across five American states and three Canadian provinces into a Council of Delegates and an Executive Committee to deliberate on policy issues ranging from transportation, tourism, and telecommunication to energy, economy, and the

environment (Brunet-Jailly 2008, 114). Lost in this complex mesh of cross-border relationships between Canada and the United States (see Figure Four), however, is the role of local government which remains relatively unstudied.

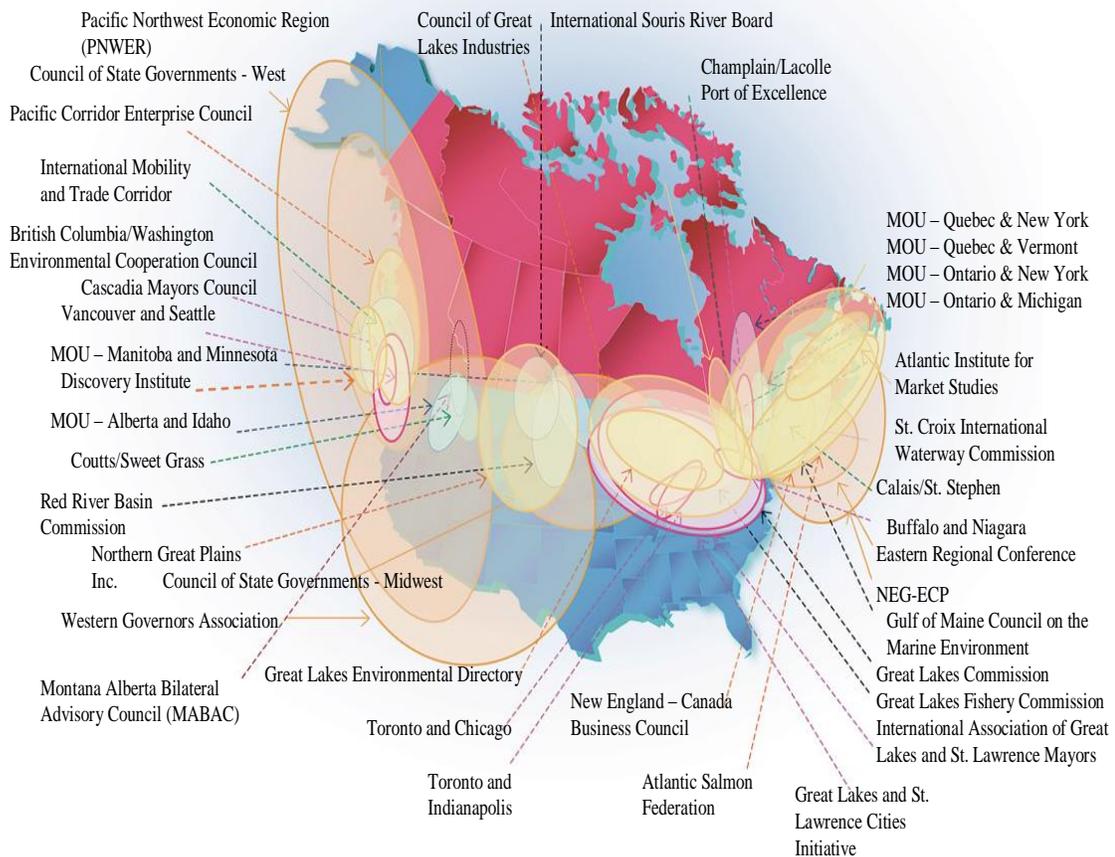


Figure 5: Select Cross-Border Networks and Organizations
 Source: Policy Research Institute, Canada, 2008, 8

Bilateral Relations in a Multilevel Governance Perspective: A Paradox

That our understanding of North American cross-border relations has become more sophisticated and inclusive of a wider array of actors at all levels of government, both state and non-state, and yet at the same time has for the most part failed to observe local government within this crush of new actors, is a product both

of the recent use, and misuse, of the *multilevel governance* framework in the study of bilateral relations in North America (Blatter 2001; Brunet-Jailly 2004 and 2008; Smith 2002; VanNijnatten 2003 and 2006).

The multilevel governance framework emerged as an amalgam of existing theories and approaches trying to explain the reorganization of the state that was taking place during the period of accelerated European integration after the signing of the Single European Act (1986). Only very recently has the framework been applied to North America. The term *multilevel governance* was first used by Gary Marks (1992) to describe the aftermath of the reforms made to the European Union's Structural Policy in 1988 which he interpreted as signaling the ceding of central government control over the design and implementation of Structural Funds to the European Commission and to local and regional governments. A heretofore centralized system was opened to include new actors who were granted decision-making powers through the adoption of the European Union's *partnership principle* which mandated that the funds be administered through partnerships consisting of supranational, national, sub-national, regional and local actors. From these observations, Marks (1992) defined multilevel governance as

a system of continuous negotiation among nested governments at several territorial tiers—supranational, national, regional, and local—as a result of the broad process of institutional creation and decisional allocation that has pulled some previously centralized functions of the state up to the supranational level and some down to the local/regional level (211).

By highlighting the dispersion of authority away from the central state, multilevel governance in essence replaced neofunctionalism (Haas 1958 and 1961; Lindberg

1963), as the alternative to state-centric theories especially *Liberal Intergovernmentalism* (Hoffmann 1966; Moravcsik 1993 and 1998).

The concept of multilevel governance has been applied in many different ways, but Bache and Flinders (2004) identify four common elements that we can place under the headings—*democratization, de-nesting and decoupling, de-formalization, and disorganization and democratic deficit*—which describe the transformations taking place around the Great Lakes basin with regards to the reorganization of the state and the expansion and internationalization of local government policy capacity. The first two elements describe what is meant by the term *multilevel*, and the other two elements describe what is meant by the term *governance* and assist in helping to understand its effects.

Democratization

The first common element of multilevel governance is **“that decision making at various territorial levels is characterized by the increased participation of non-state actors”** (Bache and Flinders 2004, 197). Hooghe and Marks (2001) would emphasize that multilevel governance also involves increased participation by sub-units of state government, not just non-state actors. Thus, multilevel governance distinguishes itself from traditional concepts of federalism which focus on only two territorial jurisdictions—federal and sub-national—and allocate “ultimate legal responsibility in one political decision-making unit” (Stein and Turkewitsch 2008, 13).

The North American application of a multilevel governance framework was undertaken by Brunet-Jailly (2008) to account for the sub-national activity taking place in the Pacific Northwest, such as the PNWER, and by VanNijnatten (2003) to account for the role of epistemic communities in the Ozone Annex. It is also a suitable framework for analyzing the role of local government within various decision-making forums around the basin such as the aforementioned Great Lakes Regional Collaboration and the changing relationships between local government and the various stakeholders across multiple levels.

The increased participation of local government in the environmental governance structure around the Great Lakes is in part an extension of the decades-long process of *devolution* that has delegated authority for environmental governance away from the federal level to sub-national governments (Gibbins 2001; Maddock 2004). The shift away from traditional federal-to-federal models of transboundary governance across the U.S.-Canada border to models which incorporate multiple actors below the level of the nation-state (Norman 2009) is best illustrated by the adoption of the International Watershed Initiative (IWI) by the International Joint Commission. In a recent report titled “The International Watershed Initiative: Implementing a New Paradigm for Transboundary Water Basins”, the IJC (2009) states that “the underlying premise is that local people and institutions are often the best placed to anticipate, prevent or resolve many problems related to water resources” (3). The Initiative was first presented by the International Joint Commission in 1997 in a report titled “The IJC and the 21st Century” in response to a request by the governments of Canada and the United States to develop “a better

integrated, more participatory” (3) approach to transboundary water issues with greater involvement by non-central state actors. The increasing inclusion of the Cities Initiative within Great Lakes governance structures is indicative of this new approach.

De-nesting and Decoupling

This shared responsibility over decision-making brings up the second common element in multilevel governance studies, which is **“that the identification of discrete or nested territorial levels of decision making is becoming more difficult in the context of complex overlapping networks”** (Bache and Flinders 2004, 197). According to Hooghe and Marks (2001), relations between levels of government are interconnected instead of being nested like a Russian matryoshka doll, and this means that local governments are able to jump scales, establishing links with other actors, at all levels of government, as well as across national boundaries, without first having to pass through intermediaries. In our *Introduction*, we illustrate this jumping of scales by describing a case of transnational environmental litigation involving transboundary air pollution in which the City of Toronto collaborates with American states and government agencies while engaging the American judicial system without the involvement either of the Province of Ontario or the Government of Canada. The case is raised again in Chapter Four.

Further illustrating these complex networks is the aforementioned testimony by Mayor Daley in front of the Senate committee in which the views of Canadian local governments around the Great Lakes are channeled through American local

governments which are then represented at the federal level of the United States without intermediation from either the Canadian federal or sub-national governments. This jumping of scales is remarkable considering that three decades earlier Ontario quashed the federal Ministry of State for Urban Affairs because it objected even to direct federal-local *domestic* relations.

The multilevel nature of this framework continues the evolution of our conceptualization of intergovernmental relations away from zero-sum games. For example, Peterson, Wong and Rabe (1986) argued that issues which affected more than one level should be handled by the federal government, while Rabe (1991) and John (1994) subsequently found that policymaking power should be located at the sub-national level. However, reality dictates that environmental issues in particular tend to affect the global, national, regional and local level simultaneously, necessitating policy cooperation between governments and non-state actors simultaneously across multiple scales that crosses jurisdictions and bypasses levels. Anton (1989) and Stever (1993) did describe interactions between all levels of government, including local government, but these relations were still hierarchically organized and the sub-national level was still seen as a necessary intermediary or chaperone, for example, in federal-local relations. The possibility that the local government could actually ‘by-pass’ higher tiers of government was introduced by Agranoff and McGuire (1998), who argued that “fundamental changes in intergovernmental relations and governance support the idea that intergovernmental management is more complex and involved than indicated by either of the zero-sum approaches” (Agranoff and McGuire 1998, 2). Multilevel governance extended this

trend further by drawing attention to a fourth, supranational, level that is above the nation-state.

The most relevant insight from this second element of multilevel governance to this dissertation is that local governments form alliances with these fourth level, supranational, actors to expand their policy capacity and strengthen their transnational networks. The clearest evidence of this comes from the European Union where local governments frequently bypass their federal and sub-national governments and cooperate directly with the European Commission, the European Parliament, and to a lesser degree, the European Court of Justice in order to attain new resources, to affect policymaking in Brussels where close to ninety-per-cent of European law now originates, or even to influence domestic policy by forming coalitions with supranational actors against their own national governments.

This *local-supranational nexus* has also been studied in the context of North American cross-border cooperation, and it is here where the application of multilevel governance tends to obscure the cross-border activities of local government, because it overemphasizes the importance of the supranational level in the mobilization and institutionalization of cross-border local government cooperation. This is the origin of the paradox, wherein our more sophisticated appreciation of bilateral relations still neglects to account for local government.

For instance, Brunet-Jailly (2004) used a multilevel governance framework to compare local-cross border relations under NAFTA and the European Union, focusing on the effects that dynamics at the supranational level have on cross-border cooperation between cities. The author's approach was quite innovative, in that it

was the first to apply a multilevel governance framework to North American cross-border cooperation which took into account the supranational-local nexus. This approach borrows from the political opportunity literature which states that, “*exogenous* factors enhance or inhibit prospects for mobilization, for particular sorts of claims to be advanced rather than others, for particular strategies of influence to be exercised, and for movements to affect mainstream institutional politics and policy” (Meyer and Minkoff 2004, 1458). In the Brunet-Jailly article, NAFTA and the European Union are the exogenous factors.

His basic argument is that economic integration and free-trade regimes impose adjustments on intergovernmental actors and intergovernmental relations in the form of intense market pressure, which directly impact local governments, creating intense inter-city economic competition which disrupts cross-border relations. Brunet-Jailly then argues that the development of advanced supranational institutions such as the European Commission regulates these pressures and mitigates their effect, creating conditions in the European Union where cross-border relations “eventually blossomed” (26), including local government cross-border cooperation, which the Commission actively promotes, expands and strengthens.

The absence of such mediating supranational institutions under NAFTA, he argues, has meant that a “competitive-city paradigm” permeates the Great Lakes region and local government cross-border relations in general between Canada and the United States dissolve in the caustic conditions of aggressive competition for jobs, investment, and labor, creating a situation where there is no “co-production of policies spanning the border, and there are *no cross-border institutions*” (25). Brunet-

Jailly's conclusion concurs with previous studies of cross-border relations in the Cascadia region in the Pacific Northwest (Blatter 2001), which found that although some ad-hoc cross-border cooperation did exist, no institutional structure was detected. Norman (2009) and Norman and Bakker (2009) concur that local actors in general have difficulty transcending significant barriers to transboundary cooperation.

The evidence presented in this dissertation describing increasing local government cross-border environmental cooperation, increasing institutionalization of this cooperation in the form of transnational municipal networks, and the increasing formalization of local government participation in governance structures around the Great Lakes, challenges the conclusions by Brunet-Jailly who states that "local actors primarily compete" (25) and that in North America "intra-metropolitan regional competition exists in principle" (3). The viability of the Great Lakes and St. Lawrence Cities Initiative, despite the competitive pressures and the lack of mediating supranational infrastructure, challenges the 'competitive-city paradigm' forthright.

Again, Brunet-Jailly's (2004) mistake rests in the overestimation of the influence of supranational level institutions and the underestimation of local governments when analyzing the effects of the local-supranational nexus on local government cross-border relations. This mistake is characteristic of the use of multilevel governance in its *classic* form which was marked by the stubborn tendency to view local governments as passive receptors of authority from national and supranational levels of government, rather than as actors who "behave strategically

and purposefully” (Fairbass and Jordan 2004, 164) on their own to attain greater policy capacity for themselves.

Charlie Jeffery (2000) spearheaded this critique that precipitated the current drive to develop “a more comprehensive conception of multi-level governance” (9) one which takes into account a ‘bottom-up’ dimension to sub-national and local government mobilization treating local governments as active subjects rather than passive players. Jeffery argues that what is fundamentally problematic about the classic multilevel governance approach is that it focused primarily on the central state and the European supranational level as determinants of the parameters of multilevel governance. According to Jeffery, sub-national actors (SNAs), which according to his definition, includes local governments,

...are typically portrayed as essentially inconsequential and passive players until either an incidental by-product of central state-EU interplay provides an opportunity for mobilization, or a central government decision is taken which passes decision-making powers down to SNAs. The perspective remains primarily a ‘top-down’ one. This perspective plays down the possibility that SNAs may themselves, and from the ‘bottom-up’, actively seek to change and succeed in changing those dynamics in ways which facilitate European policy mobilization (Jeffery 2000, 8).

In contrast to Brunet-Jailly (2004), who emphasized ‘top-down’ over ‘bottom-up’ dynamics, this dissertation attempts to incorporate both perspectives. Granted, Chapter Four of this dissertation, *Breaking the Formal Bounds of Federalism*, spends considerable effort on describing ‘top-down’ dynamics, namely, the rebalancing of intergovernmental relations between federal-state and federal-provincial governments, which precipitated the opening up political space for the expansion of multilevel governance and local government policy capacity, but subsequent chapters

are dedicated to highlighting the ‘bottom up’ dynamics by demonstrating that, around the Great Lakes, local governments actively push the boundaries of the multilevel governance system without assistance from the supranational level, that they have succeeded in attaining a seat at the decision-making table in various forums, and that they are successfully pushing for greater institutionalization of that expanded policy capacity, again, largely on their own in the context of a largely non-existent, overarching supranational structure. In this manner, we avoid the aforementioned *local trap* (Brown and Purcell 2005), by starting from the assumption that “scales and scalar relationships are the object and outcome of political struggle” (620), and that it is not the ‘top-down’ rescaling of the governance architecture itself which empowers local government, although it does provide favorable conditions in which enterprising local governments *may* empower themselves.

The fact that local governments were able to institutionalize cross-border cooperation in the form of the Great Lakes and St. Lawrence Cities Initiative in a North American context supposedly ruled by caustic market forces disruptive of cross-border linkages, and minus the counterbalancing supranational structures, indicates that the effects of these market forces are themselves exaggerated. The dominant perception is that cities are slaves to the market. Bulkeley and Betsill (2003) conclude from their case studies involving cities from Australia, the United States and the United Kingdom that “where protecting the climate [or environment] conflicts with other social and economic goals, such as economic restoration or the interests of particular local industries, any political will towards the former disappears” (185). It is widely argued that the increased mobility of capital in a

globalized world has meant that local governments will align their policies with industry for fear of losing investment opportunities (Graham 1995; Leo 2002; Pendras 2002). Consequently, as McAllister (2004) observes, “from this perspective, local governments might be seen as little more than captive agents of private-sector forces efficiently organizing social processes for the benefit of propertied interests” (20). Peterson (1981) observed very early on that cities have few policy options because they are limited by intense market forces. To these arguments, Brunet-Jailly (2004) simply adds that economic integration under NAFTA has only intensified intra-city competition over investments and jobs to such a degree that, absent mediating supranational structures, it precludes the ability of local government to establish institutionalized forms of cross-border cooperation in North America, which is why, he concludes, “there are no cross-border institutions” (25) involving local government.

However, this dissertation joins emerging studies that are beginning to question whether cities really are slaves to free-market competition and beholden to private interests. For example, Sutcliffe (2006) demonstrates the ability of the City of Windsor to develop a position regarding the construction of an international bridge that runs counter to the stated interests of major local industries, concluding that individual local governments are “capable of developing policy positions autonomously of business interests” (14). Of course, as already stated, the simple existence of the Cities Initiative suggests that local governments are able to overcome market forces by establishing and institutionalizing cross-border cooperation. Furthermore, Chapter Six in this dissertation, *Transnational Municipal Networks and*

the Effective Deployment of Informal Powers: Opposition to the Expansion of British Petroleum's (BP) Whiting Refinery, presents a case study which demonstrates that local governments are capable of developing common positions autonomously of business interests, even positions which challenge those interests directly, and that they can succeed in altering the trajectory of policy decisions backed by major industries and higher tiers of government. This dissertation adds that transnational municipal networks are able to transcend the 'competitive city paradigm' on issues with "material cross-border interdependencies" (Blatter 193).

Therefore, exogenous factors such as supranational institutions and market forces should be acknowledged but not exaggerated when it comes to local government cross-border cooperation in North America. This balanced approach is reflected in this dissertation. Hence, Chapters Five and Six do spend considerable effort considering how supranational institutions under the European Union and NAFTA influence the structure and behavior of transnational municipal networks and, in turn, both their policy capacity and their effectiveness. However, it should quickly become apparent that much of their destiny rests with local governments themselves.

Jeffery's (2000) critique alludes to the effect of self-governance by pointing out three intervening variables requiring our attention that influence the degree to which local governments are able to attain greater political authority. These variables include the level of *entrepreneurship*, the degree of *legitimacy and social capital*, and the quality of *intergovernmental relations*.

(i) Entrepreneurship

An important factor determining the influence of local government in the governing structure is what Jeffery terms “the level of entrepreneurship in sub-national mobilization” (14). He argues that “the effective administrative adaptation, leadership, and coalition-building strategies...are likely to improve the prospects or influencing...decision-making” (14). It has been observed that the effectiveness of transnational municipal networks rests in large part on the efforts of so-called ‘pioneers’, those cities that already adopt environmentally progressive policies (Kern and Löffelsend 2008), and especially on deeply committed mayors and individuals that act as policy entrepreneurs (Bulkeley and Betsill 2003; Kern and Bulkeley 2009). The Great Lakes and St. Lawrence Cities Initiative also has a polycentric governance structure centered around two global cities—Toronto and Chicago—which generate much of the ideas, set the policy direction and provide the political muscle for the network. It will be interesting to follow how the Cities Initiative responds to the fact that Toronto Mayor David Miller—a dynamic member, co-founder, and longtime Canadian chair of the network—recently announced he will not seek reelection in 2010. It raises the question whether the network is entrenched enough to survive the exit of such a key player.

(ii) Legitimacy and Social Capital

The effectiveness of the strategies adopted by the leadership of transnational municipal networks is dependent on a second factor, what Jeffery terms *legitimacy and social capital*. He argues that “the credibility of SNA claims for influence

in...decision-making is likely to be enhanced by the perceived legitimacy which SNAs bring with them into the ...policy process” (17). What legitimacy means for Jeffery (2000) is the extent to which the strategies and policies pursued by local governments reflect “the values or social representations of the population concerned” (Smith quoted in Jeffery 17). In other words, the strength of the position of sub-national actors vis-à-vis other actors depends on perceptions of the level of support sub-national actors enjoy from the population they represent. This legitimacy is strengthened “where there is a well-developed civil society, a sense of identity, civic traditions, an associative life, and relationships of confidence and exchange within the territory” (Keating 1996 quoted in Jeffery, 17). Thus, for example, the reason why sub-national regions such as Catalonia and the Basque Country are more influential within the European Union is that “they constitute not just competence-strong political units...but also firmly established civil societies” (17) and thus their “claims for a share in European decision-making processes will be high and less easy for central state institutions to ignore or deflect” (17). Therefore, in short, Jeffery acknowledges identity as a source of local government authority.

However, such territorial identities are lacking in the Great Lakes region. In its relationships with other actors, the Cities Initiative cannot point to a Great Lakes constituency with a shared identity supporting its actions. A Policy Research Institute (2005) report sponsored by the Government of Canada, entitled *The Emergence of Cross-Border Regions*, has determined that although there is greater affinity in values and philosophies between Americans and Canadians living within a region (i.e. Great Lakes) than there is, for example, between Canadians living in different regions (i.e.

Great Lakes vs. Cascadia), these affinities do not translate into territorially based or geographically defined identities. With regards to the Great Lakes itself the report finds that there is “little sense of identity” (12). Consequently, local governments and the Cities Initiative cannot draw on a Great Lakes identity as a source of credibility or to further legitimize its actions. This condition has ramifications for the kind of strategy local governments can pursue. In the case of the Cities Initiative, local governments must improve their legitimacy and credibility by other means.

If, as has been argued, pursuing policies that accord with the population increases legitimacy, the Cities Initiative must define ‘the population’ broadly. In the Great Lakes context, the population not only includes the popular will, and the environmental epistemic communities, but also territorial interest groups such as industry and, above all, higher tiers of government. One phrase that was repeated during interviews with Great Lakes mayors is that they must simultaneously ‘wear more than one hat’. They cannot afford to alienate any constituents, but they especially cannot afford to alienate higher tiers of government and industry. Their political latitude is thus limited. Therefore, as a result, they tend to seek out, identify and pursue policies that are positive-sum for all the parties involved. Rarely will transnational municipal networks venture too far ahead of what the political and business communities consider permissible. A corollary to this first strategy is that the Cities Initiative garners legitimacy and is invited into the governance structure by its ability to provide governments and industry with expertise and information that will allow them to develop and implement policy more efficiently and helps them avoid negative attention. Hence, transnational municipal networks in North America

are forced to assume the posture of a regional diplomat around the basin. Their authority emanates considerably less from who they *are* (i.e. who they represent), than what they *do* (i.e. what resources they contribute, how they behave vis-à-vis other actors etc.).

(iii) Intergovernmental Relations

Finally, Jeffery (2000) argues that the quality of *intergovernmental relations* between local governments and higher tiers of government (sub-national, national, supranational) is the third important intervening variable determining the level of influence local governments are able to generate. He argues that “formal structures ... of intergovernmental relations are likely to provide more effective channels for policy influence than more informal interactions” (14).

This dissertation demonstrates that the difference in the quality of intergovernmental relations is a crucial distinction between European and North American transnational municipal networks. As Chapter Five illustrates, the greater formal institutionalization of relations between local governments and national, as well as supranational, actors within the European Union provides European transnational municipal networks with more political opportunities for exercising policy influence and provides more resources for the expansion of the network. Meanwhile, local government policy capacity around the Great Lakes is rooted predominantly in informal structures, and the institutionalization of relations between local and national and supranational actors remains weak, leading to transnational municipal networks in North America that are relatively stunted in their structure and

behavior. However, as will be demonstrated, the process of institutionalizing these relations has already begun, with new formal platforms of exchange between different levels of government either erected or being proposed.

De-formalization

The third component of the multilevel framework which speaks directly to the meaning of *governance*, is that **“in this changing context the role of the state is being transformed as state actors develop new strategies of coordination, steering, and networking to protect and, in some cases, enhance state autonomy”** (Bache and Flinders 2004, 197). This transformation in the role of the state is predominantly characterized as a transition from government to governance or “from statist command-and-control systems to horizontal networked forms of participatory governance” (Swyngedouw 2005, 2002), inclusive of a greater array of actors. The best way to understand this change is by contrasting the terms government with governance. According to Rosenau (1992),

Both refer to purposive behavior, to goal-oriented activities, to systems of rule; but government suggests activities rather are backed by formal authority, by police powers to ensure the implementation of duly constituted policies, whereas governance refers to activities backed by shared goals that may or *may not derive from legal and formally prescribed responsibilities* and that do not necessarily rely on police powers to overcome defiance and attain compliance. Governance, in other words, is a more encompassing phenomenon than government. It embraces governmental institutions, but it also subsumes informal, non-governmental mechanisms whereby persons and organizations within its purview move ahead, satisfy their needs, and fulfill their wants (4, *italics introduced by author for emphasis*).

That the state is undergoing some sort of reorganization is rather settled, but scholars disagree over how this transformation has changed the relationship between the central-government and other stakeholders (Joas et al. 2008).

According to Lundqvist (2004), for one group of scholars, the move toward governance symbolizes an erosion of central state authority and “central government is seen as dwindling to a position of one among equals within a structure of governance consisting of inter-linked networks...mutually interdependent on each other for resources such as money, expertise and legitimacy” (19). The other side argues that although central governments are in fact playing a greater coordinating role within network governance, hierarchical relations characteristic of traditional government remain intact, central governments still determine the rules of the game and maintain control over critical resources and powers. Furthermore, although central governments distribute some peripheral tasks and responsibilities to different agents, they do so not as the result of an unintended erosion of authority, but in order to co-opt social interests and thus ‘supplement’ or strengthen their power (Keohane and Nye 2000; Pierre and Peters 2000).

In her study of transboundary water governance along the United States-Canada border, Norman (2009) argues that the process of globalization must be decoupled from the ‘hollowing out of the state’ as the higher tiers of government ultimately retain their powers and authority. This dissertation similarly posits that it is possible to stake a middle ground where new governance structures and strategies are not perceived to replace or weaken the old government ones, but instead they

emerge outside, interdependent of, parallel and complementary to, those old structures, in what Swyngedouw (2005) terms ‘governance-beyond-the-state’.

What matters for our study of the *new* role of local government around the Great Lakes, is that governance-beyond-the-state entails the opening up of new spheres of policymaking where our definition of the role of government moves away “from a role based in constitutional powers” (Pierre and Peters 2000, 25). Consequently, this new sphere is recognized as *the* site for the heretofore expansion of local government policy capacity in North America, one which provides novel avenues through which local governments might escape their otherwise tight constitutional constraints in their relations with other actors (Sancton and Robert 2004; Sutcliffe 2004; Tindal and Tindal 2004; Sutcliffe 2006; Valiante 2007).

(i) Type I and Type II Multilevel Governance

An important conceptual innovation within multilevel governance which further clarifies this transformation of the state and, especially, the interdependent relationship between the new and old structures and strategies, was introduced by Hooghe and Marks (2003) who subdivided multilevel governance into two types—Type I and Type II—essentially a *formal* and *informal* sphere of governance that “embody contrasting visions of collective decision-making” (Marks and Hooghe 2004, 29) but which are nevertheless complementary. These two types of governance describe two different and co-existing organizational structures governed by two different norms of interaction between actors.

Type I multilevel governance closely resembles traditional federal systems and has four defining characteristics. It is composed of *general purpose jurisdictions* where decision-making authority over a number of policies is bundled together and located at discrete territorial levels. It is characterized by *non-intersecting memberships*, meaning, memberships at the national, sub-national, regional and local level of government do not intersect, and membership is defined territorially. Government is composed of a *limited number of jurisdictions*, traditionally, between a national, intermediary, and local level. Finally, the loci of decision-making are characterized by a *system-wide, durable architecture*, which typically includes a legislature, executive and judiciary which are difficult to amend.

Type II multilevel governance also has four defining characteristics, but it is composed of *task-specific jurisdictions* where authority that is dispersed is organized around solving specific problems or carrying out specific tasks. It is characterized by *intersecting memberships* where borders and jurisdictions can be crossed, and where the activities of lower jurisdictions are not necessarily contained within the boundaries of higher jurisdictions. Further, governance operates across *many jurisdictional levels*, meaning that it is organized across a large number of levels which are not organized hierarchically but are composed of public and private actors collaborating in shifting coalitions. Finally, the decision-making architecture is characterized by a *flexible design* in which actors are free to join or exit the structure, which itself can be taken down as quickly as it is erected, once a task is accomplished or problem solved. Relationships between members are not fixed but constantly negotiated.

Recognizing these two types of multilevel governance with distinct organizational logics and norms of interaction helps to locate the source of expanded local government policy capacity in North America, namely, in informal, Type II governance structures. In contrast, in Europe, for instance, the empowerment of sub-national and local authorities is in large measure the result of “a deep and broad reallocation of authority from central states to regions in the European Union” (Marks and Hooghe 2004, 23) from political decentralization that has transpired in the more formal, and more effective Type-I multilevel governance in addition to Type II structures. The vital importance of Type II structures is that they allow us to explain how the expansion of local government policy capacity is occurring *without* a concomitant transfer of formal constitutional authority and resources downward, in other words, in contexts such as North American where the formal Type I structures and relations have been relatively stable and no such dramatic re-allocations of authority have taken place thus far.

The informal, Type-II governance mechanisms, according to Rhodes (1996), for the most part take the shape of “self-organizing, interorganizational networks” (660) composed of private and public actors, and it is argued that these networks increasingly constitute the structure of European governance and decision-making (Leach and Percy-Smith 2001; Jachtenfuchs and Kohler-Koch 2004). Theorizing European Union governance “as nonhierarchical, mobilizing networks of private and public actors who engage in deliberation and problem-solving efforts guided as much by informal norms as formal institutions” (Pollack 2005, 380) distinguishes the governance approach from a traditional rationalist framework which “theorizes the

EU as a political system in which formal rules shape the behavior of governmental and non-governmental actors” (Pollack 2005, 380). The transition towards an Integrated Water Resources Management (IWRM) model in the form of the International Watershed Initiative (IWI) demonstrates that environmental policymaking around the Great Lakes basin is also showing evidence that decision-making is increasingly taking the form of these kinds of ‘self-organizing, interorganizational networks’ illustrated also by the Great Lakes Regional Collaboration.

Once formed, these new Type-II decision-making structures, these networks, beget new logics, new strategies, and new behaviors. Peters and Pierre argue on separate occasions that “the novelty of governance is the emphasis of process over institution” (2004, 77) and that “political power and institutional capability is less and less derived from formal powers accorded the state but more from a capacity to wield and coordinate resources from public and private actors and interests” (2001, 131). In distinguishing itself further from traditional, rationalist assumptions of intergovernmental relations, the multilevel governance approach borrows heavily from constructivist theories in particular by emphasizing, for example, “the capacity of the EU to foster deliberation and persuasion, a model of policy making in which actors are open to changing their beliefs and their preferences and in which good arguments can matter as much or more than bargaining power” (Pollack 2005, 380).

From these assumptions, it is possible to explain the ability of weak actors such a local governments to break the bounds of their limited formal authority without significant transfers of formal powers or resources downward from higher

tiers of government, by positing that such changes have taken place as a result of cognitive reforms within higher levels of government. Furthermore, through ‘deliberation and persuasion’, backed by information and expertise, local governments are able to play a larger role, and wield more influence, than their constitutional powers would otherwise suggest due to their own political entrepreneurialism.

This transformation of the state and the burgeoning of innovative structures is perhaps best illustrated by the European Union’s Open Method of Coordination (OMC), which was institutionalized by the Lisbon European Council in 2001, and which alters not only the structure but the logic of decision-making. The OMC is a platform for multi-level deliberations between state and non-state actors based on a vision of deliberative democracy in which “informal norms, deliberation, good arguments, and consensus matter more than formal voting rules...[which]...recede into the background in favor of a collective search for the technically best solution to a given policy problem” (Pollack 2005, 388). The OMC is characterized “by common guidelines and objectives, by...indicators, by the elaboration of national action plans...by a joint evaluation of the results, by peer reviews and the exchange of best practices and by the continuous repetition of this cycle” (Heidenreich and Bischoff 2008, 501). The OMC is intended to complement, not replace, the more formal EU decision-making processes which are characterized by traditional rationalist logic of strategic bargaining, utility maximization, and traditional constructivist logic of appropriateness and rule-guided behavior. These informal, deliberative structures are based on Risse’s (2004) third logic of social action—the

logic of arguing—which “implies that the participants in a discourse are open to being persuaded by the better argument and that relationships of power and social hierarchies recede in the background” (7) thus holding that “actors’ interests, preferences, and the perceptions of the situation are no longer fixed but subject to discursive challenges” (7).

Such a method of coordination infused with the logic of arguing, is just now beginning to emerge in the North American context. For instance, Chapter Five of this dissertation analyzes the Commission for Environmental Cooperation (CEC), a supranational agency tasked with administering the environmental sub-agreement to the North American Free Trade Agreement (NAFTA), which provides a novel venue for public and private actors across multiple levels to deliberate outside the formal machinery of government, much like the OMC. The Great Lakes Regional Collaboration is another example of this kind of governance which provides local governments with the opportunity to influence the trajectory of policymaking via the strength of their discursive challenges and the credibility they are able to develop with various stakeholders. The International Watersheds Initiative (IWI) developed by the International Joint Commission is a third example.

Disorganization and Democratic Deficit

The fourth element speaks to the ramifications of multilevel governance and holds that “**in this changing context, the nature of democratic accountability has been challenged and needs to be rethought or at least reviewed**” (Bache and Flinders 2004, 197). This last understanding of governance points to the second

branch of the multilevel governance approach which is rooted in a normative critique of multilevel governance and the development of the European Union in general (Pollack 2005). Two lines of criticism have emerged. First, the complexity of multilevel governance due to the proliferation of actors in the decision-making process and the absence of clear lines of authority has reduced transparency and accountability (Bache and Flinders 2004). This state of affairs reflects the old adage that if everyone is in charge, no one is in charge. Second, Peters and Pierre (2004) argue that a Faustian bargain has been struck, where “the capacity to govern has been sold, or at least has been downgraded, in an attempt to achieve more open and inclusive bargaining, and in order to circumvent formal structures that have been central to governing and to intergovernmental allocations in many systems” (88). The emphasis on informal exchanges and structures presents the dual-problem that state actors could use this complexity as a means for evading responsibility and accountability and for political interests to escape regulation in the absence of a central authority (Peters and Pierre 2004, 84). As Chapter Four of this dissertation will demonstrate, both of these are valid concerns with regards to accountability around the Great Lakes basin, and in terms of the general state of water quality regulation in North America as the aforementioned New York Times article, “Toxic Waters” attests.

Rather than ending this train of thought as a critique of multilevel governance, George (2004) alludes to the fact that this accountability gap can serve as an important catalyst for the further mobilization of sub-national actors including local government. Whereas George (2004) interprets this mobilization on the part of sub-

national actors as their way to augment or protect their authority, Chapter Five of this dissertation demonstrates that this mobilization also serves to redress the accountability gap by galvanizing local governments into a regulatory role or watchdog role, pointing out the accountability gaps in the regulatory process and putting pressure on higher governments to repair that gap.

With regards to environmental policy around the Great Lakes, subsequent chapters will demonstrate that local governments mobilize in response to the growing accountability gap on *functional* terms, because they object to the financial burdens that central government retrenchment places on local government in environmental management and, from a *normative* standpoint, they object to the sharp disconnect between their significant and increasing fiscal contributions to environmental management in the basin and their relative political insignificance in the decision-making process.

Furthermore, from a normative standpoint, they object to what they perceive to be a gross imbalance in the economic and environmental aims pursued by higher tiers of government. As Chapter Six demonstrates, one of the ways in which local government mobilization manifests itself is that they act as a ballast between environmental and economic concerns in the policies of higher tiers of government and the activities of industry, acting as a watchdog or whistleblower when that balance is tipped too far in favor of private economic interests. Thus, local government mobilization addresses both the accountability gap and the democratic deficit within environmental management in the basin. Consequently, this dissertation demonstrates that there is a 'bright side' to the 'dark side' of multilevel

governance in the form of highly mobilized local governments that introduce a new self-monitoring and self-correcting mechanism into the system.

Multilevel Governance and Polycentricity: Local Governments as Vital Components of Systems Addressing Common-Pool Resource Problems

The findings presented in this dissertation that local governments, through the transnational municipal network, are adding another layer of oversight to the management of Great Lakes water quality fits nicely with recent findings in the study of *common-pool resources*. A common-pool resource is a large resource (i.e. forest, air-shed, or a lake) whose use is difficult to control because it is difficult to differentiate legitimate from illegitimate users and thus exclude the latter. Furthermore, these resources are ‘subtractable’, meaning that one person’s use diminishes benefits for other users. The central concern of this scholarship has been to develop a system of management that prevents the ‘Tragedy of the Commons’ from occurring, which is the exhaustion of the common-pool resource due to overuse (Hardin 1968). Until recently, this debate was also framed in zero-sum terms. The push toward centralization of resource management in the 1970s and 1980s gave way to “the decentralization euphoria of the 1990s” (Andersson and Ostrom 2008, 72) which promoted placing control of natural resources in the hands of local actors. In the last decade, however, research from local government resource management has shown mixed results leading scholars to ask, why does local control over resource management work in some cases and not in others (Andersson and Ostrom 2008)?

Recall the emerging consensus within political ecology literature which posits that “the characteristics of a given scale or scalar arrangement cannot be assumed a

priori; rather the social and ecological outcomes of any particular scalar arrangement are the result of the political strategies of particular actors, not the inherent qualities of particular scales” (Brown and Purcell 2005, 609). According to Andersson and Ostrom (2008), success is not determined by whether resource management is centralized or de-centralized, but by the quality of relationships among actors with overlapping jurisdictions operating across different levels. Such systems, involving higher-level participation on the part of multiple stakeholders has been called *polycentricity* (Ostrom et al. 1961) or more recently *collaborative planning* (Frame et al. 2004). Andersson and Ostrom (2008) argue that imperfections exist at any one level of governance, and these imperfections can be offset by ‘complementary back-up institutions’ existing at higher or lower levels of governance (73). In other words, “a governance system that manages *to distribute capabilities and duties* in such a way that perverse incentive and information problems at one level are offset to some extent by positive incentives and information capabilities or actors at other levels, will achieve better outcomes than either a highly centralized or fully decentralized system” (Andersson and Ostrom 2008, 73). However, the effectiveness of such systems is not pre-determined, but relies on the relationships forged by the actors involved.

Hence, the ability of local governments to embed themselves in the environmental governance structure around the Great Lakes, largely through the institutionalization of cross-border cooperation and the establishment of a transnational municipal network, not only serves the political purpose of local government, increasing its presence and policy capacity, but potentially provides a

‘complementary back-up institution’ to federal and state authorities thereby supporting a moth-eaten regulatory system. Furthermore, local governments acting as diplomats seeking positive-sum solutions may also improve or strengthen the quality of relations between all actors involved in the basin thus enhancing the governance system (Andersson and Ostrom 2008). Again, the key vehicle in both these transformations has been the internationalization of local government manifested through transnational municipal networks.

Multilevel Governance and Regional Cross-Border Cooperation in North America and Comparisons Abroad

Multilevel governance is a natural framework for analyzing regional, cross-border cooperation at the level of local government taking place within the Great Lakes basin. Liesbet and Hooghe (2004) argue that “type II jurisdictions are common in cross-border regions, especially in North America and Europe. Ad hoc, problem driven jurisdictions in the form of inter regional commissions, task forces, and inter-city agencies have mushroomed over the past three decades” (25), adding that Type II governance structures are “widespread at the local level” (26), and “appear where local communities are faced with local common pool resource problems” (27).

Yet, the recent consensus from studies examining multilevel governance in the European context (Carmichael 2005; Marshall 2005) and comparative analyses involving multiple countries including those in Europe, North America and Africa (Lazar and Leuprecht 2007), is that multilevel governance has developed more fully outside the North American context where there are greater opportunities for local

government mobilization. The question thus becomes, how great is the gap between multilevel governance in Europe and North America and, consequently, how great the continental gap between local government policy capacity?

In their study of eight countries, Lazar and Leuprecht (2007) conclude that municipalities in France, Germany, Spain, Mexico, South Africa and Switzerland “are maturing constitutionally as a distinctive sphere of government” (7) and interdependence between levels of government is increasingly recognized. The South African Constitution (1996) is touted as exceptional in that it formally recognizes municipalities as one of three spheres of government that are, “distinctive, interdependent, and interrelated” (quoted in Leuprecht and Lazar 2007, 7), and because it mandates that local government be given an opportunity to comment on national and provincial legislation “that affects the status, institutions, powers or functions of local government” (quoted in Leuprecht and Lazar, 7).

In contrast, Vogel (2007) concludes in his analysis of multilevel governance in the United States that “the federal partnership with cities has completely evaporated” (288) and that “national policymaking is made without reference to the problems of cities and with little direct input from city officials” (271). Municipalities within the Canadian multilevel governance system do not fair better. Gattinger (2008) argues that “Canada’s overall multi-level governance system is underdeveloped, particularly at the institutional level. No formal mechanisms exist for federal, provincial, and municipal levels of government to coordinate and collaborate on joint issues on an ongoing basis” (1). Relations between the federal and local governments remain ad hoc (Berdhal 2006), and “there is little evidence of

a coherent agenda [or] systematic co-ordination” (Bradford 2004, 7) between the three levels of government, while overall “municipalities still struggle with a centuries-old subordination to provincial governments” (Bradford 2004, 7). The gap between the two continents appears to be yawning.

However, again, the establishment of the Great Lakes and St. Lawrence Cities Initiative and its growing participation in various policymaking arenas, at the very least suggests that the generalizations about retarded North American multilevel governance should be tempered or at minimum include a caveat which points to the expansion of multilevel environmental governance around the basin as a counter-example.

In one of the very few comparative analyses of multilevel governance in Europe and North America to date, Blatter (2001) emphasizes not only the differences but the continuing divergence of the two continental multilevel governance systems by arguing that cross-border cooperation in Europe is evolving into a *multi-level system* which is “formalized, comprehensive and territorially defined” while in North America a *multi-level polity* is emerging where “only informal, specific and non-territorial institutions are evolving” (175).

Interestingly enough, Blatter keeps the door open to the possibility that a significant degree of convergence could eventually take place, by stating,

The hypothesis that we are witnessing divergent paths of polity change in Europe and North America might be challenged by the observation that the current state of affairs in the border regions in North America resembles the situation in Western Europe at the end of the 1960s and the beginning of the 1970s when the first limited cross-border linkages emerged. A functionalist would assume that North America will catch up and that soon we will see the development of a full-blown,

territorially based polity in North America on the continental and the borderlands level (202).

Blatter's concluding paragraph could very well be, in fact, the starting paragraph for this dissertation which demonstrates that multilevel governance, and the policy capacity of local governments within that system, is expanding, at least around the Great Lakes basin and, therefore, the gap between multilevel governance around North American and European water basins, for example between the Great Lakes and the Baltic Sea, may well be shrinking.

CHAPTER III

METHODOLOGY

This chapter explains the methods used in this study to gather data on the expansion of local government policy capacity in bilateral environmental politics around the Great Lakes, the manifestation of this expansion through a transnational municipal network called the Great Lakes and St. Lawrence Cities Initiative, and the effectiveness of increased local government participation in environmental policymaking around the basin. The growing emphasis in the study of Political Science on policy-relevant research and the observation by Hugh Hecló (1972) that “there remains great untapped potential in the use of case studies for policy analysis” (93) motivates both the exploration of this particular subject matter and the use of case studies as the dominant technique within this research.

Case Studies

Orum et al. (1991) define a case-study as “an in-depth, multifaceted investigation, using qualitative research methods, of a single social phenomenon” (2). The major advantage of case studies, over quantitative, statistical analyses, is that they permit the study of complex phenomena within a “real life context” (Scholz and Tietje 2002) thereby providing a greater level of conceptual validity. Furthermore, a case study is appropriate where “the universe of cases is too small for a statistical analysis” (Walt 1996, 15), as is the case with transnational municipal networks. A

case study is also superior to historical analyses particularly in recent or ongoing phenomena because of “its ability to deal with a full variety of evidence—documents, artifacts, interviews and observations—beyond what might be available in a conventional historical study” (Yin 2003, 8).

The use of different types of case studies should be tailored to the particular research objective pursued and to the stage of the research project (George and Bennett 2005). Yin (1993) identifies three types of case studies: *exploratory*, *descriptive* and *explanatory*. Exploratory case studies typically reflect the early stages of research within a nascent body of research on a particular phenomenon requiring basic data collection to establish the basis for identifying patterns and formulating basic hypotheses. Descriptive case studies are more advanced in that they describe the characteristics of a particular phenomenon through data collection that is guided by already established theories or models. The more advanced explanatory case studies seek to identify causal mechanisms and investigate ‘how’ or ‘why’ certain events occur. This dissertation employs a multiple-case-study approach which utilizes all three types of case studies. This strategy reflects the “growing consensus that the strongest means of drawing inferences from case studies is the use of a combination of within-case analysis and cross-case comparisons within a single study or research program” (George and Bennett 2005, 18) and it also reflects the multiple theory-building research objectives of the dissertation (George and Bennett 2005).

Case One: The Great Lakes and St. Lawrence Cities Initiative

The first type of case study employed is a combined exploratory and descriptive case study of the Great Lakes and St. Lawrence Cities Initiative. It is exploratory because there has been no previous research on the Cities Initiative or any other North American transnational municipal network. It is descriptive because the data collected on the Cities Initiative will be guided by models established by previous research on European transnational municipal networks (Heinelt and Niederhafner 2005; Kern and Bulkeley 2009).

This case study of the Cities Initiative contains three research objectives (George and Bennett 2005). In the first instance, it is a *building block* study, which will provide thick descriptions of a particular subtype or subclass of actor or event thus distinguishing it from the general phenomenon. Thus, the building block contributes to *typological theorizing* by identifying variance, in this case, within the class of transnational actors and variance within the subclass of transnational municipal networks. Next, the case study serves a *heuristic* objective by seeking to identify new variables which affect the structure and behavior of transnational municipal networks, which is achieved through a unique ‘cross-case comparison’ between European and North American transnational municipal networks. An impetus for including such a comparative component was the symposium on Trans-border Water Governance sponsored by The Academies of Arts, Humanities and Sciences of Canada (RSC), which concluded that “there is a need for more international governance research [around the Great Lakes] and comparison with other trans-boundary water governance areas like the Baltics” (RSC, 2005). Finally,

there is an element of *theory testing* within the case study. The competitive-city paradigm (Brunet-Jailly 2004) posits that severe market pressures and lack of mediating supranational institutions in North America preclude local government cross-border cooperation from becoming institutionalized. Identifying a functioning transnational municipal network around the Great Lakes basin and demonstrating its increasing embeddedness within the governance structure represents a *least likely* scenario that would challenge the competitive-city paradigm.

Case Two: The British Petroleum Refinery Dispute

The second case study will focus on the dispute surrounding the British Petroleum refinery expansion which ignited in the summer of 2007. British Petroleum was granted a pollution permit by the State of Indiana to dump fifty-percent more waste into Lake Michigan after it completes a \$3 billion expansion of its refinery thereby allowing it to process Canadian oil sands petroleum. Support came from all levels of government and industry. This is a clear case where environmental concerns yielded to strategic and economic considerations. Nonetheless, opposition was mobilized to the permit and to the expansion, and it succeeded in reducing discharges while instigating a comprehensive regulatory review by the State of Indiana to improve accountability. The purpose of this case study is to analyze the degree to which local government, and the Great Lakes and St. Lawrence Cities Initiative, were involved in mobilizing the opposition and to measure the effects of the opposition on the policy result and the policy process. A significant portion of the chapter is dedicated to establishing the political and economic context surrounding

the British Petroleum refinery dispute, specifically, the unfavorable political climate where intense pressure at the highest levels of government for expeditiously expanding the petroleum supply made any opposition delaying refinery expansion on the part of local government risky and highly unlikely, particularly when considering that the case involved dimensions of energy, economic, security and environmental policy and simultaneously affected local, regional, sub-national and federal governments across the continent.

This study begins with a ‘within case study’ with a *theory testing* objective. It addresses a central question raised by the second branch of multilevel governance theory focusing on the democratic quality of network governance: can non-central state actors affect policymaking in multilevel governance systems and under what conditions are they most effective (Peters and Pierre 2004). The first part of this second case study sets itself up as a *difficult* or *least likely* case. Local governments traditionally conceived as appendages of federal and sub-national governments and captives of industry are not expected to successfully mobilize opposition to a refinery expansion project backed by both government and industry. Furthermore, the competitive-city paradigm (Brunet-Jailly 2004) predicts that cross-border local government cooperation is expected to dissolve in the context of high material interdependencies where jobs and investment are at stake (Blatter 2001). Even if they do mobilize, however, local governments are subsequently not expected to have influence over the policy process or policy results which, within a multilevel governance setting, are expected to be driven by dominant actors (Peters and Pierre 2004). Hence, we focus on two dependent variables. The first dependent variable is

the ability of local governments to mobilize opposition to the permit. The second dependent variable is the *policy process* and the *policy result*. To analyze the second dependent variable, the case study incorporates a ‘before-and-after’ approach, using Bukowski’s (2004) five-criteria for the evaluation of the democratic legitimacy of the decision-making process to measure the effect of local government involvement in the British Petroleum case before and after they inject themselves into the dispute.

Case Three: Comparing the Refinery and the Bridge

The ‘within-case’ study of the refinery is subsequently expanded to include a ‘cross-case comparison’ with Bukowski’s (2004) examination of the construction of the Vasco da Gama Bridge in Portugal. In both cases, a *process-tracing* technique is employed to reveal the different causal paths leading to two different outcomes. The opposition mobilized by non-central state actors to the refinery and the bridge construction succeeded in altering the policy result and the policy process to varying degrees. The central question in this cross-case comparison is *what conditions led to the varying effectiveness of European and North American non-central state actors?* The focus here is not so much on the dependent variable, but on the independent variable, specifically on the supranational level as the locus of the *causal mechanism*. We expect to find that the key independent variable, the development of supranational institutions and their relationship with non-central state actors, provides additional political opportunities and resources for European non-central state actors not available to North American ones, which makes the former more effective in altering the policy result and policy process than the latter.

Comparing the refinery and the bridge is an example of a *controlled comparison* utilizing the *most-similar* case design. In both cases, non-central state actors mobilized in opposition to both the policy process and the policy result of a project undertaken by heavily invested higher tiers of government and industry. In all three countries involved—Portugal, Canada, and the United States— non-central state actors such as local government are limited in their authority and very little authority has been transferred downward to them. Bache observes that in Portugal “despite incremental shifts towards greater sub-national and non-state participation and the creation of new regional structures, the central government retained a firm grip over much of the important decision-making” (2008, 62). Thus, one would expect the Portuguese non-central state actors to be even less effective within such a centralized, unitary state with decades of conditioning under an authoritarian regime than non-central state actors in North America.

Limits of the Case Studies

A drawback of the cross-case comparison of the bridge and the refinery is that whereas in the refinery case we focus explicitly on the role of local government and transnational municipal networks as the main players in the opposition, the Portuguese bridge case focuses on environmental groups as the main ‘local actors’. We identified other near-identical cases to the refinery case, for example, the Fairbass and Jordan (2004) analysis of the effects of EU directives and institutions on the mobilization of non-state actors in environmental policymaking in the United Kingdom, but we failed to locate a case study which focused attention specifically on

local governments and transnational municipal networks in Europe. Therefore, we acknowledge that the comparison of the refinery and bridge cases operates on the assumption that non-state actors, local governments and transnational municipal networks would respond similarly to the political opportunities and resources provided through cooperation with supranational actors. Hence, we must temper our conclusions for the time being.

Furthermore, we accept the fact that by selecting case studies which positively identify the impact of non-central-state actor mobilization on policy results and policy process that we run the risk of introducing a *selection bias* by sampling along the dependent variable. Selection bias “is commonly understood as occurring when some form of selection process in either the design of the study or the real-world phenomenon under investigation results in inferences that suffer from systematic error” (Collier and Mahoney 1996, 59). Consequently, we must be careful about generalizing our findings.

However, Homer-Dixon (1999) argues that especially in the early stages of research, as with the study of transnational municipal networks, it is appropriate to select on both the independent and the dependent variables because it can demonstrate, for example, “any cases in which the independent variable is causally linked, in a significant and important way, to the dependent variable” (172-173). This case study will test the hypothesis that the development of supranational institutions and the degree of cooperation between supranational and non-central-state actors are intervening variables which increase the effectiveness and policy capacity of non-central state actors such as local government. Homer-Dixon also argues that selecting

on the independent and dependent variables can help identify which variables are not *necessary* or *sufficient*. By selecting the Cities Initiative as our unit of analysis this dissertation will seek to demonstrate that supranational infrastructure, shown to be nearly non-existent in the North American context, is neither necessary nor sufficient in the initial emergence of transnational municipal networks nor is it necessary for their effectiveness.

Data Collection

Within these case studies, a *triangulated approach* incorporating multiple methods of data gathering identified by Stake (1995) and Yin (1994) is employed including (1) *interviews* with public officials and confidential interviews with key observers (2) *documents* such as newspaper articles, personal correspondence, memos, agendas, websites, independent reports, and congressional records (3) *archival records* of the Cities Initiative (4) *Direct observation* of the Annual Meetings of the Cities Initiative in 2008 and 2009, as well as the 2009 Biennial Meeting of the International Joint Commission (IJC) (5) *Participant Observation* of the workshops held during the 2009 Biennial Meeting of the International Joint Commission (6) *Physical artifacts* such as CD-ROMs, flyers, pamphlets and brochures collected during the meetings of the Cities Initiative and the IJC. Snow and Anderson (1991) argue that

the basic argument [for triangulation] is that social reality is too complex to be adequately grasped by any single method. Consequently, rather than debate the merits of one method vis-à-vis another...one does better to combine multiple strategies so that they can supplement one another's weaknesses (158).

Furthermore, multiple sources permit the corroboration of evidence from any one single source. Primary sources of information are crucial with regards to the multiple case studies under consideration, particularly in terms of the Cities Initiative and the British Petroleum refinery where little to no scholarly work (Barnes 2007; Augustine 2008; Augustine 2008b) has produced a nearly non-existent historical record of both phenomena.

The type of interview used varies in structure depending on the researcher's objective, the stage of the research process, and the interviewer's level of expertise on the subject (Aberbach and Rockman 2002). The interviews conducted were exploratory in nature, reflecting the nascent body of literature surrounding transnational municipal networks, and semi-structured guided by several pre-determined questions but not limited to them. The interviewees were encouraged to move beyond those questions and provide additional insights, reflecting the observation by Leech (2002) that "in elite interviewing...the investigator is willing, and often eager, to let the interviewee teach him what the problem, the question, the situation, is..." (54). This was true of members of regional environmental non-governmental organizations who were asked to explain the complex regulatory process surrounding the permit process.

Ten mayors from the Cities Initiative were interviewed representing small, medium and large cities. Seven out of the ten mayors were board members, including both founding chairs—the mayors of Chicago and Toronto (See Table 2: Interviews Conducted and Declined). Two mayors declined interviews. The Executive Director of the Great Lakes and St. Lawrence Cities Initiative was

interviewed. One city official from the City of Toronto was interviewed, while two officials from the City of Chicago declined including one from the office of the Commissioner of the Department of the Environment. In compliance with IRB ethics standards, the identity of non-elected officials remained confidential.

The key questions directed at mayors included: (1) Why did your city join the Cities Initiative? (2) What was the significance of the British Petroleum case for the Cities Initiative and for environmental management of the Great Lakes basin? (3) What impact did the Cities Initiative have on the resolution of the BP dispute? (3) How important are supranational institutions such as the IJC and the CEC to the Cities Initiative? (4) How have local-federal, local-state or local-provincial relations changed in the last decade? (5) What impact has the Cities Initiative had on local government policy capacity in the region? An interview with the Vice-President of the Union of Baltic Cities, Urve Tiidus, who is also the Mayor of Kuressaare, Estonia, was conducted during the annual meeting of the Cities Initiative in Trois-Rivieres, Quebec in 2009.

Table 2: Interviews Conducted and Declined

| | Mayor | City Official | Government | NGO | GLSLCI Official | CEC | IJC | Journalists | Total |
|---------|-------|---------------|------------|-----|-----------------|-----|-----|-------------|-------|
| Canada | 6 | 1 | 0 | 4 | 1 | 0 | 1 | 1 | 14 |
| U.S. | 3 | 0 | 1 | 5 | 1 | 0 | 0 | 2 | 12 |
| Other | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 2 |
| Total | 9 | 1 | 1 | 10 | 2 | 1 | 1 | 3 | 28 |
| Decline | 2 | 2 | 7 | 0 | 0 | 0 | 0 | 0 | 11 |

Eight semi-structured interviews were conducted with key members of prominent non-governmental organizations around the Great Lakes basin who were also involved in the British Petroleum case, as well as one journalist from a regional newspaper who broke the story and covered the duration of the British Petroleum case. The purpose of these interviews was to gain a different perspective on the course of the events, but mostly in order to explain the regulatory system, demystify some of the technical and scientific jargon, and explain the changes in the policy process and regulatory system wrought by the opposition.

The key questions posed to this constituency included: (1) In what ways can you term the opposition to the British Petroleum refinery expansion in Whiting, Indiana a 'victory?' for industry, for the Indiana Department of Environmental Management and for environmental groups (2) What improvements did the Indiana Department of Environmental Management anti-degradation Draft Rule introduce over the current policy? (3) What was the role of local government in the opposition to Whiting? Specifically, what was the role of the Great Lakes and St. Lawrence Cities Initiative?

Three more exploratory inquiries via email were also conducted in order to identify key contacts and resources in the basin, including an official from the Federation of Canadian Municipalities, as well as a person who tracks environmental politics in the basin through a *web-blog* at www.thepoliticalenvironment.blogspot.com.

Interviews meant to gather regional and local perspectives were supplemented with broader perspectives in terms of Canada-United States bilateral environmental relations through an interview with the Canadian Chair of the International Joint Commission. Furthermore, a brief exchange of correspondence was initiated with the former Chair of the Joint Public Advisory Council (JPAC) of NAFTA's Commission for Environmental Cooperation (CEC) in order to gain insight into the operation of this supranational institution.

One of the challenges of gathering data by conducting interviews is declines or failures to respond. It would have been beneficial to speak with members of the United States and Canadian legislatures involved either specifically in the British Petroleum case or more broadly in terms of bilateral water quality issues. Five congresspersons who were involved in the British Petroleum case were contacted and failed to respond or declined. Of particular interest to this case study was Congressman Mark Kirk (R-II) who organized a Shoreline Mayors Task Force, comprised of local officials from ten North Shore communities to oppose the British Petroleum permit, but could not be reached. Another interviewee of interest who could not be reached was Member of Parliament Francis Scarpaleggia who is the Vice-Chair of the House of Commons Standing Committee on Environment and Sustainable Development which is currently studying the effects of the oil sands on water quality.

Despite these declines, the 27 interviews conducted complemented data gathered from other sources, such as newspapers, which did provide a federal

angle and which, together, established a reliable picture of both the transnational municipal network and the case.

Much of the contextual information and contact information was provided by reviewing newspapers relying in part on Lexis-Nexis as a meta-search engine. The Gary Post-Tribune, the Chicago Tribune, Chicago Sun-Times, the Milwaukee Journal-Sentinel, and the Northwest Indiana Times provided the most extensive coverage of the British Petroleum dispute, although a wide range of other newspapers were examined in order to provide as broad a perspective as possible on the relationship between the Alberta oil sands, British Petroleum, and the Great Lakes including the Indianapolis Star, the Financial Times, Canadian newspapers such as the Globe and Mail, the National Post, and international newspapers such as the International Herald Tribune and The Guardian.

In order to gather more insight into how the British Petroleum case fits into the relationship between the Alberta oil sands and the Great Lakes, various position papers from government, industry and non-governmental organizations were analyzed. Government reports were examined, for instance, from international sources such as the International Energy Agency, the International Joint Commission, the Commission for Environmental Cooperation under NAFTA; American national sources such as the U.S. General Accounting Office, U.S. Congressional Research Service, Congressional Task Force, the EPA; Canadian national sources such as the Government of Canada, the National Energy Board, the Commissioner of the Environment and Sustainable Development within the Office of the Auditor General; as well as sub-national

sources such as the Indiana Department of Environmental Management, the Government of Alberta, in addition to the Federation of Canadian Municipalities and the City of Toronto. Particularly informative were the various written testimonies and reports submitted to the Ontario Ministry of Environment's Walkerton Commission, such as the Ontario Public Service Employees Union (OPSEU) report which gave a good overview of the evolution of the province's water quality governance system. Industry reports were examined produced by the Canadian Association of Petroleum Producers, the Alberta Federation of Labour, and British Petroleum. Non-governmental position papers examined were published by, for example, the Alliance for the Great Lakes, Greenpeace UK, the Pembina Institute, Save the Dunes, and the Environmental Law and Policy Center. Independent analyses from academia were analyzed, for example, reports by the Purdue University Calumet Water Institute-Argonne National Laboratory Task Force, the ERB Institute for Global Sustainable Enterprise at the University of Michigan, and the University of Toronto's Program on Water Issues. The broad swathe of perspectives mobilized from these position papers helps to minimize the bias of any one organization and provides a basis for the corroboration of evidence.

Of great value was an independent report commissioned by Indiana Governor Mitchell Daniels, the so-called "Barnes Report", published by Professor James Barnes of Indiana University which provided an in-depth analysis of the British Petroleum case from the perspective of the regulator, industry, and the public. In addition, a report titled "How the Oil Sands Got to the Great Lakes

Basin” (Israelson, 2008) published by the Program on Water Issues at the Munk Center for International Studies deserves to be singled out as integral for an understanding of the link between the oil sands and the Great Lakes. The findings in the report form the contextual basis for Chapter Six of this dissertation.

In addition to newspapers, legislative records were examined. For example, the debate over a resolution passed by Congress condemning the British Petroleum permit process was studied. These records also included the United States Senate Committee on the Environment and Public Works, as well as Canada’s House of Commons Standing Committee on Environment and Sustainable Development, specifically, the public meetings and testimonies held for the Oil Sands and Canada’s Water Resources study. The findings of this last study will be released in a report sometime in 2010. Public notices related to the British Petroleum case and the subsequent anti-degradation policy review published by the EPA and the IDEM on their websites were also examined.

The vast majority of information on the structure and behavior of the Great Lakes and St. Lawrence Cities Initiative was found on its website which contains a wealth of information including a comprehensive running update of membership, recent activities, resolutions, statements, and programs from November 2002 until the present, including whole sections dedicated to the Water Conservation Framework, Best Practices and Restoration Projects, and Annual Meetings.

Direct observation of the activities of the Great Lakes and St. Lawrence Cities Initiative was undertaken on two separate occasions during two annual

meetings. The first Annual Meeting was held in Toronto, Ontario (July 16-18, 2008) and the second Annual Meeting was held in Trois-Rivieres, Quebec (June 17-19, 2009). On both occasions, access was granted to all the events involving the General Assembly, as well as the Board of Directors meetings, which provide invaluable insights into how the organization develops and discusses strategy and votes on courses of action. Furthermore, the majority of the interviews were conducted face-to-face during the course of these annual meetings. A secondary benefit of attending the annual meetings was the opportunity to acquire contacts as well as physical artifacts such as brochures, CD-ROMs, and other physical documents which provide further insights into how the organization carries out its external relations and interacts with the outside world. Finally, meeting the mayors, city officials, and other participants at these meetings helped to establish trust which provided the basis for future data gathering opportunities.

Direct observation was also employed during the Biennial Meeting of the International Joint Commission (IJC) organized in Windsor, Ontario, on October 7-8, 2009. The Biennial Meetings exemplify multilevel governance around the Great Lakes basin as participants include members from all levels of government, bureaucrats, academia, the scientific community, industry, non-governmental organizations and the public. Furthermore, the Biennial Meetings provided the opportunity for participant observation during the workshops that were organized around particular issues such as beaches and waterfront recreation where a broad cross-section of participants discusses problems, current policy, and potential solutions. These discussions are then summarized and communicated to the

respective IJC body tasked with developing policies and reports on that particular subject.

Applying the technique of *triangulation* in the data gathering methods, incorporating interviews, documents, newspapers, position papers, and legislative records, a picture emerges of the role of local government within the Great Lakes basin that is more faithful to the complexity of the phenomenon under study.

CHAPTER IV

BREAKING THE FORMAL BOUNDS OF FEDERALISM: THE EXPANSION OF LOCAL ENVIRONMENTAL DECISION-MAKING CAPACITY IN A DYNAMIC MULTILEVEL GOVERNANCE STRUCTURE

Introduction

This chapter seeks to explain *how* and *why* local governments were able to break the bounds of their formal constitutional constraints, improve their standing as both domestic and external actors, and as a result play an increasing role in environmental governance around the Great Lakes as individual cities and as members of transnational municipal networks. The chapter is divided into three sections.

The first part—the *Introduction*—describes the severe constitutional constraints placed on local government within Canadian and American federal systems and the weak status of local governments in formal environmental governance structures around the Great Lakes. This section then shows that local governments have partially broken free of the formal bounds of federalism. Although this freedom manifests itself predominantly within informal—Type II—governance architecture, vital changes precipitating this newfound local government policy capacity took place in the formal, Type I, governance sphere within federal-sub-national intergovernmental relations. Particular emphasis is placed on the character of these changes, or what is referred to as the *mode of transition*. Two main conclusions are drawn from a comparative analysis of the mode of transition in

Europe and North America. First, in both cases, the expansion of multilevel governance, and hence local government policy capacity, is rooted in the re-balancing of formal relations between federal, state and provincial governments characterized by the adoption of a collaborative model of intergovernmental relations. Second, the formalization and institutionalization of multilevel governance has not gone nearly as far or as deep in North America as it has in the European Union. The ramifications of these findings are discussed in subsequent chapters.

The second section—*Domestic Interactions*—will trace the actual re-balancing of formal intergovernmental relations at the federal and sub-national level in Canada and the United States as it passed from a period of competition into a period of collaboration. In the process it will provide a picture of how formal authority pertaining to bilateral environmental cooperation is dispersed within the federal system of the United States and Canada and how, in the case of Ontario, a small but significant portion of that authority was delegated to local government, paving the way for the institutionalization of cross-border local government environmental cooperation in the form of the Cities Initiative.

The third and final section—*Explaining the Turn*—will discuss how the turn toward *collaboration* led to the mobilization of local government in its present form. Like earlier sections of the chapter, this section will demonstrate that the re-balancing of federal-sub-national relations led to the opening of political opportunities for local governments. However, this section will emphasize that the re-balancing of these relations has also (a) created functional imperatives for local government mobilization and (b) provoked local government political entrepreneurialism that

sought to maximize those opportunities and address those imperatives. In this manner, incorporating both ‘top-down’ and ‘bottom-up’ dynamics as explanatory variables satisfies Jeffery’s (2000) criteria for applying “a more encompassing conception of multilevel governance” (9), and parallels a similar shift in the European “structure of authoritative decision-making” (Marks 1997, 22) which “has been an internal one, rooted in a changed and changing relationship between central and sub-national authorities” (Jeffery 2000, 7).

Differentiating Formal and Informal Policy Capacity

Understanding the nature of American and Canadian federalism and intergovernmental relations is vital to an understanding of the place of local government within present environmental policymaking around the Great Lakes. As Andrea Gerlak (2000) observes, “a struggle between national supremacy and local autonomy pervades water management” (231). The fundamental question of who governs the waters, the essential balance between national and local policy capacity, is complicated presently by the fact there is no single locus of authority directing water quality management across the basin or in either country. Instead, environmental policymaking around the Great Lakes is an excellent example of multilevel governance. It is *multi-level* because authority is dispersed vertically between increasingly interdependent supranational, national, provincial, state, and local governments, and it is *governance* because that authority is also shared horizontally across borders, with non-governmental organizations and other societal actors in “self-organizing, interorganizational networks” (Rhodes 1996, 660). The

end result is that no single actor monopolizes political power over environmental policymaking.

Rather than a free-for-all, however, this system of multilevel governance is disciplined by the nature of the federal structure and the tenor of intergovernmental relations on either side of the border. Environmental policymaking, then, is the product of formal, constitutionally defined exchanges between actors constrained by the bounds of jurisdiction and hierarchy, and informal, contextually defined exchanges between the state and societal networks of stakeholders that take place outside those set bounds (Peters and Pierre, 2004). Likewise, local government authority draws on both formal and informal powers, hence determining the role of local government in environmental policymaking around the Great Lakes must account for both informal and formal structures and relations. Such a determination must also include a measure of the balance of both formal and informal sources of authority, since the former is likely to provide greater political and material resources for local governments and thus prove more effective for influencing policy (Jeffery 2000, 14).

Threadbare but for a Constitutional Straitjacket: The Weak Formal Powers and Severe Constraints of Local Government in Canada and the United States

A formal reading of the relations and structures within the federal institutional framework is necessary in order to provide the context for an examination of the “severe domestic institutional constraints” (Marshall 2005, 674) local governments face in exercising their influence on environmental policy around the Great Lakes

basin (March and Olson 1989). Such a reading makes readily apparent the weak formal powers ascribed to local governments.

Local governments in Canada and the United States are said to be creatures of the provinces and states. In Canada, they are barely mentioned in the Canadian constitution, except for section 92(8) which grants provincial government exclusive control over the creation, structure, policy functions, and financial resources of local government. Historically, in Ontario for example, the province conferred very limited and strictly defined powers to local government and maintained considerable influence over their day-to-day functioning through substantial conditional and unconditional grant programs, as well as through control over the ability of local governments to borrow money. In addition to this steady and predictable influence, the amalgamations of cities that took place in Ontario in the 1990s, often against the wishes of the local governments, underscored the observation that municipal governments are “vulnerable to capricious actions taken by their provincial governments” (Tindal and Tindal 2004, 204-5). Attempts by local governments to improve their standing in the constitutional structure have been quashed by the provinces. During the repatriation of the constitution in 1982, the Federation of Canadian Municipalities’ Task Force lobbied unsuccessfully for a formal recognition of local government in the new constitution (Tindal and Tindal 2000, 243). Most recently, in 2000, the Province of Ontario denied the City of Toronto the right to hold a referendum on becoming a ‘city state’ and gaining greater autonomy from provincial control (Sutcliffe 2004, 90).

In the United States, the status of local government within the federal system also goes unmentioned in the Constitution, which exclusively outlines the division of power between the federal and state government. States are unitary entities, and the degree of control that states maintain over local government is limited only by their own laws. This also means that the autonomy of local governments varies by state, as it does by province in Canada. Some states abide by the principles established by the restrictive Dillon's Rule doctrine (1865) which holds that local governments can only exercise powers which are "granted in express words" by state legislatures, or those powers deemed "essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable". Courts are able at any time to deny altogether even these limited powers (quoted in Vogel 2007, 258). Canadian courts have also traditionally followed Dillon's Rule when delineating the limits of local jurisdiction. The political capacity of cities under this rule is usually limited to providing traditional municipal services such as waste disposal, sewage, zoning, public works and public safety.

Yet, within the last hundred years or so, some states have adopted the principle of Home Rule which is "the power of local government to conduct its own affairs—including specifically the power to determine its own organization, the functions it performs, its taxing and borrowing authority, and the number, types, and employment conditions of its personnel" (Advisory Commission on Intergovernmental Relations 1981, 1). However, Vogel (2007) argues that the effects of Home Rule on local authority have been limited since state legislature still maintain strict control over local government and Dillon's Rule is held up in court

cases involving the interpretation of the limits of municipal authority, concluding that local government activism still cannot be accounted for by their formal authority (259). In Canada, Home Rule failed to develop at all (Valiante 2007, 1066).

The Weak Formal Role of Local Government within the Great Lakes Basin

From a narrow legal-constitutional interpretation of local government capacity, neither environmental policymaking nor cross-border relations are the business of local government in Canada and the United States. Consequently, according to Valiante (2007), the international status of the Great Lakes as a shared watershed between two countries has meant that “local governments are all but ignored in the formal agreements establishing the present system of Great Lakes governance” (1062). The clearest example of the exclusion of local government from formal governance structures around the basin is the fact that one of the foundational agreements for the joint management of the water basin by the United States and Canada, the Great Lakes Water Quality Agreement² (GLWQA) signed in 1972 and amended in subsequent years, only mentions local governments once and only with regards to the operation of water treatment plants (Valiante 2007, 162). This is despite the fact that the GLWQA relies directly on local governments for the achievement of many of its explicit goals across a broad range of issues (Valiante 2007). For example, Annex 2, dealing with the restoration of particular areas of concern through the establishment of Remedial Action Plans (RAP) requires the direct participation of local governments in whose jurisdictions those contaminated

² The Great Lakes Water Quality Agreement (GLWQA) between the United States and Canada was originally signed in 1972 and superseded by an agreement of the same name in 1978. The GLWQA was amended in 1983 and 1987.

areas are situated. Annex 3, dealing with phosphorous control, inherently requires municipal cooperation because of its authority over wastewater plants where phosphorous is treated. Annex 13, dealing with pollution from land-based activities such as run-off from agriculture, known as Non-Point Source pollution, requires the exercise of local government authority over urban planning.

Further evidence of exclusion is the fact that the bi-national commitments made in the GLWQA are implemented by subsequent domestic agreements between federal and sub-national governments without the participation of local government. For example, in Ontario the aims of the GLWQA are adopted, its programs planned and implemented, through a federal-provincial agreement called the Canada-Ontario Agreement (COA) which is renewed every five years. Here again local governments have only been given an advisory position within the executive body of COA. Also telling is the fact that the International Joint Commission (IJC), a bi-national institution composed of three American and three Canadian commissioners established under the Boundary Waters Treaty of 1909 to help resolve bi-national water disputes between the two countries and to act as a source of expertise on bi-national water issues, is planning in 2009 to release, for the first time in its one-hundred year existence, a report which presents recommendations directly to local governments. This pending report is not only additional evidence of the long-standing exclusion of local government in formal Great Lakes management and exchange structures, but an indication that perhaps local governments have finally arrived in the consciousness of the federal, state and provincial governments that have until now been the formal environmental stewards of the basin.

The general perception of the role local government plays in cross-border ecosystem management inside or outside the Great Lakes basin reflects the traditional absence of local government within cross-border governance structures. For example, Mingus (2003) surveyed the members of the Pacific Salmon Commission, a bi-national, cross-border resource management regime established under the Canada-United States Pacific Salmon Treaty of 1985, and asked what are the 'top-ten' state and non-state actors they have the most contact with. Whereas the most significant organizations were governmental, specifically federal, state and provincial governments, and though a broad range of non-state organizations were also identified, local governments were mentioned as top-ten actors by less than one per cent of the respondents.

An Unforeseen Expansion of Local Policy Capacity in Cross-Border Environmental Policymaking

And yet, despite little change in their formal standing, local governments have been engaging more meaningfully in environmental policymaking across borders with greater frequency than a formal reading would predict, either as individual local governments, as partners in temporary alliances, or as members of longer-term institutionalized forms of cooperation. A prime example of this invigorated participation within the Great Lakes basin is the recent establishment of the Great Lakes Regional Collaboration, a kind of task force composed of nine federal cabinet ministers, a congressional delegation, Great Lakes governors and mayors, as well as leaders of First Nations brought together in 2004 by a Presidential Executive Order for the purpose of establishing and prioritizing goals, structures, and steps necessary

to address environmental challenges to the basin including the threat of invasive species, the degradation of coastal habitat, the continued contamination of areas of concern, and the incorporation of sustainable development programs. In essence, it unofficially sets the groundwork for a much needed formal review and updating of the thirty-year old Great Lakes and Water Quality Agreement. To see local government at the policy-making table setting priorities and influencing the direction of a comprehensive basin-wide management plan—well before the implementation stage—is a new development and an upgrade in its heretofore role in the basin.

Another formidable example of individual local governments directly engaging in cross-border environmental management is the case of American Electric Power Corporation (AEP). In 2001, the City Council of Toronto instructed the City Solicitor to seek *Amicus Curiae* (Friend of the Court) status in a lawsuit against AEP launched by the United States federal government, eight states and twelve non-governmental organizations in a United States court³. The suit claimed that the company violated the Clean Air Act (CAA) by not including best available pollution reduction technologies when undertaking major modifications to its coal-fired electric plants. As one of the largest utilities in the United States, AEP was already the largest emitter of sulfur-dioxide and nitrogen-oxide in the country, pollutants which compromise both air and water quality in the basin. Toronto was granted Friend of the Court status in 2001 and filed an *Amicus Curiae* brief in 2005 demonstrating the

³ The states include: Connecticut, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. The non-governmental organizations include: Ohio Citizen Action, Citizens Action Coalition of Indiana, Hoosier Environmental Council, Valley Watch, Ohio Valley Environmental Coalition, West Virginia Environmental Council, Clean Air Council, Izaak Walton League of America, National Wildlife Federation, Indiana Wildlife Federation, League of Ohio Sportsmen, Sierra Club and Natural Resources Defence Council.

impact of transboundary air pollution from U.S. coal-fired plants on Toronto's population. The report estimated that half of all air pollution affecting Toronto comes from the United States and particularly from Midwest coal-fired plants like those belonging to AEP. That same year, a report published by the Ontario Ministry of the Environment concluded that transboundary pollution contributes to 2,750 premature deaths from air pollution (about half the province's total) and \$5 billion in environmental damage (City of Toronto, Staff Report, December 18, 2007, 5).

In 2007, a landmark out-of-court settlement was reached in the AEP case which mandated emissions reductions for nitrogen-oxide and sulfur-dioxide of 69 and 79 per cent respectively in coal-fired plants belonging to AEP, \$4.6 billion of upgrades, \$15 million in environmental penalties and \$60 million in clean-up costs (City of Toronto, 2007, 3). According to a staff report from Toronto's Medical Officer of Health, "this is the largest pollution reduction ever obtained from the owner or operator of a Clean Air Act stationary source" (City of Toronto, 2007, 3).

This was also the first time that the City of Toronto had initiated such a cross-border activity, using the American political and judicial system to achieve its domestic environmental and health policy aims. A high ranking official from the Environmental Protection Office (EPO) within the Toronto Public Health department, stated "I am not aware of other municipalities in Ontario, or elsewhere in Canada that have used this approach to deal with a transboundary air pollution problem" (City of Toronto, EPO correspondence December 1, 2008). It is also worth noting that the idea for filing an amicus brief originated from within the City of Toronto, from a report released by the Toronto Medical Officer of Health in 2000 and 2004 which

studied the economic and personal impacts of illness resulting from air-pollution. This report by a local government was quite novel at the time because its concern with the environment and health matters went beyond the traditional, narrow, constitutionally defined concerns of local government.

More importantly, the actions by the City of Toronto had an impact on the political and judicial process of a foreign country. The official at the EPO states that the brief was influential in assisting the parties in the United States to articulate their concerns about pollution from coal fired plants, in that “they could articulate the risks for health on not only American residents living downwind of old coal-fired power plants in the U.S., but could also demonstrate tremendous concern by Canadians living downwind. It demonstrated long-range transport issues, especially for ozone and particulates” (City of Toronto, EPO 2008). See Figure 5.

Furthermore, according to the EPO official, the multi-year consultations and preparations before the filing of the brief “enabled collaboration and knowledge exchange with American NGOs and legal colleagues, and greater publicity of the impact of transboundary pollution on both sides of the border, through enhanced media attention in both countries” (City of Toronto, EPO 2008). Finally, the EPO official argues that the publicity that was generated from the case put pressure on the Ontario Minister of the Environment to engage transboundary pollution and health issues. At the very first Shared Air Summit in 2005, a one-day meeting of experts and public officials from all levels of government across Canada and the United States hosted by the Ontario Minister of the Environment, Premier Dalton McGuinty announced that the province was seriously considering joining one of the fifty

lawsuits dealing with air pollution that were taking place in the United States. Finally, the EPO official also stated that another intended purpose of filing the amicus curiae brief was to influence the sentencing stage had the lawsuit not been resolved out-of-court.

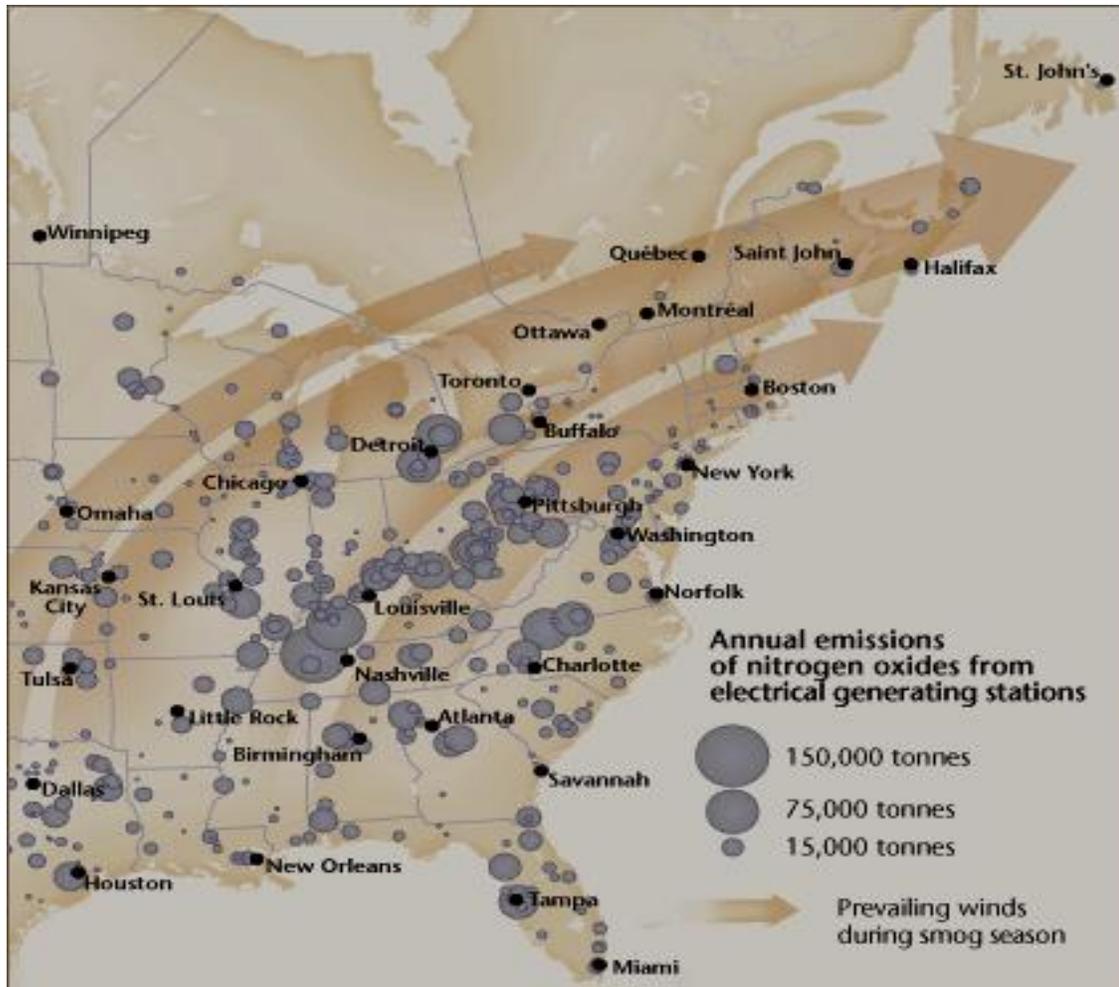


Figure 6: Transboundary Air Flows into Great Lakes

Source: Vincent and Fick 2000, 32-33⁴

⁴ Data Sources: Natural Resources Defense Council (Benchmarking Air Emissions of Electric Utility Generators in the Eastern U.S.); Environment Canada; Health Canada; Ontario Power Generation; Nova Scotia Power; Pollution Probe; Ontario Clean Air Alliance; Ontario Medical Association; David Suzuki Foundation

An indication that the strategy of using American political and judicial instruments to attain domestic aims by local governments in Canada was not an isolated incident but has become an embedded strategy, was the filing in November 2006 of a petition with the United States Environmental Protection Agency (EPA) to make a finding under section 115 (a) of the Clean Air Act (CAA) that air pollution emitted from 150 coal fired plants located in seven Midwestern states including Ohio, Illinois, West Virginia, Indiana, Kentucky, and Pennsylvania was endangering the health and welfare of Canadians (Ecojustice, letter to EPA dated Wednesday, July 30, 2008). The petition was organized by a Canadian nongovernmental organization called Ecojustice Canada, but its signatories included thirteen Canadian cities and municipalities from Ontario and Quebec including the local or regional governments of Windsor, Essex, Halifax, Chateauguy, Peel, Chatham-Kent, Cornwall, Durham, Ajax, Laval, Goderich, Gatineau and Toronto which played a central role in the initiative. A counsel for Ecojustice involved in the case stated that “Toronto encouraged others to sign on” (Ecojustice, phone interview November 27, 2008). Mayor Miller of Toronto states, “Both cases [AEP and EPA] are examples where the city of Toronto chose to act independently of the position of national governments. In a post free-trade world, where so many institutions are linked together, it is logical for cities to spread out” (GLSLCI interview David Miller 2010).

This was the first time that Canadian local governments had filed such a petition across the border directly with the EPA. It also signaled a change in local government consciousness and strategy. Rather than engaging American political and judicial actors as individual cities, local governments realized that there was

strength in numbers and formed a temporary alliance. The EPA petition brought forth by thirteen Canadian municipalities garnered intense media scrutiny and brought transboundary pollution again to the fore of the domestic political agenda on both sides of the border.

Furthermore, local government participation in cross-border environmental management has moved beyond these ad hoc and isolated activities and such participation is becoming increasingly institutionalized, which contradicts the findings of a Policy Research Institute (PRI) report sponsored by the Government of Canada which concluded that local government cross-border cooperation is sparse, it is predominantly bilateral in nature (i.e. between individual or very small groups of cities), and lacks institutionalization (PRI 2005). The most important example, of course, is the emergence of the Great Lakes and St. Lawrence Cities Initiative in 2003 as a transnational municipal network (TMN). The internal and external dynamics will be analyzed in more detail in subsequent chapters, but the key point here is that the Cities Initiative is increasingly engaged by all levels of government in environmental policymaking from both sides of the border and it is through this transnational municipal network that local governments have attained even greater access to both formal and informal decision-making structures.

For example, the Great Lakes Regional Collaboration Strategy mentioned earlier incorporated local government participation not on an ad hoc basis but through the inclusion of the Great Lakes and St. Lawrence Cities Initiative as a member of its Executive Committee and as the sole representative of regional local government interests. When state governors and state legislatures began deliberations in 2005 on

the creation of a Great Lakes Water Compact Council to regulate out-of-basin water diversion and other water quantity issues, the Executive Director of the Cities Initiative was the sole representative of regional local governments on its Advisory Committee. In March, 2005, Mayor Daley and Mayor Miller, as the founding chairs of the Cities Initiative, took part in a joint address before the Great Lakes Congressional Breakfast in Washington, D.C. It was the first time that a Canadian mayor had addressed this annual gathering of congressmen, governors, mayors, and other stakeholders. Miller notes, “I met a number of congressmen, Rahm Emanuel among them. I can call him up now if we need to reach the Obama administration” (GLSLCI, interview David Miller 2010). The Executive Director was also appointed by President Bush in 2006 to the joint United States and Canada Great Lakes Fisheries Commission which has been managing fisheries in the basin since 1954. The Executive Director of the Cities Initiative also represented the local government perspective on the Agreement Review Committee (ARC) set up by the Bi-national Executive Committee, working alongside officials from the Environmental Protection Agency and Environment Canada to formulate ideas on improving the Great Lakes and Water Quality Agreement. As a result, the Committee adopted a principle recognizing that local governments play a key role in the development and the implementation of the Water Quality Agreement.

The work of the ARC may appear symbolic, except when seen in the light of recent developments. United States Secretary of State Hillary Clinton and Canadian Minister of Foreign Affairs Lawrence Cannon agreed on June 13, 2009, that both countries would undertake a formal review of the Great Lakes Water Quality

Agreement for the first time in more than two decades. This announcement was based in part on the recommendations made by the Agreement Review Committee (ARC). If those recommendations relating to local governments are adopted by the new Water Quality Agreement, it will mark the first formal recognition of the role of cities in environmental management around the Great Lakes and surely a sign of their growing importance.

The Great Lakes and St. Lawrence Cities Initiative in particular exposes the deficiency of a purely formal reading of local government policy capacity in cross-border environmental policymaking. Hence, a formal reading does not explain the range of roles and the degree of influence local governments have attained over time, nor can it explain why or how the expansion of local policy capacity has taken place around the Great Lakes because these changes have not stemmed from changes in constitutionally defined formal relations.

This observation in this North American context accords with observations about the formal basis undergirding the expansion of the policy capacity of non-central actors in the European context. For example, Peters and Pierre (2004) observe that “the constitutional definitions of institutional competencies have remained remarkably intact...we have seen very few cases of constitutional reform accompanying the emergence of multilevel governance” (80).

A New Playground for Local Government Activity: Contrasting Type I and Type II Multilevel Governance

If not within the bounds of formal, constitutionally reinforced structures, then where has local policy capacity expanded? What we in fact see operating around the

Great Lakes are parallel and interdependent polities. Marks and Hooghe (2004) have demonstrated the simultaneous existence of two types of multilevel governance structures. On the one hand, we see the nested, non-intersecting, limited jurisdictions and defined responsibilities of the Type I multilevel governance structures that most closely resemble what we have come to understand as traditional federal arrangements. As stated, these formal arrangements have remained relatively stable and durable with local governments largely confined to playing the role of appendages of state and provincial governments—although some nascent changes are detected.

Rather, the expansion of local policy capacity around the Great Lakes has taken place most dramatically in the other, less formal, functionally specific, and jurisdictionally flexible Type II governance structures best described as exchange networks with the added characteristic that they also operate horizontally across national borders. These open structures provide more access-points for non-central actors to influence the decision-making process. A prime example of Type II governance structures is the aforementioned Great Lakes Regional Collaboration.

Acknowledging that Type I and Type II governance structures operate alongside each other, and that the expansion of local government policy capacity has taken place for the most part in the latter, does not tell the complete story because it does not examine the dialectical relationship between the two types of structures. This relationship has a direct impact on the behavior of transnational municipal networks. The more informal, Type II governance structures did not arise, nor do they operate, independently of the more formal Type I structures. Changes in the

style of policymaking, and the tenor of intergovernmental relations, within Type I arrangements preceded and prepared the ground for the emergence of Type II arrangements, which continue to operate within the confines of the formal Type I architecture (Marks and Hooghe 2004, 25).

In other words, the informal Type II structures are the product of a transition that has and continues to take place within Type I architecture, and the character of that transition within Type I relations still shapes the actors operating within those informal spheres. At the same time, the significant growth and increasing credibility of Type II governance structures has had a ‘spillover’ effect, precipitating greater institutionalization and formalization of previously informal local government relations within the Type I architecture. This ‘spillover’ of local government authority into formal structures is much more pronounced in the European context. More on this continental difference shortly.

If we follow a path dependent analysis approach and accept, for example, the observation by Munck and Leff (1997) in the field of comparative democratization that “transitions...are formative or founding moments” (343), then we become very interested not only in describing and comparing local government policy capacity in Type I and Type II architecture as separate spheres, but we become interested in the process of transition within the former in order to understand how it has spawned and shaped the latter. This is due to the fact, as Munck and Leff argue, “transitions matter because they generate fairly durable legacies that affect the post-transitional regime and politics. Different modes of transition are likely to have distinct consequences for a country’s politics” (1997, 345).

Although we are primarily interested in describing in this chapter the mode of transition in the North American context, it is here that a brief comparative multilevel governance approach proves especially enlightening. Type I structures in Europe and North America have both undergone a period of decentralization, and a transition towards a collaborative style of policymaking, that has opened up political space for the emergence of informal Type II governance structures and the increased participation of non-central actors such as local government. This is what Jeffery (2000) meant when he stated that the mobilization of sub-national actors in Europe is rooted in the changing relationship between central and sub-national authorities.

However, it is important to keep in mind that the mode of transition in Europe and North America has played out differently with unique consequences for the development of multilevel governance and local government policy capacity on these two continents. Type II governance structures emerged decades earlier in Europe simply because the transition toward collaboration between higher tiers of government and hence toward multilevel governance occurred much sooner and with greater intensity under the auspices of the European Union. The major impetus for the explosive proliferation of Type II governance structures such as transnational municipal networks was the signing of the Single European Act (SEA) in 1987 which introduced a new redistributive mechanism—Cohesion Policy and Structural Funds—and brought the European Community directly in contact with local governments for the first time by establishing a *partnership principle* which mandates that the massive amounts of structural funding be administered through partnerships between all levels of government including the local. In both Europe and North America, the

move towards a more collaborative model was initiated by elites located at higher tiers of government, not at the level of local government.

However, the expanding role of local government was embedded more formally in the European Union, for example through the partnership principle, through institutionalized programs such as Cohesion policy, through alliances with supranational actors such as the European Commission, and through their participation in formal intergovernmental forums such as the Committee of the Regions (COR). Only silhouettes of such formal relations are beginning to emerge in the North American context, hence local government participation in policymaking is not as embedded in formal, Type I governance structures in North America.

This point is important because transnational municipal networks in Europe and North America may share similarities of membership composition and policy concerns, since they are both composed of local governments that pursue similar goals in their internal and external relations, but as a result of these different exogenous conditions they differ in how their internal governance structures are organized, in their capacity to attain certain goals and their ability to interact with the external environment, and thus the style in which they pursue those goals also differs. Since the expansion of local government policy capacity in North America is embedded predominantly in informal, Type II, governance structures rather than formal, Type I governance structures, it stands on less certain ground. To repeat Jeffery's previous argument, the *quality* of intergovernmental relations matter and "formal structures...of intergovernmental relations are likely to provide more effective channels for policy influence than more informal interactions" (2000, 14).

Consequently, whatever position cities have achieved within the policymaking circle within the Great Lakes, whatever opportunities have been opened up for local governments to use their own creativity to break the bounds of their constitutional constraints, increase maneuverability, and participate in environmental management, cities are acutely aware of the tenuousness of their standing and it is this understanding that conditions their behavior. The weak-to-absent legal-constitutional basis for the existence of transnational municipal networks is more pronounced in the North American context. Therefore, what the next chapter will examine in more detail is that North American transnational municipal networks are, first and foremost, bridge-builders, eschewing conflict in favor of compromise and cooperation, and as such they have become important catalysts of closer regional integration because they seek out positive-sum gains.

Rebalancing Federal-Sub-national Relations and its Local Effects: Collaboration and Decentralization

The next part of this chapter sets out to describe the re-balancing of federal-provincial and federal-state relations, hence the changes in the formal type I structures, what Marshall (2005) calls the “shifting institutional tableau surrounding urban governance” (675). The dynamic perspective presented in this chapter comes from tracing the evolution of intergovernmental relations between the dominant actors in Type I governance structures—federal, state and provincial governments. This will demonstrate that as formal intergovernmental relations passed from a period of *competition*, with federal and sub-national relations determined by concerns with jurisdiction and structure, into a period of *collaboration* where the actors begin to

concern themselves with the quality of the decision-making process, specifically, it's openness and accessibility, and also begin to concern themselves with finding "a strategic alternative to zero-sum power struggles, directed towards building new frames for intergovernmental consensus" (Gualini 2003, 619), that it was this new emphasis on the process of collaboration and positive sum relations which opened the way for Type II structures like transnational municipal networks to be erected, tolerated and accepted. To echo an earlier quote by Bache (2008), this is a case of "dominant actors changing their values and preferences" (36). Federal, state, and provincial governments that had heretofore been preoccupied with jealously guarding their jurisdictions 'loosened up' and became permissive and even accommodating of new players, new governance structures, and new interactions.

This opening up of the political sphere (Heinelt and Niederhafner 2005, 76), in turn, provided an avenue for greater local government engagement in the decision-making process even though the formal institutional structures remained largely intact. Bache (2008) described the same move toward collaboration but in the context of the European Union's cohesion policy, arguing that "what began as a strategic response" (167) to the European Union's experimentation with a new redistributive mechanism "led to a deeper transformation in actor preferences over time. The most obvious example here is *the acceptance of multilevel and cross-sectoral partnerships as part of the institutional architecture* in states where this was a novel or underdeveloped mode of governance" (167) and, more importantly, "where little or nothing previously existed" (167). In North America too, we witness the emergence and acceptance of brand new informal governance structures on the shores of the

Great Lakes, such as the Great Lakes and St. Lawrence Cities Initiative, where such involvement was previously non-existent.

Domestic Interactions: Intergovernmental Relations in the Context of Canadian and American Federalism

The Evolution Towards Collaborative Intergovernmental Relations

Over the last sixty years, several models of intergovernmental relations have emerged to describe the patterns or periods of intergovernmental relations in Canada and the United States in the twentieth century. For example, in Canada, Harvey Lazar (1997) describes the different periods of intergovernmental relations as *cooperative*, *competitive* and *collaborative*. Andrea Gerlak divides U.S. intergovernmental relations into five periods. Both models locate periods of intergovernmental relations along a competition-collaboration spectrum defined by the prevailing dynamic, although different dynamics can and often do co-exist (Elazar 1990).

This chapter divides the twentieth century into two periods, a period of *competitive-cooperation* followed by a period of *collaborative-cooperation*. This simple typology acknowledges the rather obvious fact that some form of cooperation is always present in intergovernmental relations. What differentiates the two periods is that the former category entails intergovernmental relations that are defined by a preoccupation with durable governance structures and the exclusivity of jurisdictions, which gives these relations a competitive hue, while in the latter period the actors

begin to focus more on the quality and openness of the policymaking process, a flexibility of institutional design, intersecting membership at different jurisdictional levels, and the attainment of positive sum results conducive to collaboration.

(i) Competitive Cooperative Federalism in the United States

In varying degrees throughout the twentieth century the central player in United States environmental policy was the federal government. The centralization of authority in environmental policy at the federal level was not explicitly defined in the American constitution, but was enshrined in several separate articles that deal with commerce, property, and resources, which forms the legal basis both for the economic interests that have historically underpinned United States environmental policy and the federal government's dominant role. The primary source of federal authority on the environment is the commerce clause (Article I sec. 8) which gives Congress the authority to regulate interstate and international commerce. The federal government has used the commerce clause to uphold minimum environmental standards in order to remove a potential source of trade distortions and inter-state competition that could generate pressures for a regulatory 'race to the bottom'. For example, state and local governments have recently asked the federal government to harmonize ballast water regulations which would force all freighters entering any port in any Great Lakes state to undertake the same measures to prevent the release of harmful invasive species from discharged ballast water. Such harmonization would not only protect Great Lakes water quality but it would prevent ports from profiting financially from less rigorous standards.

Other powers include the tax and spending clause (Article I sec. 8), which gives the federal government the ability to fund environmental programs and to regulate state and local environmental policy by attaching conditions on federal monies transferred to states, thereby entrenching the imbalance of intergovernmental relations in environmental policy. The tax and spending clause has become a powerful regulatory instrument. The percentage of total federal outlays, transfers to state and local government, has steadily increased since Lyndon Johnson's Great Society, rising to a fifth of all federal expenditures during the administration of G.W. Bush. State and local governments depend on these transfers for roughly twenty per cent of their revenue (Benton 2007). The Environmental Protection Agency (EPA) alone spent \$60 billion on municipal sewage treatment in the period 1972-1990 (Deason et al. 2001, 186).

The property of the United States clause (Article IV sec. 3) gives Congress the authority to regulate the use of all lands belonging to the United States, which is significant in itself considering two-thirds of all land in the United States belongs to the federal government. Most importantly, the federal government has authority over natural resources. Finally, the supremacy clause (Article VI sec. 2) not only makes federal law the supreme law of the land, but provides the basis for the pre-emption principle which dictates that in a case where federal and state laws conflict, the former trumps the latter. These constitutional provisions give the federal government the potential for acquiring a commanding position in United States environmental policy, a position it began to seek only at the start of the twentieth century.

It took the federal government some time to fully assert its formal authority and become the central actor in resource management which was originally a responsibility for the most part taken up by state and local authorities. Centralization moved forward after the turn of the last century as the federal government was called upon to carry out immense projects for irrigation, navigation, power production and flood control which outstripped the administrative capacity of states and local government (Gerlak, 235). The significant steps toward centralization of resource management was perhaps best illustrated by the establishment of river basin authorities such as the Tennessee Valley Authority in 1933—the first and to this day largest regional planning agency of the federal government. During the 1950s, the federal government also began using the courts to assert its sovereignty over water quality management when faced with opposition from states and local government.

The strong current of centralization carried over into the period of *competitive-cooperation* which characterized American intergovernmental relations from the 1960s to the 1980s capped by the creation of the Environmental Protection Agency (EPA) in 1970. Crampton (1984) states, “in 1970, EPA wrote the regulations, set the standards, issued the permits, and did most of the monitoring, inspection, and enforcement work involved in ensuring compliance with national environmental rules” (4). Indicative of the current of centralization of this period, the passing of the 1972 Clean Water Act (1972) gave the EPA the task of regulating the discharge of pollutants at the state and local level. Gerlak (2006) argues that “the CWA was the first environmental law to place heavy burdens on local government ... and represented the first time that state actions had ever been subject to such complete

federal control” (231). The increasing federal intrusion into sub-national regulatory policy coincided with a twenty-five per cent increase in federal transfers to states and local government between the years 1973-74 under the Nixon administration (Benton, 376). John Kincaid (1990) explains that the imbalance in intergovernmental relations in the command-and-control environmental regulatory system prevailed “by compensating state and local officials for federal intrusions into their authority with fiscal assistance and with federal assumption of policy decisions too painful to be made by some state and local authorities” (143).

On the other hand, a counter-current also emerged during the period of competitive-cooperation, as the federal government began to delegate decision-making power with regards to implementation and enforcement to the states. Granted, the states were largely seen as the “primary operational arm of a national network for environmental protection” (Crampton 1984, 5), but they were more than just an appendage of the federal government. The Water Resources Planning Act (1965), for instance, gave states equal standing with the federal government in river basin commissions set up to coordinate water management, while the National Water Commission (1968) recommended the expansion of local water management. The concurrent centralizing and decentralizing tendencies collided over where jurisdictional lines should be drawn. Fierce debates surfaced about the proper division of decision-making power framed as zero-sum games between a centralized, federal command-and-control model and a model that gave states greater leverage.

(ii) Competitive-Cooperation in Canada

A period known as *competitive-cooperation* also existed in Canadian federalism, where a preoccupation with structure and protecting government jurisdiction dominated environmental policymaking. However, unlike the United States, what fueled the competition was not burgeoning federal authority coming up against increasingly assertive states, but that dominant provincial governments were being asked to accommodate a role for an otherwise weak and timid federal government.

The Canadian constitution set the ground for one of the most decentralized environmental policies in the Western world (Rabe 1999) in terms of authority granted sub-national governments. As in the United States, control over the environment was not explicitly addressed in the Canadian constitution, and the allocation of authority over environmental policy emerged by piecing together the division of powers between the federal government and the provinces outlined in Section 91 and Section 92. The constitution gave the federal government control over criminal law, sea coast and inland fisheries, navigation, shipping and foreign relations, while delegating authority over natural resources, property rights and provincial public lands to the provinces.

This bifurcation of constitutional jurisdiction weakened the Canadian federal government's position in environmental policy and brought about several key differences between the allocation of American and Canadian environmental policymaking authority. A major difference between the two countries is that the supremacy clause allows the United States federal government to overrule state law,

while the Canadian government cannot implement treaties which affect provincial jurisdiction. Hence, the lack of a supremacy clause in such a diffuse, cross-jurisdictional policy field means that environmental policymaking in Canada has required federal-provincial diplomacy from the very beginning whereas in the United States the constitutional strength of the federal government has brought about command-and-control in environmental policy.

Furthermore, Canadian federal-provincial diplomacy has largely been marked by federal restraint and deference towards provincial governments, partly on account of the latter's control over natural resources including lakes and rivers. As Fafard argues, "although both orders of government have the constitutional jurisdiction to act [on environmental policy], on balance provinces have been more aggressive in asserting their jurisdiction....the federal government has been comparatively timid to assert or even to test the full extent of its constitutional authority" (1998, 205).

Initially the meekness of the federal government in environmental policy was attributed to its weak constitutional position (Gibson 1973; Lundquist 1974), but over time other forces were seen to be at play such as fluctuations in the business cycle (Hoberg 1993) and fluctuations in the public's interest in the environment (Harrison 1995a). The emergence of stagflation in the early 1970s sharply turned the electorate's focus from the environment to the economy. Since environmental protection was no longer a national political priority for voters, it removed the political incentive for a confrontation with the provinces. With no groundswell of popular opinion to mitigate the political costs of such a confrontation, the federal

government largely surrendered to the economic concerns of the provinces (Harrison, 1996).

Yet, rather than painting the federal government as a victim of political circumstance, Harrison (1996) argues that, during periods of waning public interest, federal governments are more than satisfied to “take advantage of jurisdictional uncertainty by ‘passing the buck’ to jurisdictionally defensive provinces” (162). This deference has been especially pronounced in relations with provinces whose economies were heavily dependent on natural resources, for example British Columbia (forestry) and Alberta (oil and gas). Plus, the federal government was particularly cautious not to provoke separatist sentiment in Quebec by introducing any environmental legislation that could be interpreted as interfering in the province’s hydro-electric and pulp-and-paper industries (Skogstad 1996; Fafard 1998). The result was that environmental policy was in the hands of provincial officials which were insulated from any external pressures to adopt extensive environmental regulations.

A noticeable shift occurred towards the end of the 1980s, when a second wave of environmentalism hit Canada. The growing importance of the environment to the electorate, and the increased salience of issues such as acid rain, provided an impetus for the federal government to play a larger role in the environment, offsetting the constitutional constraints and provincial resistance that had stifled federal involvement until that point (Harrison, 1996). Grassroots pressure from local environmental groups and coalitions such as Greenpeace and Sierra Legal Defense Fund, as well as the strengthening of the overarching international environmental

regimes in the wake of the Brundtland Report (1987), the release of the European Union's Fourth Environmental Action Plan (1987) and the United Nations Conference on Environment and Development (1992), combined to create upward and downward pressures on the federal government to assert itself on the environment.

As a result, the federal government and the provinces came into direct conflict over jurisdiction in environmental policy, most notably in the Supreme Court case *R. v. Crown Zellerbach* (1988). A forestry company in British Columbia was dumping waste in the Pacific Ocean, but still within provincial waters. The federal government argued that the action violated the Ocean Dumping Control Act and thus invoked the "national concern" aspect of the Peace, Order, and Good Government (POGG) clause of the constitution, which, the federal government argued overrides what had been historically provincial jurisdiction. Holland et al. (1996) argue,

The political ramifications were obvious: acceptance of this argument would not only establish a new federal environmental jurisdiction over both national and provincial sea water but also confer a *prima facie* legitimacy on federal regulation in almost any environmental policy deemed to be of national interest (46).

Despite vehement opposition from British Columbia and Quebec, the Supreme Court decided in favor of the federal government. The effect of international standards on the Court's thinking can be seen in its reference to several United Nations reports on marine pollution in the decision.

Emboldened by their expanded powers, the federal government passed several pieces of important legislation including the Canadian Environmental Protection Act (CEPA) in 1988, an amendment to the Pulp and Paper Effluent Regulations in 1990,

and the Canadian Environment Assessment Act (CEAA) in 1992 (MacKay 2004, 32). These three pieces of legislation affirmed Ottawa's role in regulating toxic substances which until then was a provincial domain, allowed the federal government to issue pollution control permits separate from the provinces, and it created a statutory obligation for federal environmental impact assessments for certain development projects (MacKay 2004, 32).

Two other important cases reinforced Ottawa's role in environmental matters. In *Friends of the Oldman River Society v. Canada* (1992), the Supreme Court ruled that the federal government was obliged to undertake an environmental assessment prior to the construction of a dam in Alberta, arguing that the federal right to regulate navigable waters superseded the province's control over the river bed. The case is also noteworthy for the fact that it was brought forth by local environmental groups who exercised a *mandamus* order that obliged the federal government to act, demonstrating the effects of upward pressure from local environmental groups on the mobilization of the federal government.

The *Canada v. Hydro Quebec* (1997) case involved a Quebec utility company charged with dumping polychlorinated biphenyls (PCBs) into the St. Maurice River and failing to report the discharges. Both actions were in contravention of the Canadian Environmental Protection Act (CEPA). The Supreme Court rejected Quebec's claim that CEPA had intruded into an area of exclusive provincial control, arguing instead that the federal government's exercise of criminal law power for the prohibition of toxic substances was valid.

These three rare examples of environmental litigation in Canada strengthened and expanded the federal government's powers in environmental matters vis-à-vis the provinces by the Court's recognition of the principle of national concern, the federal exercise of criminal law, and the POGG clause. However, the Supreme Court was also careful in its decisions to limit federal intrusion into provincial jurisdiction and thus prevent the pendulum from swinging completely the other way by reiterating its longstanding position that protection of the environment required cooperation from both levels of government. In its ruling in *Crown Zellerbach*, for instance, the Court established the principle of 'provincial inability' which stated that federal intrusion on provincial jurisdiction could occur only when the failure of one province to act on a matter had an effect on other provinces (Baier 2002, 27). Also, the court ruled that any federal legislation referred to for the purpose of justifying federal intrusion must also have "a singleness, distinctiveness, and indivisibility that clearly distinguishes it from matters of provincial concern" (Richards 1991, 60).

Nonetheless, on balance, the Court's decision did soften the relative provincial monopoly on environmental policymaking by expanding the federal government's jurisdiction and thus laid the groundwork for the possibility in the near future of a more balanced intergovernmental relationship between the two levels of government and for greater collaboration, a relationship which was soon made manifest.

(iii) Collaboration in Canada

Starting with the signing of the *Statement of Interjurisdictional Co-Operation* (1990), federal and provincial governments in Canada entered a period of

collaborative-cooperation with both levels committing themselves to multi-stakeholder consultation and cooperation on environmental matters. A preoccupation with structure and jurisdictional competition gave way to pragmatism, with both sides seeking to minimize intergovernmental conflict. Collaborative federalism was further institutionalized with the establishment of the Canadian Council of Ministers of the Environment (CCME) in 1993 as the chief intergovernmental organization responsible for coordinating intergovernmental environmental policy comprised of federal and provincial environmental ministers.

The signing of the Canada-Wide Accord on the Environmental Harmonization in 1998 not only entrenched the CCME as the location for the drafting of environmental standards, but institutionalized the principle of stakeholder participation, a goal made explicit in its guiding principles. Alcantara's (2005) analysis of this new, more open intergovernmental policy process leading to the creation of dioxin and furans standards reveals that "societal actors did have a substantial influence on the process and the outcome" (175), an observation in stark contrast to previous, closed periods of intergovernmental relations. Stakeholders influenced the policymaking process through various input mechanisms including advisory groups composed of representatives from industry, non-governmental organizations and local government as well as a series of national stakeholder meetings in 1999, 2000 and 2001 (Alcantara 2005, 166).

(iv) Towards Collaboration in the United States

A few years before the Canadian courts were laying the groundwork for the rebalancing of intergovernmental relations towards a more collaborative model, the Reagan administration began introducing reforms which extended the move away from what James Stever (1993) termed the *top-down executive-centered intergovernmental management model* to one that placed a greater onus on sub-national level initiative, planning and implementation. Indicative of this period, Reagan's decision to reduce federal funding of the Water Resource Council and the River Basin Commissions suggested, more and more, "that states were to go it on their own" (Gerlak, 238). To illustrate further, the regulation of water quality was gradually delegated to the states, starting with the National Pollutant Discharge Elimination System (NPDES) which oversees point source discharges into water systems. The 1987 amendment to the Clean Water Act reinforced this decentralization by establishing the Clean Water State Revolving Fund (CWSRF) which gave states greater discretion and responsibility in planning, funding and implementing wastewater programs.

As the federal government began its retrenchment, new governance structures emerged to fill the void. Interstate compacts to restore and protect water basins emerged. Most notably, the Chesapeake Bay Agreement was signed in 1983 establishing the Chesapeake Bay Commission consisting of fifteen state legislators and three state governors from Pennsylvania, Virginia and Maryland, as well as three citizen representatives to oversee and coordinate environmental efforts related to the

protection and restoration of the Chesapeake Bay. State courts even began to adjudicate water rights cases without opposition from the federal government.

Gerlak (2003) argues that as the federal government continued its retreat during the 1980s and 1990s, a century of centralized national water policy gave way to an era of “hyperpluralism” (243) where competing interests from an increasing number of players created a “contested and volatile” (243) policy landscape.

As a response to the process of decentralization and fragmentation of national water policy and the growing hyperpluralism, intergovernmental relations in the United States entered a phase of *collaborative-cooperation*, or what Gerlak (2003) terms ‘pragmatic federalism’ (Gerlak 243). According to Gerlak, pragmatic federalism “has evolved to fill the absence of any national guiding water policy. Today’s federalism recognizes the piecemeal and fragmented approach that has come to characterize the water policy arena” (243). Pragmatic federalism is characterized by expanded consultations between new stakeholders and an adaptable management process (Kincaid 1999), a process akin to the International Watershed Initiative (IWI) developed by the International Joint Commission. Structure and jurisdiction are deemphasized during this period in favor of shared power and decision-making, signaling an increase in the breadth and depth of multilevel governance. Gerlak argues, “The division of authority or locus of decision making is less important under this variety of federalism. Process reigns supreme. Relying on a diverse set of approaches and tools, it strives to be more accessible, with improved processes and greater coordination” (Gerlak, 243). In short, federal and state governments became accommodating of new governance structures.

A notable outcome of this new approach was the establishment of programs and institutions around areas defined by particular problems and particular watersheds, areas that are referred to as *problemsheds* (Gerlak, 243). Again, perhaps the best illustration of this new approach is the International Watershed Initiative and its multi-scalar, multi-actor management of particular watersheds including the St. Croix River (Maine), the Red River (North Dakota, Minnesota, Manitoba), Rainy River (Minnesota, Ontario), and the Souris River (Saskatchewan, North Dakota, Manitoba). Future watershed initiatives are being considered which include the Great Lakes.

In essence, this development signaled the regionalization and further fragmentation of national water policy in the United States, illustrated by the proliferation of new, informal regional institutions such as the Great Lakes Regional Collaboration and the Great Lakes and St Lawrence Cities Initiative (GLSLCI), and an increasing profile and presence of existing regional organizations such as the Great Lakes Commission, Great Lakes United, and the Council of Great Lakes Governors. The division of the policy process according to the unique geographic, ecological, political and social circumstances of each *problemshed* gave rise to an even greater fragmentation of national environmental policy as the federal government ceded an ever greater share of the responsibility for water management to these informal regional bodies. Illustrating this new era of water policy, in 2003, the Department of the Interior's *Water 2025* initiative on conservation issues stated that the "principles of federalism and fiscal realities make it clear that these decisions cannot and should not be driven from the federal level" (quoted in Gerlak, 242). The dramatic re-

balancing of federal-sub-national relations was complete. The stage was set for the expansion of multilevel governance.

The Impact of Decentralized-Collaboration on Local Government: the case of Ontario

The case of Ontario illustrates the impact that the transformation towards a decentralized-collaborative model of intergovernmental relations has had on local policy capacity around the Great Lakes. The effects of collaboration that began to characterize federal-provincial relations in the late 1990s initially took some time to trickle down to local government. During the Conservative Government of Premier Mike Harris (1995-2003), Ontario actually experienced one of the greatest periods of provincial-local conflict in Canadian history. Under the banner of a Common Sense Revolution, the Harris government undertook an aggressive policy of ‘disentanglement’ which sought to eliminate shared jurisdictions between levels of government. Although the purported goal was greater clarity and efficiency in policymaking and service delivery, the unquestionable result was a major downloading of services to local government minus the necessary funding. On the positive side, the provincial government, seeking to ameliorate municipal frustration at having to carry these new burdens, increased the proportion of unconditional grants in provincial transfers, thereby giving local government greater autonomy over how those funds would be dispensed. However, only in the twilight years of the Conservative government, when public support for the Common Sense Revolution was petering out and popular dissatisfaction with reduced social programs and the deterioration of municipal services was leading to almost certain electoral defeat in

the 2003 elections, did local governments begin to see the fruits of collaboration and the expansion of their policy capacity.

A new era of local-provincial relations was heralded with the signing of the Memorandum of Understanding associated with the Ontario Municipal Act (2001), which stated that the provincial government is “committed to cooperating with municipalities in considering new legislation or regulations with a municipal impact” (Province of Ontario, Memorandum of Understanding between the Association of Municipalities of Ontario and the Province of Ontario 2001, 2). The Municipal Act came into force on January 1, 2003, and recognized municipalities for the first time as ‘natural persons’ which gave them broad regulatory authority—much like individuals and corporations—to conduct their day-to-day business without the need for specific legislative authority. The Act also instructed the courts to interpret their spheres of jurisdiction broadly. Furthermore, municipalities were recognized for the first time as responsible and accountable governing bodies. According to the Ontario Ministry of Municipal Affairs and Housing website, the Act “has brought about a new relationship between the municipal sector and the province based on mutual respect, consultation and cooperation” (Ontario Ministry of Municipal Affairs and Housing, 2009).

A string of judicial decisions strengthened the case for expanded local government involvement in environmental governance by conferring on local government a responsibility for the protection of the general welfare of its citizens which explicitly includes health and the environment thus going well beyond the specific responsibilities for sewers, water treatment, flooding etc. that previously

defined the narrow scope of local jurisdiction under Dillon's Rule. In the *Canada Ltee v. Hudson* case in 2001, the Supreme Court of Canada upheld a Quebec municipality's ban on pesticides arguing that the Town of Hudson could refer to its "general welfare" powers to pass bylaws protecting the health of its citizens. In the *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary* (2004) case, the Supreme Court reviewed the new municipal powers and decided, according to Justice Bastarache, that "this shift in legislative drafting reflects the true nature of modern municipalities which require greater flexibility in fulfilling their statutory purposes" (quoted in Valiante 2007, 1069). The Ontario Court of Appeal ruled in *Cropflife Canada v. Toronto* (2005) that the new municipal powers "are to be interpreted broadly and generously" (quoted in Valiante 2007, 1069).

Following closely on the heels of these decisions, Sutcliffe (2007) argues that two subsequent pieces of legislation, the Municipal Statute Law Amendment Act (2006) and The Stronger City of Toronto for a Stronger Ontario Act (2006) gave municipal governments an even greater legislative flexibility. By allowing the city "to act on any local issues that has not been explicitly identified as a matter of exclusive provincial interest" (Silva quoted in Sutcliffe 2007, 257), the City of Toronto Act significantly softened the *ultra vires* principle that has historically undergirded Ontario law, which states that local governments can only act in those areas specifically identified by legislation. More importantly, both these laws grant cities broad, general powers with regards to "economic, social and environmental well-being" as well as "health, safety and well-being of persons" (Province of

Ontario, An Act to Amend Various Acts in Relation to Municipalities, 2006, chapter 32).

In essence, these developments signified a dramatic reinterpretation of Canada's Dillon's Rule. The decision of Toronto, and other Canadian municipalities, to file an amicus brief in an American court in the aforementioned AEP case and to subsequently file a petition with the EPA with regards to coal-fired plants in the American Midwest, is not only a response to these new mandates to protect health and the environment and thus the general welfare of its citizens, but it also drew on these new, broadly defined spheres of jurisdiction in their pursuit of these new aims. It is this string of legislation and judicial decisions which opened up the sphere of environmental policymaking *and* bilateral environmental policymaking for Canadian local governments, and set the ground for them to operate within a transnational municipal network institutionalizing cross-border environmental cooperation between local governments. Mayor Miller of Toronto states that the new legislation authorized local government to cooperate with other governments other than the provinces, and even though he argues that "the Cities Initiative would have emerged regardless of the new laws", cities in Ontario feel more secure stepping outside their narrow constitutionally defined jurisdictions because "now we have something to point to if we are ever challenged" (GLSLCI interview David Miller 2010).

In 2002, Fowler and Siegel observed that despite the province's stubborn reluctance to grant municipal governments greater constitutional standing, the period of disentanglement and restructuring of local government, coupled with the public's rejection of the command-and-control style of Conservative rule, has prepared the

grounds where “local government will gradually obtain a de facto status as real governing and policy-making bodies, which provincial governments would never allow them to attain de jure” (14). Local governments are much closer to attaining that status than Fowler and Siegel predicted or imagined.

Local governments have also sought and attained greater cooperation and influence at the federal level, despite the fact that the constitution did not include a basis for any formal federal-local relationship, either through individual lobbying or collectively through such lobbying organizations as the Association of Municipalities of Ontario (AMO) and the Federation of Canadian Municipalities (FCM). Sutcliffe (2007) argues there are three fundamental motivations that drive local government to seek to influence the federal government. First, legislative decisions made at the federal level have direct impact on local government across a number of policy issues including the environment. Second, the federal government provides some funding directly to municipal governments. Finally, the federal relationship with the provinces indirectly affects local government. For example, cuts to federal transfers to provincial governments have led to cuts in provincial transfers to local government. The creation of the Canada Infrastructure Works program in the 1990s injected \$2 billion for local infrastructure projects, and that money was supplemented by the Canada Strategic Infrastructure Fund, the Municipal Rural Infrastructure Fund, and the Border Infrastructure Fund (Sutcliffe 2007, 258). Keating’s observation in 1991 that, “the federal level has no direct links with local governments and provides virtually no resources for them” (59), is therefore no longer accurate at this point, and the federal-local relationship has changed in even more important ways since then.

Furthermore, in 2002, the Liberal Party Task Force on Urban Issues set up by Prime Minister Jean Chretien released its report which concluded with a firm commitment to the expansion of the collaboration model down to local government, stating that “strong urban partnerships and tripartite agreements should be developed between and among all orders of government as well as with the private sectors. Provincial and municipal leaders need to be involved in decisions that affect them” (quoted in Sutcliffe 2007, 265). The next Prime Minister, Paul Martin, took up the mantle by promising local governments a “New Deal”, which he delivered in part through the creation of a Minister of State (Infrastructure and Communities) and the institution of new funding mechanisms by providing cities with a Goods and Services Tax (GST) rebate and a share in the federal gas tax (Sutcliffe 2007, 265) that will transfer \$7 billion and \$1.86 billion respectively to municipalities over the next few years, with much of that money for infrastructure projects that meet environmental objectives of sustainability. These new federal-local linkages that have emerged during the period of collaborative cooperation are significant if one pauses to consider for example that in 1978 the federal government’s Ministry of State for Urban Affairs was dismantled just seven years after its establishment as a result of the Ontario government’s zealous defense of its control over local government and its opposition to direct contacts between federal and local governments.

In stark contrast to previous eras of federalism, Prime Minister Martin underlined the spirit of this new collaborative period of intergovernmental relations in Canada by stating, “We cannot as a nation, remain isolated inside the old silos that prevent partnership between the orders of government. If we do so, we risk

sacrificing the path ahead for some kind of nostalgia” (Sutcliffe 2007, 265). In May 2009, the Great Lakes and St. Lawrence Cities Initiative published a document titled, *At the Shoreline: A Mayors’ Collaborative Action Plan to Protect the Great Lakes*, calling for the establishment of a trilateral collaborative forum for the federal, provincial, and local governments on environmental issues. Such a trilateral forum has never existed, and although such an official forum does not yet exist *in toto*, the first tripartite meeting of government officials dealing with environmental issues around the Great Lakes was held in October 2009, and this in itself marks a radical departure from the previous era of intergovernmental relations.

Explaining the Turn Toward Collaboration and the Expansion of Local Government Policy Capacity

Alongside the growing trend toward collaboration, the second important dimension to the transition occurring within Type I governance structures that requires attention has been the process of decentralization in North America because it too has factored heavily in the mobilization of local government participation in environmental policymaking and in particular the shaping of the structure and behavior of transnational municipal networks. Again moving forward from a process-oriented, path-dependent approach that acknowledges the formative effect of transitions, Kelleher, Batterbury, and Stern (1999) argue that “the *degree* of decentralization and the *type* of de-concentration occurring...inevitably shapes the relations between key actors” (viii) which in turn determines the breadth, depth and contour of multilevel governance (Hooghe 1996). Canada’s environmental policymaking was already one of the most decentralized in the Western world, with

formal policy capacity residing at the level of provincial government. The degree of decentralization in Canadian environmental policymaking was limited in that it did not seep past the level of provincial governments downward to local government. The most dramatic degree of decentralization of water policy across the Great Lakes basin took place on the American side of the border, and this brought intergovernmental relations in Canada and the United States into greater alignment as the locus of decision-making authority shifted towards the sub-national level.

The fact that greater authority for environmental policymaking in the basin was now located in the provinces and the states was a critical development and had two effects on local government. On the one hand, the significant degree of dispersion of authority downward to provinces and states also brought the locus of decision-making authority one step closer to local governments. Local government on both sides of the border could utilize already existing local-provincial and local-state channels of communication to engage their respective sub-national governments who could then directly influence environmental policy in the basin. On the other hand, locating more authority over environmental policymaking in provinces and states that have traditionally subordinated environmental policy to economic interests created a leadership gap and weakened accountability structures as these governments failed to step up and fill the void left by federal government retrenchment in water quality management. This accountability gap presented both an opportunity and a functional imperative for increased local government mobilization.

Rabe (1999) early on noted the problems of moving towards a more decentralized Canada-model of water governance. Comparing the pollution

prevention programs in four Canadian provinces and four American states, Rabe (1999) concluded that a more robust federal presence in United States water policy accounted for better pollution prevention measures in the states in part because the greater interaction between the two levels of government, even to the point of open conflict, had often coalesced “into a single system of positive-feedback, each encouraging the other to enact stronger reforms than might otherwise occur” (Baumgartner and Jones quoted in Rabe 1999, 291).

In Canada, the absence of the federal government in water policy has meant that provincial officials are autonomous and insulated with little outside pressure put on them to innovate. This stagnation occurs in large part because “the bottom line is not environmental protection here, but economic development” (Harrison quoted in Rabe 1999, 290). Rabe notes that “provinces are clearly reluctant in any way to alienate industries that might transfer investments to less-rigorous provinces” (1999, 290).

In contrast, in the United States, Hanson (1992) argues that the “the force that is really moving pollution prevention forward is the federal government” (quoted in Rabe 1999, 299). The negative consequences of accelerated retrenchment of the federal government from water management was identified by former director of EPA, William Reilly, who stated, that “unless the EPA is pushing state regulators, a culture of transgression and apathy sets in” (Duhigg 2009), which echoes an aforementioned statement by Matthew Crum, a former official with West Virginia’s Department of Environmental Protection, that “if you don’t have vigorous oversight by the feds, then everything just goes limp” (Duhigg 2009). Similarly, the EPA and

other United States federal agencies have been the main drivers of water quality regulation in the Great Lakes basin, with the Ontario government following their lead. The retrenchment of the federal role within environmental policymaking, and the move toward a Canada-model within the Great Lakes, has weakened the regulatory system on both sides of the border.

In part, the turn toward multilevel governance through the dual processes of *collaboration* and *decentralization* in both countries can be seen as a functional response to the growing complexity of environmental policy based on a normative assumption that governance based on multiple jurisdictions, which includes local government, can deal more efficiently with that complexity than centralized government, a logic which underpins the establishment and functioning of so-called aforementioned *problemsheds*. In support of this thesis, Marks and Hooghe argue that,

...governance must operate at multiple scales in order to capture variations in the territorial reach of policy externalities. Because externalities arising from the provision of public goods vary immensely—from planet-wide in the case of global warming to local in the case of most city services—so should the scale of governance (16).

Environmental policymaking around the Great Lakes reflects one of the central characteristics of multilevel governance, which is that “governing does not have a uniform pattern but is defined differently owing to the nature of the policy problems” (Peters and Pierre 2004, 84). This is especially valid considering that the management of water quality is inherently a ‘glocal’ issue, one that is simultaneously local and global in scale, since it requires management of pollution from activities taking place at international, national, regional and local scales. Auer (2000) argues

that under these conditions “the state-centered view offers few insights as to the constitutive, organizational and human resource requirements for effective policy” (175).

In particular, the development and nurturing of more informal, Type II governance structures such as policy networks complements traditional, formal, Type I structures and helps alleviate collective action problems that stem from strategic bargaining in a complex, interorganizational environment. Borzel (1998) argues “such informal linkages, based on communication and trust, overlap with institutionalized structures of co-ordination” and “they provide redundant possibilities for interaction and communication (262). This reasoning echoes, as you may recall, the argument by Andersson and Ostrom (2008) that “a governance system that manages to distribute capabilities and duties in such a way that perverse incentive and information problems at one level are offset to some extent by positive incentives and information capabilities or actors at other levels, will achieve better outcomes than either a highly centralized or fully decentralized system” (73). The informal networks identified by Borzel are not necessarily sites of decision-making, but “for the information, communication and exercise of influence in the preparation of decisions” (262) which reduce the transaction costs in complex decision-making because “they provide a basis of common knowledge, experience and normative orientation” (262). In part, Type II governance structures provide the kind of ‘complementary back up institutions’ which Andersson and Ostrom (2008) argued improve *polycentric* governance systems, as we discussed in Chapter Two. Hence, one way to interpret the expansion of multilevel governance and local government

policy capacity is that higher tiers of government recognized the utility of both as supplementary resources for the regulatory system.

A competing and more critical interpretation for the expansion of multilevel governance is provided by Peters and Pierre (2004), who argue that “informal patterns of political coordination could in fact be a strategy for political interests to escape or by-pass regulations” (85), and that, according to the authors, the non-central actors, like local governments, find themselves trapped in a Faustian bargain where “the capacity to govern has been sold, or at least has been downgraded, in an attempt to achieve more open and inclusive bargaining, and in order to circumvent formal structures that have been central to governing” (2004, 88). It is a Faustian bargain for local governments because, as will be demonstrated shortly, increased decision-making through informal multi-level governance structures provides local government with opportunities for greater participation in the policymaking process, but it also increases the costs they bear as a result of the downgrade in the governing capacity of the entire system.

Peterson and O’Toole (2001) identify three negative tendencies of shifting decision-making to Type II network governance structures which weaken the democratic legitimacy of the decision-making process: (1) network governance leads to ambiguity in the policy process about “when and by whom important decisions are made” (309) which results from a fundamental lack of transparency within the process (2) networks suffer from systematic problems of accountability which privileges private power (i.e. business) since, “increasingly ‘hollow states’, which emerge when power shifts from public to private governance and central to sub-

central levels (see Milward, Provan, Else 1993) may become paper tigers in terms of policy compliance” (310) and (3) networks composed of multiple stakeholders exhibit drift, indecisiveness and general lack of leadership in which “governments are unable to provide clear direction” (310), and which consequently leads to incrementalism. Consequently, local communities and local governments incur the increasing costs of deteriorating water quality in terms of quality of life as well and the cost of having greater responsibilities placed on them for environmental management. Both costs are associated with the weakening governance structure precipitated by the retrenchment of the federal and sub-national governments from their responsibilities in favor of network governance. In short, participation has a steep price.

The lack of a coordinating center in environmental policymaking around the Great Lakes has indeed been exacerbated by the process of decentralization in both federal systems and the transfer of much of the authority over environmental policy from the central government to states and provinces who view environmental stewardship primarily through the narrow prism of economic development. Nowhere has this been more evident than during the Conservative government of Ontario Premier Mike Harris (1995-2003) elected on a neoconservative platform of downsizing, deregulation, devolution and privatization (Clarkson 2002, 342).

With regards to environmental policy, the province undertook an intense dismantling of regulatory institutions while transferring management of the environment and natural resources to industry and to a lesser extent municipal government. The Harris government reduced the budget for the Ministry of the Environment (MOE) by half and cut 40 per cent of the staff. The Ministry of Natural

Resources (MNR)—which is responsible for managing 85 per cent of the land in Ontario—shed 2,100 positions. At the same time, a series of omnibus-style bills, such as Bill-26 passed in 1996, increased industry self-regulation and voluntary standards, especially in the forestry and mining sectors. The creation of a Red Tape Review Commission implemented a virtual regulatory freeze, while at the same time the Commission reviewed and weakened the regulations already in existence under Ontario’s environmental statutes (Clarkson, 342).

In transferring control over water infrastructure to municipal governments, the provincial government downloaded the important responsibility of water testing to municipal governments. At the same time, the Harris government closed the three provincial water testing laboratories in London, Kingston and Thunder Bay in 1996. A microbiologist working in one of the labs stated, “the laboratory system is the heart of the MOE...and what the government did is cut out the heart of the Ministry of the Environment” (anonymous source quoted in OPSEU, *Renewing the Ministry of the Environment* 2001, 96).

Prudham (2004) argues that Ontario’s dramatic retreat from its regulatory functions had the potential “for progressive devolution of regulatory administration” (352) had it increased stakeholder participation and strengthened, or even maintained, avenues for input from the scientific community or the general public. However, the Common Sense Revolution essentially closed these avenues. For example, the Harris government provided no consultation, and only eight weeks notice, on the decision to transfer ownership of water infrastructure and the responsibility of water testing to local governments. Furthermore, the government eliminated advisory boards and

multi-stakeholder committees on the environment that provided access to the policymaking table for local governments, independent members of the scientific community, and concerned citizens such as the Advisory Committee on Environmental Standards, the Environmental Assessment Advisory Committee, and the Ontario Roundtable on the Environment and Economy (Clarkson, 342). Clarkson argues that “the Harris government systematically reduced public input and access to information while setting up a closed clientalist relationship with the once regulated industries as it moved them towards self-regulation and self-monitoring reporting” (344).

The eight years of Conservative government accelerated the reorientation of the provincial role in environmental management that had begun in the 1970s. The Harris policy symbolizes the province’s retreat from its role as an active steward of the environment and reinforced its standing as a pollution haven in North America. Former Environmental Commissioner of Ontario, Eva Ligeti, aptly summed up the situation in her final annual report before being fired in 1999:

Evidence of the deterioration of the province’s environmental protection standards is widespread. The Ministry of Natural Resources’ much reduced staffing and its reliance on industry self-monitoring raised questions about the ministry’s capacity to protect the province’s natural resources effectively...The ministry [MOE] is retreating from enforcement of effluent limits and is making little progress on applying pollution prevention to hazardous wastes. It has promised to update 70 provincial air quality standards, but in two years, has produced only nine guidelines and no new enforceable standards. *Less government in this case means less enforcement and less environmental protection.* In order to maintain the semblance of environmental protection, ministry officials have resorted to describing the ‘co-benefits’ of existing programs, attempting to involve industry in voluntary measures and transferring responsibility for environmental decisions to municipalities (quoted in Prudham, 355).

Further proof of Ontario's sliding environmental reputation NAFTA's Commission for Environmental Co-Operation (CEC) has ranked Ontario the second worst polluter among states and provinces in the United States and Canada (Clarkson 342). Clarkson argues that the Harris government undermined Ontario's environmental standards and dispersed the scientific capacity to implement, monitor and enforce them (342), stating, "the dismantling of Ontario's once-proud and competent environmental ministry proceeded under an ideological fervour unseen in provincial history" (342).

The nine years of Conservative Party rule in Ontario illustrates the power located at the sub-national level in Canada, and indirectly, the vulnerability of local government to 'ideological fervour' at the top. It also illustrates the reluctance on the part of federal and sub-national governments to exercise the full extent of their authority in environmental matters and therefore illustrates why there is a palpable sense of backsliding from the commitments and improvements made in Great Lakes water quality during the 1980s and 1990s following the signing and renewal of the Great Lakes Water Quality Agreement in 1972 and 1978. This retrenchment has created both a leadership vacuum around the Great Lakes and a lack of accountability that together comprise the most critical shortcomings of the governance structure. This retrenchment also supports warnings about the 'dark side' of multilevel governance (Peters and Pierre 2004).

The problem with accountability is acknowledged on both sides of the border. As early as 2001, a report by the Canadian Commissioner of Environment and Sustainable Development on the state of Great Lakes governance stated that the

Canadian federal government “decided to rely on others, and when others failed to deliver, it did not assume the lead” (Office of the Auditor General of Canada 2001, 10) and that “limited use of federal powers, weakness in basic management and accountability and the politics of federal-provincial relations have all played a part” (307) in the failure to meet the goals set forth in the Great Lakes Water Quality Agreement. Shortly thereafter, in 2003, a report prepared by the United States General Accounting Office on the Great Lakes highlighted the fragmentation and lack of accountability in the American governance structure by observing that there were 148 federal and 51 state restoration programs and that “the myriad of current strategies and coordination efforts makes it difficult to determine which organization is in charge” (35).

American and Canadian observations about the gross inadequacies in their water governance structures were synthesized and given their most forceful expression in the 13th Biennial Report on Great Lakes Water Quality published by the International Joint Commission (IJC) in 2006, which for the first time focused entirely on the problem of accountability. The IJC report concluded that “there is now a compelling need to ... improve accountability so that persistent and emerging challenges to the Lakes can be effectively and definitively addressed” (4), arguing that the objectives of the Great Lakes Water Quality Agreement are “indefinite and outdated, and there are few limits and thresholds or schedules for action” (8), that the “precise roles and responsibilities for achieving the Agreement’s objectives are unspecified” (8), that the monitoring system is “still insufficient as well as uncoordinated across jurisdictional boundaries, and fails to provide the

comprehensive, focused information required to assess progress under the Agreement” (8), and that requirements for reporting “have become outdated and ...left undone” (11). The holes in the governance structure identified by the report leads to the general conclusion that “we have no collective sense of the progress we are making” (11) in managing the Great Lakes environment and “the public has neither an accounting of specific progress toward identified goals nor confidence that any reports tell the full story” (17). In short, the lack of accountability at the heart of water quality management, manifested through poor coordination, monitoring, reporting and enforcement, has created something of a crisis of credibility and authoritative legitimacy in the water governance structure, so much so that it spurred the IJC to call for the United States and Canada to create a basin-wide Framework for Great Lakes Water Quality Agreement Accountability by June 2008 and immediately thereafter to convene a Great Lakes Accountability Summit.

It would be premature at this point to conclude whether the expansion of multilevel governance around the Great Lakes is motivated by a general recognition of the merits of polycentricity or by a desire on the part of federal and state governments to shirk responsibility and allow industry to avoid accountability. However, the litany of shortcomings stated above provides strong evidence that the ‘dark side’ to multilevel governance has indeed manifested itself within the Great Lakes basin (Peters and Pierre, 2000).

The important conclusion one draws from either scenario is that the mobilization of local government around the Great Lakes and the expansion of their policy capacity may well be facilitated by the opening up of political opportunities

via a shift towards a more collaborative model of intergovernmental relations, but the motivations behind local governments actually acting on those opportunities centers around the issue of accountability, and thus the expansion of their policy capacity is very much a product of local governments responding to the crisis of accountability in environmental governance in the basin.

The accountability gap presents local governments with two functional imperatives in that they seek to avoid shouldering the costs of the yawning accountability gap in terms of direct economic, environmental and health consequences of decreasing water quality of the basin by engaging directly in environmental management of the Great Lakes and thus taking on the role of a ‘complementary back-up institution’ (Andersson and Ostrom 2008). Plus, local governments mobilize in order to secure the funding necessary to deal with the increasing financial and administrative burden associated with an accelerating devolution of water management responsibilities resulting from the retrenchment of federal and sub-national governments. A recent report prepared by the Great Lakes Commission for the Cities Initiative entitled *Local Investment in the Great Lakes and St. Lawrence*, concluded that local governments around the Great Lakes collectively invest more money (\$15 billion) than any other level of government towards environmental management of the Great Lakes (Great Lakes Commission 2000). Another report released by the Great Lakes Commission emphasized the increasing burdens of environmental management being shouldered by municipalities by stating that “local governments cannot pay for it all and should not be disproportionately burdened. Federal, state and provincial governments need to significantly increase

their investment” (Great Lakes Commission 2000, 1). The report also highlights the disconnect between the financial contributions and the political participation of local government within basin governance, stating that “while Great Lakes and St. Lawrence agreements have excluded local government as a key partner, many of their objectives are being carried out, and paid for, at the local level” (2000, 1).

In response to these two functional imperatives, local governments “behave strategically and purposefully” (Fairbass and Jordan 2004, 164) both re-actively and pro-actively on their own to push the bounds of that new political space outward, to expand multilevel governance and to increase their roles in order to minimize the costs associated with weakening accountability structures and in order to secure the resources necessary to deal with the burgeoning responsibilities associated with that growing accountability gap. For example, a major rationale for the creation of the Cities Initiative, and perhaps *the* most significant, was the desire to secure funding akin to the \$8 billion Congress allocated to the restoration of the Florida Everglades in 2000. A high-ranking executive member of the Cities Initiative argues that “this evolved into something called ‘Everglades Envy’ where people felt that if the Everglades were worth \$8 billion, the largest source of fresh water in the world, the Great Lakes, must be worth at least five times that amount” (GLSLCI, interview, January 13, 2008). The aggregation and organization of political pressure across multiple levels of government, and the demonstration of a united front to Congress, was seen across the basin as a prerequisite for successfully lobbying the federal government to release that kind of funding. Mayor of Grand Rapids, Michigan, George Heartwell stated “we are advocating for federal resources that may come to

the Great Lakes from both sides of the border. I think we have a collectively stronger voice looking for money for Great Lakes projects, infrastructure development” (GLSLCI, interview George Heartwell, June 18, 2009). Such a strategy illustrates what Jeffery terms *entrepreneurship*.

Hence, local governments have mobilized around the Great Lakes not simply in response to new formal capacities bequeathed them through decentralization since, and this bears repeating, such a transfer was limited. The two developments stemming from decentralization—political opportunity brought on by closer proximity to a decision-making nodule and the functional imperatives brought on by retreating federal and sub-national authorities in environmental policy—provide two explanatory factors for the mobilization of local government around the Great Lakes and consequently the expansion of Type II arrangements within environmental multilevel governance around the basin. The important conclusion here is that the expansion of local government capacity has resulted from both ‘top-down’ and ‘bottom-up’ processes that are both linked to the re-balancing of federal-state and federal-provincial intergovernmental relations.

The present period of collaboration did indeed open possibilities for greater involvement of local governments in environmental management around the Great Lakes, although it required initiative and political entrepreneurialism in order to translate that opportunity into influence. One manifestation of this expanded involvement and policy capacity was the establishment of the Great Lakes and St. Lawrence Cities Initiative in 2003, a transnational municipal network, which institutionalized cooperation between American and Canadian local governments in

environmental matters around the Great Lakes. The following chapter focuses on the way this network governs its internal and external activities and relations as it embeds local government deeper into the environmental management structure of the basin.

Subsequently, in Chapter Six, we return to the nagging problem of the Faustian bargain. Specifically, we focus on the fundamental criticism of multilevel governance raised by Peters and Pierre (2004) who argue that the informal basis of multilevel governance—and hence the expanded policy capacity of local governments—means that the decision-making process is still dominated by more powerful actors such as national, provincial and state governments. They wonder “to what extent informality entails inequality” in the sense that for them, “informality will respond to the interests of the weaker constituencies if and when dominant players find a reason to do so” (88). Hence, they challenge scholars to demonstrate that “that multi-level *governance* means something more than multi-level *participation*” (87). The case study in Chapter Six of this dissertation involving British Petroleum will demonstrate that local governments do involve themselves in environmental management, and influence environmental policymaking, with greater effect than their formal and informal powers would otherwise suggest.

CHAPTER V

THE GREAT LAKES AND ST. LAWRENCE CITIES INITIATIVE: EXAMINING TRANSNATIONAL MUNICIPAL NETWORKS IN NORTH AMERICA

As authority has been dispersed upwards to the supranational level, and downwards to the sub-national level, vertical power relations have been loosened thus permitting weaker actors such as local governments to bypass central and sub-central governments and establish horizontal links outside national boundaries with other actors and levels of government across borders. One of the clearest manifestations of this expanding multilevel governance has been the emergence of institutionalized networks of cooperation between local governments across national borders which are called transnational municipal networks (TMNs).

Transnational municipal networks have been studied most extensively in the European context where they were first observed. The first such network, the *Council of European Municipalities and Regions* (CEMR), was formed in 1951 and is today the most important network composed of over 50 national associations of towns, municipalities and regions across 37 countries representing over 100,000 member cities and regions. This network addresses every political issue whether in the field of regulation (i.e. environment, energy) or redistribution (i.e. cohesion policy) from the local to the global. In the 1980s, Europe witnessed a significant expansion of transnational municipal networks and the emergence of different types. These new networks were based not on an aggregation of national municipal associations, but on direct membership of cities, such as the *Eurocities* network, with

120 members in over 30 countries. More recently, these general purpose networks have been supplemented by the emergence in the 1990s of regionally defined, direct membership organizations such as the *Union of Baltic Cities*, with over 100 cities in ten countries, the *Alliance of the Alps*, with 250 local authorities, as well as direct membership organizations centered around specialized issues, such as those dealing with climate change including the *Climate Alliance*, *Cities for Climate Protection*, and *Energie-Cites* totaling some 1,400 member cities across the continent.

This chapter extends the comprehensive analytical model employed by Heinelt and Niederhafner (2005) and Kern and Bulkeley (2009), which focuses attention on the internal structures and functions, as well as external behaviors, of European transnational municipal networks, to North America, where the emergence of TMNs has been a very recent development. The first TMN to emerge was the Great Lakes and St. Lawrence Cities Initiative (GLSLCI or simply Cities Initiative) in 2003. The Cities Initiative is a regionally defined, issue specific, direct membership TMN that institutionalizes environmental cooperation between American and Canadian cities around the Great Lakes. By analyzing the internal and external behavior of the Cities Initiative, this chapter represents the first comprehensive analysis of a transnational municipal network in North America. Consequently, the observations made by Kern and Bulkeley (2009) and Heinelt and Niederhafner (2005) about European TMNs will form the framework for an examination of the Cities Initiative—it's internal structures, the way it governs its internal and external relations, and how these structures and behaviors are conditioned by the exogenous political environment. Three findings emerge from this analysis.

First, we find that although the internal structures of both the European and North American transnational municipal networks are strikingly similar, the political context is measurably different on two counts. The institutionalization of multilevel governance has gone farther and deeper in Europe than in North America. As a result, European cross-border local government cooperation is embedded in both formal Type I and informal Type II structures, while in North America cross-border local government cooperation is embedded predominantly in informal Type II architecture. Equally as important, the supranational structures of the European Union such as the Commission, the European Court of Justice, and the European Parliament all provide European transnational municipal networks with resources, political opportunities, legitimacy and powerful allies that are vitally important in the formative stages in the development of these networks (Ward and Williams 1997). These structures, resources and opportunities are not available nearly to the same degree for North American local governments. As a result, the more complex internal structures and expanded policy scope of European transnational municipal networks suggests that there is a positive relationship between the development of the overarching supranational structure and the development of the structural capacity of subsidiarity as it is manifested through the development of transnational municipal networks.

Our second finding reveals important consequences for the behavior of transnational municipal networks in North America stemming from the fact that local government cross border cooperation in North America is poorly embedded in formal Type I architecture and takes place under an underdeveloped and unsupportive

overarching supranational superstructure. These rather meager support structures has led to the emergence of vulnerable, under-resourced and therefore relatively stunted transnational municipal networks in North America which predisposes them to behave strategically as bridge-builders, eschewing confrontation in favor of cooperation, searching for positive-sum gains in its relations with other actors, and in this manner they have become important catalysts of even deeper integration in the basin.

Finally, our third finding indicates that although the ‘top-down’ redistribution of resources is vital in the formative stages for the development of transnational municipal networks, the essentially ‘bottom-up’ mobilization of the Great Lakes and St. Lawrence Cities Initiative demonstrates that such a transfer of resources downward is not a prerequisite for the initial emergence of these networks. The only necessary conditions for the emergence of transnational municipal networks are the opening up of political space, provided by the process of Europeanization in Europe and Collaborative-Cooperation in North America, and an entrepreneurial spirit on the part of local governments, consisting of imagination and willpower, to fill that space.

Internal Structures, Characteristics and Concerns

In 2003, at the direction of Chicago Mayor Richard M. Daley, the Great Lakes and St. Lawrence Cities Initiative came into existence, becoming the first institutionalized transnational network of local government in North America dedicated to addressing environmental issues. As of 2009, this transnational municipal network consisted of 64 mayors from American and Canadian local

governments located within the eight states and two provinces bordering the Great Lakes including Illinois, Indiana, Michigan, Minnesota, Ohio, New York, Pennsylvania, Wisconsin and Ontario and Quebec.

It introduced a completely new layer to the transnational environmental cooperation already taking place at different levels of government around the Great Lakes, joining an already dense web of networks including the Council of Great Lakes Governors, the Great Lakes Legislative Caucus, and the Great Lakes Commission, which operate at the regional level, as well as the International Joint Commission (IJC) and the North American Free Trade Agreement's Commission for Environmental Cooperation (CEC), both bi-national agencies that operate at the supranational level above the level of the nation state. These sub-national and supranational networks operate beside more traditional forms of bilateral cooperation between the federal, state and provincial governments in both countries, as well as beside non-state actors, for example, the non-governmental organization Great Lakes United.

Kern and Bulkeley (2009) argue that transnational municipal networks have three defining characteristics. First, they are self-governing, "non-hierarchical, horizontal and polycentric" (310). Second, its member cities are autonomous and can exit the organization at their choosing. Third, member cities vote on and implement decisions taken by the network. Though such a conceptual definition was conceived by analyzing transnational municipal networks primarily in the European context, its validity is confirmed in our North American case as all three characteristics describe the Great Lakes and St. Lawrence Cities Initiative.

The bureaucratization of the Cities Initiative follows the established ‘non-hierarchical, horizontal and polycentric’ pattern typical of transnational municipal networks. Three standard levels or groups of actors emerged: (i) an international *secretariat* located in Chicago (ii) the *executive* composed of chairpersons, a board of directors comprising the mayors of member cities selected to those posts, and a general assembly of all the member cities who gather annually to vote on resolutions; and (iii) the individual *member cities* themselves (Kern and Bulkeley 2009, 315). See Figure 7.

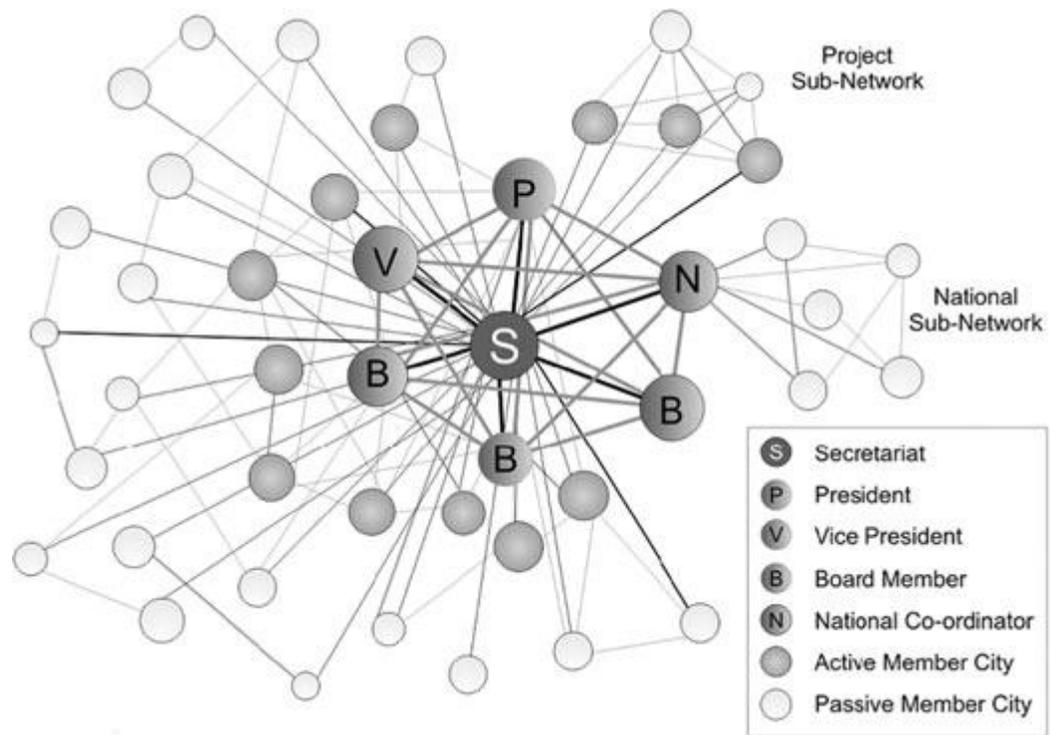


Figure 7: Structure of Transnational Municipal Networks
Source: Kern and Bulkeley 2009, 315

The secretariat is headed by the Executive Director, a position that has been held from the beginning by David Ullrich, a thirty-year veteran of the Environmental

Protection Agency and former deputy regional administrator for the Great Lakes region. The administrative capacity of the Cities Initiative was augmented as the membership and agenda grew, and the position of Deputy Director was created in 2007 and filled by Nicola Crawhall who previously worked for the Ontario Minister of the Environment and the Association of Municipalities, thus bringing a Canadian perspective into the secretariat. The position of Program Manager was also established at this time. The executive director and his staff are in charge of day-to-day operations including governing the internal affairs of the network and coordinating external relations.

As in the European transnational municipal networks, the Cities Initiative has established sub-networks to deal with specific issues, although these are less formal than the separate governance structures operating in European TMNs which deal with specific national territories or policy areas. For example, the *Climate Alliance* and *Energie-Cites* have decentralized structures with national satellite offices spread throughout various European countries. In contrast, discussions within the Cities Initiative about locating a permanent separate office in Toronto and Quebec in order to coordinate Canadian and regional issues have not fully crystallized. The internal complexity of the European transnational municipal networks reflects a larger resource base. Nonetheless, informal regional meetings of Cities Initiative members do occur, for example, as when Toronto hosted a meeting of Ontario member cities in 2007 in order to discuss regional issues. In addition, certain board members of the Cities Initiative have regional designations based on four geographical quadrants—

Lower Lakes, Upper Lakes, St. Lawrence/Quebec, and Great Lakes/Ontario—and a responsibility to coordinate and represent issues pertaining to those sub-regions.

The executive of the Cities Initiative is composed of the Board of Directors made up of 16 mayors including the two permanent founding chairs—Richard Daley, mayor of Chicago, and David Miller, mayor of Toronto—an elected chair serving a one-year term, a vice-chair and a secretary-treasurer. The Board elects new members to the executive. The Board meets mid-winter to assess progress and to bring new issues to the table. These issues are presented to the General Assembly at the Annual Meeting in the summer. At the Annual Meeting, and with help of the Executive Director, common policy positions, resolutions, and a general agenda are proposed which are debated, voted on and adopted by the Board of Directors. These common positions or resolutions are then presented and voted on by the member cities attending the General Assembly at the annual conference. In addition to fulfilling internal governing functions, the members of the Board of Directors also represent the Cities Initiative in its external relations by speaking at conferences, taking part in regional stakeholder meetings, publishing editorials in newspapers, or engaging in advocacy. For example, on July 30, 2008, Mayor George Heartwell of Grand Rapids, Michigan, testified on behalf of the Cities Initiative as its vice-chair in front of a United States Senate Committee deliberating on the ‘Water Compact’, essentially a groundbreaking piece of water diversion legislation.

The local governments comprising the Cities Initiative vary in size representing large cities such as Chicago (pop. 2,837,000) and Toronto (pop. 2,500,000), regional municipalities such as Niagara (pop. 427,000), towns such as

Wasaga Beach (pop. 15,000) and appropriately named townships like Tiny (pop. 10,750). It also includes one village called Spring Lake (pop. 2,514). The cities are geographically dispersed, stretching from the most northern city, Nipigon, at the top of Lake Superior, as far east as Rimouski, Quebec, on the St. Lawrence River, to Sheffield Lake on the southern shores of Lake Erie, and Duluth on the western tip of Lake Superior (See Figure 3).

However, as is often the case in European networks, there is a clear territorial pattern within the Cities Initiative. In Europe, language is often the ‘critical issue’ in setting territorial patterns (Kern and Bulkeley 2009, 317). For instance, *Climate Alliance*, the largest transnational municipal network dealing with climate change issues, has faced problems recruiting members from countries other than Germany and Austria because its working language is German (Kern and Bulkeley 2009, 317). The working language in the Cities Initiative is English, but this has not presented a difficulty as evidenced from the fact that nine member cities come from Quebec, though it is possible that some smaller, rural French speaking towns may well have found language to be a barrier to membership.

Territorial patterns have emerged in a distinct clustering effect with two groups of cities concentrated around the most powerful members—Chicago on Lake Michigan and Toronto on Lake Ontario including a cluster of cities north of Toronto along the southern shore of Georgian Bay. This pattern reflects the influence that these two major cities have had on the recruitment process and their gravitational power as global cities (Sassen 1991). Recently, *Foreign Policy* ranked Chicago and Toronto within their top global cities index (Foreign Policy 2008). Recognizing the

influence of these two global metropolises, Denis Lapointe, the Mayor of Salaberry-de-Valleyfield, a Quebec town with a population of 30,000, said that “we realized that with the capacity to pressure government of the mayor of Chicago and Toronto, things have changed, we were finally listened to” (GLSLCI, interview Denis Lapointe June 18, 2009). The clustering effect around Toronto and Chicago may be due to the fact that smaller local governments within the vicinity of these two cities have even more incentive to collaborate with Toronto and Chicago because they have a better chance of having their localized issues taken up and placed on the national agenda. In addition to a patterned dispersal, there is also a marked Canadian bias in the membership. Forty out of the sixty-four members—or 62.5 per cent—come from Canada, with Ontario alone enlisting nearly half—31 members. However, the Board of Directors is divided equally between eight Canadian and eight American mayors. The cities represent both rural and urban interests, different geographical concerns based on their proximity to a particular Great Lake, varied socio-economic statuses, different cultural-linguistic backgrounds, and they voluntarily join for a number of reasons including potential access to information, funding, and political support.

Cities that join transnational municipal networks distinguish themselves from other cities in that they already tend to be highly motivated and active in a certain policy field, to the degree that Kern and Bulkeley (2009) argue that TMNs are “primarily networks of pioneers for pioneers” (311). Nonetheless, even transnational municipal networks can be further divided into active and passive members, with the latter forming the majority. As a result, the typical polycentric governance structure in these networks also appears in the Cities Initiative. In its 2007 Annual Report, the

Great Lakes and St. Lawrence Cities Initiative acknowledged that it had purposefully undertaken the “development of a core membership base” (GLSLCI Annual Report 2007, 7) which was strategically cultivated because “establishing a central group of committed members has helped the organization focus its efforts around key issues throughout the Basin” (7).

Over the last three years, the most active members, the so-called policy entrepreneurs, who have the most frequent contact with the secretariat and individual member cities, who feature most prominently in its external relations, have emerged as a kind of ‘core-of-the-core’ executive. This unofficial subgroup of the Board of Directors includes Mayors Richard Daley (Chicago) and David Miller (Toronto) who are designated Founding Chairs and thus have permanent chairmanships on the Board, as well as Lynn Peterson (Thunder Bay), Gary Becker (Racine), and George Heartwell (Grand Rapids) who together over the last three years have filled the position of elected Chair, Vice Chair and Secretary.

As one moves outward from the centre of the polycentric circle to the next ring of the core executive, one can add mayors who have sat on the last three consecutive Boards including Ellen Anderson (Blue Mountains, Ont.), Rudolph Clay (Gary, Ind.), Robert Duffy (Rochester, N.Y.), Carleton Finkbeiner (Toledo, Oh.), Eddie Francis (Windsor, Ont.), Denis Lapointe (Salaberry-de-Valleyfield, Que.), Brian McMullan (St. Catharines, Ont.), Joseph Sinnott (Erie, Pa.), and Gerard Tremblay (Montreal, Que.). Due to the election cycle, this group also includes the different mayors who held office in the Quebec Metro Community (Andree Boucher, Regis Labeaume) and Duluth, Minnesota, (Herb Bergson, Don Ness) over the last

three years. The geographical location of these board members provide an equitable representation of the four regional quadrants on the Board—Upper Lakes, Lower Lakes, Great Lakes/Ontario, and St. Lawrence/Quebec—so that the issues pertaining to each of the Great Lakes are represented. The fact that the core executive has changed minimally over the last five years has provided continuity and a kind of institutional memory which provides the organization with stability and an ability to learn and adapt their strategies without expending much energy on bringing new core members ‘up to speed’, thereby maximizing their limited resources.

Maintaining the network’s internal cohesion has been a central preoccupation for the executive of the Cities Initiative. A high ranking official within the organization stated that “we can recognize regional issues, but it is important that we speak with one voice” (GLSLCI, interview official, June 9, 2008). According to Dave Ross, the Mayor of Superior, Wisconsin, a city with a population of 27,000 people, most local government organizations suffer from a long-standing division between small cities and big cities, but he argues that this cleavage has been managed successfully in the Cities Initiative. According to Mayor Ross, “we have an equal seat at the table. We have an equal voice. There is no hierarchy within this organization” (GLSLCI interview David Ross June 18, 2009). Mayor Ross credits Chicago Mayor Richard Daley for promoting small cities, citing as an example his invitation from Mayor Daley to attend the Conference of Western Hemisphere Mayors he organized in 2006, noting that “I sat at the table with mayors from large metropolitan cities not only in North America but the Western Hemisphere and he chose to invite a mayor like myself and mayor Peterson from Thunder Bay, both

small cities, and not only was there this idea that we all have the same problems no matter what our size is, we really did have an equal voice” (GLSLCI, interview Ross, 2009).

Rather than being overshadowed by larger cities such as Toronto or Chicago, small cities find that the Cities Initiative actually levels the playing field. Mayor Steve Parish, from the Town of Ajax with a population of 100,000, argued that, with regards to a disagreement involving his city and the City of Toronto, “if we were doing this bilaterally, Toronto has the size to make decisions without Ajax’s input. Doing it in front of the general assembly puts an onus on them to not act as the big fish” (GLSLCI, interview Steve Parish, June 18, 2009). Small cities are represented on the Board of Directors, and a special award of \$5,000 was instituted to recognize the environmental efforts of small cities with a population under 100,000 people called the Wege Small Cities Sustainability Best Practices Award.

Another rift occasionally surfaces between port-cities and non-port cities, especially over issues related to the regulation of the shipping industry. Cities that do not have ports, including cities like Chicago and Toronto which have ports that are largely inoperable and irrelevant, favor strong regulation on shipping, for example, that would control the discharge of ballast water from incoming transport ships thus preventing the introduction of non-native, or invasive, species of fish. Many port cities, although recognizing the problem of invasive species, view extensive regulations as a threat to the shipping and maritime industry which forms the economic basis of their communities and their cultural identity. Mayor Ross, of Superior, Wisconsin, argues that initially, as more and more non-port cities began

joining the Cities Initiative, “there were some concerns among port-cities whether we were diluting our effectiveness” (GLSLCI, interview Ross 2009), but that those concerns were quickly dissipated. On the contrary, Vance Badawey, the Mayor of Port Colborne, Ontario, a city with a population of 19,000, argues that the Cities Initiative provides a platform for port cities to promote their unique interests and assets, and “not only to showcase but to work together to communicate what those assets are” (GLSLCI, interview Vance Badawey, 2009).

The most recent, and perhaps most controversial, fissure to emerge centers around the proposed creation of a sub-network called the *Forum Des Municipalites Riveraines au fleuve Saint-Laurent* initiated by a group of Quebec cities spearheaded by the Mayors of Montreal, Sorel, and Beaconsfield. This faction had begun informal meetings in 2006 to discuss regional issues pertaining to their narrow geographical location along the St. Lawrence River and specific to Quebec politics. At the 2009 Annual Meeting of the Great Lakes and St. Lawrence Cities Initiative in Trois-Rivieres, Quebec, representatives of the *Forum* sought formal recognition from the Cities Initiative as a separate sub-network and also sought support for its plans to establish their own direct contacts with the Provincial Government of Quebec.

The most vociferous opposition to the *Forum* was voiced by Mayor Regis Labeaume of the Quebec Metropolitan Community who viewed it as an unnecessary duplication of the Great Lakes and St. Lawrence Cities Initiative structures and, furthermore, viewed it as a splinter organization that threatens the internal cohesion of the Cities Initiative. Mayor Labeaume argued that in the case of two parallel organizations operating simultaneously in Quebec—the *Forum* and the Cities

Initiatives—the Quebec government will choose to negotiate with the former, thus undermining the legitimacy and influence of the latter. Mayor Labeaume took further exception to the fact that Quebec City was not invited to take part in the *Forum* nor informed of its designs until a separate side-meeting of the *Forum* was held during the Annual Meeting of the Cities Initiative at Trois-Rivieres in 2009. In protest, Mayor Labeaume walked out of that meeting, and at the subsequent meeting of the GLSLCI Board of Directors, he declared that he “strongly opposes” the *Forum*’s resolution calling for a formal recognition, and stated that he would work very hard to make sure “this deal won’t happen”.

Similar concerns were expressed by other Board Members. Mayor Anderson, of Blue Mountains, argued “It is not a good thing to recognize any particular group. As soon as we tie ourselves to an alliance we lose flexibility” (GLSCI, Board of Directors Meeting, July 18, 2009), a sentiment echoed by Mayor Ross, of Superior, who stated, “if we focus on more narrowly focused groups we lose our distinctive voice and our message can be compromised especially if our purposes diverge at some point” (GLSLCI, Board of Directors Meeting, July 18, 2009). Mayor Heartwell of Grand Rapids, stated, “I share Mayor Anderson’s concern with fractionalizing the organization. When we focus on local or regional issues, we begin to divide ourselves. If we divide ourselves on jurisdictional lines we lose cohesiveness,” (GLSLCI, Board of Directors Meeting, July 18, 2009). The disagreement was serious enough that the executive of the Cities Initiative decided to postpone a decision on the location of a satellite bureau it intended to open in Quebec, so as not to add further

fuel to the fire while the matter of the *Forum* was set aside for further study and dialogue.

Concern over internal cohesion also surfaces not only with regards to internal structure and membership, but also with regards to specific policies. For example, concerns over cohesion were raised during the Board of Governors meeting July 16, 2008, in Toronto, specifically during the deliberations over Resolution 17 whose purpose was to frame the Cities Initiative response to the Order of Approval released by the International Joint Commission (IJC) in March 2008. Through the Order of Approval, the IJC gave its formal blessing to a construction project altering a dam located in Cornwall, Ontario, which would alter the flow of water from Lake Ontario to the St. Lawrence River. Although it was determined through detailed scientific and technical reviews that the project would benefit Lake Ontario, the Quebec Metropolitan Community and surrounding areas were seeking reassurances that changing the flow of water would not harm their region. During the discussion on the framing of the resolution, the Secretary of the Cities Initiative George Heartwell, Mayor of Grand Rapids, wanted the board members to consider “does it have the potential to divide us into upper and lower Great Lakes?” (GLSLCI, Board of Directors Meeting, 2008).

Transnational Municipal Networks as Sui Generis and the Internal and External Governing Behaviors that Result

There is a need to analyze the behavior of transnational municipal networks on their own terms as a distinct phenomenon from the concepts that have been put forth thus far to explain their structure and behavior. According to Kern and

Bulkeley (2009), the conceptualization of transnational municipal networks as intergovernmental (Rhodes 1997; Ward and Williams 1997), inter-urban (Leitner and Sheppard 2002) or transnational (Bennington and Harvey 1998) *policy networks* (Marsh and Rhodes 1992) has inadequately described the distinct nature of TMNs for three reasons: (i) they disregard their homogeneity (ii) they overemphasize resource dependencies as a driving motor (iii) they overemphasize lobbying as the main function (313). Each of these three is discussed below.

Homogeneity

(i) The Double Helix: Homogeneity and the Defining Duality of Transnational Municipal Networks

The crucial characteristic that distinguishes transnational municipal networks from all other policy networks is that whereas the latter are predominantly conceptualized as a mix of different actors, transnational municipal networks are homogenous in the sense that they are composed exclusively of local governments. This is the key characteristic and a vital distinction. Variants of policy networks, such as the global civil society and advocacy network approach, privilege the role of non-state actors. For example, Risse-Kappen (1995) observed that networks include “regular interaction across national boundaries when at least one actor is a non-state agent or does not operate on behalf of a national government or intergovernmental organization” (3) while Keck and Sikkink (1998) state that “NGOs play a central role *in all* advocacy networks” (9). Even though some European transnational municipal networks such as the *Climate Alliance* and *Energie-Cites* do include NGOs, regional governments, and even public utilities as associated members, the conceptualization

of networks as heterogeneous units excludes by definition transnational municipal networks which do not count non-state actors as full members, and in particular such a conceptualization excludes pure TMNs such as the Great Lakes and St. Lawrence Cities Initiative which do not contain associated members at all.

To illustrate the distinct nature of transnational municipal networks, an organization institutionalizing cross-border relations between Canadian and American local governments around the Great Lakes already existed before the Cities Initiative called the *International Association of Great Lakes and St. Lawrence Mayors*. However, it cannot be considered a TMN because its governance structure was composed of and dependent upon actors from industry as well as provincial and state governments. At best it can be considered a proto-network.

The International Association of Mayors was established in 1987 in Quebec City by the St. Lawrence Economic Development Council (SODES) which endowed this new organization with a near-total economic orientation focused almost exclusively on issues related to the shipping industry. SODES is an organization that promotes the interests of the shipping and maritime transportation industry. Its executive is composed of a Chairman of the Board, Pierre Prefontaine, who is the Vice-President of Canada Steamship Lines, a Vice-President, Jocelyn Fortier, who is also the Vice-President of the Societe des Traversiers du Quebec, which is an organization representing ferry services, a Secretary, Jean Gregoire, who is an associate of the law firm Langlois Kronstrom Desjardins, which specializes in maritime and admiralty law, and a Treasurer, Michel Tosini, who is also Vice-President of Fednav Ltd., which is an international shipping company. An official at

the Cities Initiative stated privately that the International Association was “just a show” and a platform “for industry to wine and dine mayors” (GLSLCI, conversation with member of executive, July 18, 2008). Mayor Ross, of Superior, Wisconsin, who was a member of both the International Association and the Cities Initiative noted that the former organization was mostly composed of small, port cities, and he noticed in his first annual meeting that there were “a good number of shipping presentations by shipping organizations” and that the International Association was “more balanced towards industry, and less balanced towards environmental”, a balance he determined to be “80/20” economic versus environmental (GLSLCI, interview Ross 2009).

The Co-Secretariat of the International Association of Mayors was composed of the SODES and also the Great Lakes Commission. The Great Lakes Commission is a public agency formed in 1955 by an interstate compact between eight Great Lakes states and two associated provinces Quebec and Ontario principally in order to oversee the expanding maritime industry resulting from the construction of the St. Lawrence Seaway. Although broadening its scope of interests, the traditional concern of the Commission has been shipping. Consequently, the International Association of Great Lakes and St. Lawrence Mayors was a creature, first and foremost, of industry, and second, of the states and provinces with shipping interests.

A prominent American environmentalist and former head of the Great Lakes Basin Commission appointed by President Carter, who also worked for the EPA and Chicago’s Department of Environment, states that the International Association of Mayors “did not participate in the Great Lakes community, it was not a force, it was

not even an actor, it just existed, and it did not do anything except for proposing resolutions that were put forth by the Great Lakes Commission” (ex-Great Lakes Basin Commission, interview October 1, 2009). In essence, the International Association of Mayors existed to legitimize policies of the Great Lakes Commission.

Chicago was the first big city to join the organization which until that time had been composed primarily of small port cities. According to the former head of the Great Lakes Basin Commission, “when Mayor Daley found out how ineffective and trivial it was, he transformed it” (ex-Great Lakes Basin Commission, interview October 1, 2009). Meeting in Chicago in July 2003, the International Association of Great Lakes and St. Lawrence Mayors and the Great Lakes and St. Lawrence Cities Initiative agreed in principle to merge the two organizations. Many of the member cities of the International Association joined the Cities Initiative and assumed positions on the Board of Directors. The merger was completed in 2005. The headquarters was moved from Quebec City to Chicago. Mayors Badawey and Ross, who were members of both organizations, noted that after the merger an even orientation between economic and environmental concerns exists within the Cities Initiative.

Network concepts that are based on the assumption of heterogeneity such as transnational advocacy coalitions (Keck and Sikkink, 1998) or epistemic communities (Haas 1992) do capture dimensions of how transnational municipal networks operate, but they fail to account for the unique political standing of transnational municipal networks that stems precisely from their homogeneity, which is, that transnational municipal networks govern their internal and external relations as non-state actors,

yet as a constellation of individual local governments they remain anchored to the hierarchical federal structure and are thus themselves governed by the inherent hierarchical intergovernmental power relations of the federal system. It is precisely in this manner that transnational municipal networks are fundamentally hybrid actors, which Hocking (1996) and Blank (2006) faintly alluded to but never quite identified.

Transnational municipal networks, such as the Great Lakes and St. Lawrence Cities Initiative, are non-state actors in at least two important ways. First, the Cities Initiative has the legal standing of a non-state actor. It is registered as a 501(c)3 non-profit charitable organization with the United States government, a designation held by other non-state advocacy networks such as Greenpeace, the Environmental Outreach and Stewardship Alliance, and the Environmental Working Group. European transnational municipal networks are also registered as non-profit associations. For example, the Union of Baltic Cities, headquartered in the Polish city of Gdansk, is registered as a non-profit association with the government of Poland. The 501(c)3 status applies to corporations, funds or foundations which operate exclusively in order to promote religious, charitable, scientific, educational and public safety purposes, and it carries significant restrictions on the scope of action for the Cities Initiative. Section 501(c)3 organizations are ‘absolutely prohibited’ from influencing political campaigns for public office, other than to educate voters on specific issues in a non-partisan manner. For example, the Cities Initiative sent letters to both United States presidential candidates and all the major Canadian federal party leaders before their respective elections in 2008 asking them to present their positions on a series of policy questions pertaining to the Great Lakes, for example, their

position on renegotiating the Great Lakes and Water Quality Agreement by 2010. Although the Cities Initiative published their responses, they refrained from endorsing a candidate. Furthermore, the charitable status also states that “no substantial part” of the Cities Initiative activities can be devoted to lobbying.

The second non-state behavior pertains to self-sustenance. In order to remain in operation, transnational municipal networks must seek out and compete for funding outside traditional funding streams flowing from higher tiers of government, and these funds constitute a significant proportion of their total operating revenue. Keck and Sikkink (1998) highlight the importance of charitable foundations as sources of revenue for advocacy networks. The Cities Initiative is largely dependent on private grants from such organizations as the Wege Foundation, the Joyce Foundation, the Charles Stewart Mott Foundation, as well as the City of Chicago’s Environmental Fund. The income of the Cities Initiative varies from year-to-year, depending on the amount of grants it receives. For example, in 2007, the Cities Initiative received a large grant from the Joyce Foundation of \$500,000 to be disbursed over two years. In general, however, using fiscal-year 2009 as an example, the Great Lakes and St. Lawrence Cities Initiative relies on grants for approximately one-third of its total revenues, and membership dues for the remaining two-thirds (GLSLCI Consolidated Financial Reports, 2008).

While transnational municipal networks such as the Great Lakes and St. Lawrence Cities Initiative display typical non-state characteristics and behaviors, their formal position within the state has three consequences that distinguishes them from all other non-state actors and all other heterogeneous networks.

First, transnational municipal networks are composed of members that are directly elected, have direct links to citizens, and that represent public interests which, when aggregated, grants them a greater degree of legitimacy than non-state actors like Greenpeace who represent the narrow interests of particular stakeholders.

Second, Valiante (2007) argues, for example, that “even though municipalities are invisible in international law, if they act in a way that is inconsistent with Canada’s international obligations, Canada could be liable to claims” (1073). Therefore, although transnational municipal networks behave like non-state actors, their behavior has direct consequences for the state. Due to the position of its constituent members within the state, it has the potential to compromise national sovereignty, and as a result their behavior draws greater scrutiny from higher tiers of government.

Third, and most importantly, if the network acts in a way that is inconsistent with the interests of the higher tiers of government, it exposes itself and individual local governments to retaliation from federal, provincial and state governments which possess not simply a credible threat but total blackmail potential over local governments. A provincial government facing an insubordinate local government, for example, may not have the constitutional power to reduce private funding for the Great Lakes and St. Lawrence Cities Initiative in its guise as a 501(3)c non-governmental organization, but it can directly reduce provincial funding to the individual local governments in question—which is a significantly greater threat considering provinces and states are the single largest sources of revenue for local governments.

In addition, retaliation may not necessarily come in the form of tightened purse strings. The higher tiers of government can simply withhold political legitimacy by closing down lines of communication between them and local government. In short, they can restrict access to policymaking. Particularly for cities in Ontario, the Conservative government's 'reign of terror' fueled by an 'ideological fervor' in the 1990s which closed down many of the major avenues for direct provincial-local government interaction is not far from their minds. Ultimately, provinces and states can resort to the 'nuclear option' of rearranging or dissolving local government altogether, a danger which non-state actors do not have to contemplate. North American local governments especially lack the power of immunity which is "the power of localities to act without fear of the oversight authority of higher tiers of the state" (Clark 1984, 198).

Consequently, transnational municipal networks such as the Great Lakes and St. Lawrence Cities Initiative pursue strategies that avoid arousing political concerns and provoking reactions which could threaten its independence and legitimacy. The general behavior, and the strategies employed by the Cities Initiative, derives from their keen understanding of the two different conceptualizations of power. In the traditional, rationalist conceptualization of power as one actor having "power *over*" another actor, local governments understand their vulnerability in the federal system due to the fact that their autonomy is neither well-entrenched nor supported constitutionally, and this understanding of their severely limited political latitude results in behavior that can be described as positive-sum seeking, collaborative,

integrationist, and one that contrasts starkly with the more confrontational or even brash behavior of non-state actors such as Greenpeace or Ecojustice.

This constitutional vulnerability translates into their heightened sensitivity to the interests of federal, state, and provincial governments, as well as industry, and a strong impulse to avoid behaviors that could be interpreted as threatening those interests. Local governments within the Cities Initiative seek the safe ground of positive sum gains to the point that even in their deliberations over issues in the Board of Directors meetings mayors spend considerable time and energy framing resolutions in non-threatening language. One of the Board Members, the Mayor of the Town of Blue Mountains, Ellen Anderson, exemplified this understanding of their constitutional vulnerability by stating “we have to be careful when we put forth these resolutions so that we don’t close doors” (GLSLCI, Board of Directors Meeting 2009). Local governments eschew talking about power in terms of “power *over*” because they are usually on the losing end of that equation in the federal system.

Rather, local governments, and the Cities Initiative in particular, prefer to hew to conceptions of power from the governance approach defined in terms of the “power *to*” accomplish certain ends or policy goals. In this conceptualization, local governments are able to embed themselves into the policymaking process around the Great Lakes because of the unique resources or services they provide other, more powerful, actors. Mayor Anderson again illustrates local government’s dual understanding of power by stating, “I hate the word power because it turns people off. What we have is good information. I think we are a source of information. We can help them [government, industry etc.] make choices where they’re not going to end

up on the front page” of a newspaper in a negative way (GLSLCI, interview Anderson 2009).

This sophisticated appreciation of the dual dimensions of power as they relate to local government underpins the modus operandi of the Great Lakes and St. Lawrence Cities Initiative which Mayor Anderson sums up by stating that “the vision is to eventually be known as a positive and constructive resource for provincial, federal, and state governing bodies as well as industry” so that they “look at us as a balance” (GLSLCI, interview Anderson 2009). In a sense, because of its constitutional vulnerability the Great Lakes and St. Lawrence Cities Initiative plays the role of the diplomat of the basin, educating state and non-state actors about the possibility of striking a better balance between both environmental and economic considerations in matters pertaining to the Great Lakes, identifying issues where the interest of disparate actors intersect, and providing both the political legitimacy and political pressure for joint action.

From a theoretical standpoint, taking into consideration the dual character of transnational municipal networks blurs the distinction between state and non-state actors which underpins most of the concepts used to explain transnational networks (Betsill and Bulkeley, 2003). In a sense, whereas governance is still traditionally conceived as “governing with and through networks at the *boundary* of the state and civil society” (Bevir and Rhodes 2003, 9), and consequently, policy networks and transnational networks are traditionally viewed as bridges spanning and connecting the opposite shores of state and civil society, transnational municipal networks must be viewed not as bridges but as a double-helix that combines, or melds together, the

genetic material of both state and civil society in one organism. Transnational municipal networks do not so much penetrate or perforate the boundary between the state and civil society but, rather, they efface it. Hence, transnational municipal networks are not identical to either parent—state or non-state—but share traits that belong to both. It is this duality stemming in part from its homogeneity which is the defining and distinguishing feature of transnational municipal networks and the key to understanding its internal and external behavior.

(ii) Internal Governing as a Non-State Actor

Since transnational municipal networks lack the traditional forms of authority such as regulation, sanction and force, granted state actors located higher on the totem pole of intergovernmental relations, these networks rely on soft power to achieve their aims both internally and externally. Internally, transnational municipal networks employ three key strategies (1) communication and information (2) recognition, benchmarking, and certification (3) program funding and cooperation (Kern and Bulkeley 2009, 319).

As Mayor Anderson alluded to earlier, *information and communication* are the fundamental pillars of transnational municipal networks. Internally, the exchange of best practices is one of the principal aims of the Great Lakes and St. Lawrence Cities Initiative and one of the principle reasons local governments join the network. Their website (www.gslscities.org) contains a section titled “Best Practices and Restoration Projects” where local governments are encouraged to share information on projects and policies they have undertaken under headings such as climate change,

pollution reduction, stormwater/wastewater, waterfront vitality, and beaches. Some of the best practices advertised include Hamilton's ongoing leak monitoring and watermain rehabilitation project to conserve water, Chicago's rooftop gardening to increase energy efficiency, and Rochester's combined sewer overflow abatement program. Kern and Bulkeley (2009) dub this the 'laissez-faire' approach to self-governing because it demands few resources from the network or the city. One of the advantages of such a strategy is that it does not impose obligations which could turn passive, or less resourceful, members away, although the drawback is that there is little verification whether in fact these are best practices or whether they are even replicable.

The exchange of best practices is also good example of how information exchange combines with the strategy of *recognition* and *benchmarking* to provide the Cities Initiative with a more interventionist approach to internal self-governing. The Cities Initiative initiated in 2007, with financial assistance from a private foundation, the Wege Small Cities Sustainability Best Practices Award. Cities with populations under 100,000 submit descriptions of a best practice project they are undertaking and compete with other small cities for a grant of five-thousand dollars. Such systems of recognition are common in European transnational municipal networks, for example, with the *Climate Alliance* distributing "Climate Star" awards, and this strategy helps "to reach beyond the network core" (Kern and Bulkeley 2009, 322) to engage the passive members and those with fewer resources. In 2009, the recipient of the Wege Award was the City of Sheffield Lake, Ohio, which will use the money to defray the costs of its rain-barrel program used to recycle water and reduce storm water runoff.

The award may be small, but as the Mayor of Sheffield Lake, John Piskura, notes, “pride in recognition and participation in a program that can be incorporated Great Lakes-and-St. Lawrence-River-wide is more valuable than the prize” (GLSLCI, letter from John Piskura, April 29, 2009).

In addition to exchanging best practices, a voluntary program called the Water Conservation Framework adopted by the Cities Initiative in 2007, is another excellent example of strategies which combine information exchange with recognition and benchmarking. The Water Conservation Framework was a response to a recent piece of legislation sponsored by the Great Lakes governors called the Great Lakes and St. Lawrence River Basin Water Resources Compact and Sustainable Water Resources Agreement which addresses at the state level water quantity issues especially conservation and out-of-basin diversions. Through the conservation framework, local governments voluntarily adopt goals set at the state-level and provincial-level and commit themselves to reduce total water usage by 15 per cent of 2000 levels by 2015.

There are 33 member cities who are voluntarily participating in the program, and to date half of them have collectively achieved a 12 per cent reduction in water usage totaling some 82 billion gallons of water. The conservation framework employs a rudimentary benchmarking system. The framework participants are divided into Group One, those who have a water conservation plan in place, and Group Two, those who have yet to put in place such a plan. Both groups must submit detailed plans to the secretariat for review and annual progress reports. The framework provides an opportunity and platform for local governments to share information, best practices, and to collaborate on water conservation projects, and to

measure the progress of local conservation efforts. It also demonstrates the desire of local governments to set policy goals independent of higher tiers of government. As Mayor David Miller of Toronto notes, “we should set standards ourselves in line with our desire to have a seat at the table, and not just ask for the higher ups to give us the standard” (GLSLCI, Board of Directors Meeting 2008).

Although practicing recognition and benchmarking, the Cities Initiative has not incorporated the advanced strategy of *certification* common in Europe and exemplified, for example, by the ‘Swiss Energy City’ certification given to over 160 Swiss local governments that have attained the strictest level of energy conservation (Kern and Bulkeley 2009, 322). Kern and Bulkeley (2009) argue that certification is a more interventionist approach which can serve to widen the gap between those cities that have the resources and administrative capacity to pursue certification and those that do not, in essence creating a two-speed network composed of pioneers and laggards. The Great Lakes and St. Lawrence Cities Initiative has been careful to maintain its internal cohesion, and for this reason, it is more likely to continue pursuing a softer approach.

The one element of these three core strategies missing from the Cities Initiative repertoire is *project funding and cooperation*. The numerous European Union funds dedicated to local government cooperation (i.e. EU Recite) and transnational cooperation (i.e. INTERREG) spurs European transnational municipal networks either to submit bids on behalf of their members for project financing or to facilitate member cities to collaborate and submit their own individual joint bids. For example, *Energie-Cites* has joined BELIEF (Building in Europe Local Intelligent

Energy Forums) which is financed by the European Commission (Kern and Bulkeley 2009, 321). In North America, there is no dedicated funding for transnational cooperation between Canadian and American local governments either at the national level or at the supranational level through the IJC or NAFTA's Commission for Environmental Cooperation (CEC). More about the relative lack of external resources will be said later in this chapter. It is enough to state at this point that none of the mayors interviewed could identify any such external funding, though all of them indicated that if such funding was available, they would most definitely submit project proposals and bids.

(iii) External Relations as a Non-State Actor

In its external relations the Great Lakes and St. Lawrence Cities Initiative employs the four tactics used by transnational advocacy networks and other non-state actors described in Keck and Sikkink's (1998) typology—information politics, symbolic politics, leverage politics and accountability politics (16).

In line with its internal governing strategies, the Cities Initiative engages in external *information politics* generating “politically useable” information and moving it “where it will have the most impact” (Keck and Sikkink 1998, 16). For example, in 2008, the Cities Initiative published a comprehensive 84-page report titled *Local Investment in the Great Lakes and St. Lawrence*, calculating for the first time the total local government investment in Great Lakes water quality protection and restoration. The report was the result of a year-long collaborative investigation in partnership with the Great Lakes Commission and funded by the Joyce Foundation. A survey of 143

American and Canadian local governments revealed that they had invested \$3.3 billion in environmental protection and restoration programs in 2006, and if these figures are extrapolated to the 688 local governments who received the survey, it is estimated that local governments around the Great Lakes had invested over \$15 billion that year (Great Lakes Commission 2008, iii).

The report was part of an overall strategy to secure greater federal funding for the Great Lakes. Hence, the report's major accomplishment was that it "sheds light on an overarching disconnect between bi-national and national stated goals for the resource and their achievement" and specifically on the enduring injustice that "while Great Lakes and St. Lawrence agreements have excluded local government as a key partner, many of their objectives are being carried out, paid for, at the local level" (Great Lakes Commission 2008, 1). The report was directed at Congress, where the information would have the most effect. This strategic awareness on the part of the Cities Initiative is evidenced in the report's introduction which establishes a major justification, if not *the* justification, for publishing the report, by stating "it is customary for Congress and federal agencies to desire, if not require, commitment at other levels of government before spending federal tax dollars on programs" (Great Lakes Commission 2008, i).

In order to secure federal funding, the Cities Initiative also engages in information politics by *reframing* the debate. In the Board Meeting held on July 16, 2008, Mayor Daley of Chicago stated, "our problem is convincing legislatures that water projects are as important as roads and bridges", adding that the Cities Initiative should ask for the federal government to include environmental projects in its

stimulus bill by framing the request in terms of an investment in infrastructure not simply as “handing out cheques” (GLSLCI, Board of Directors Meeting, 2008). Following this strategy, the Cities Initiative has been advocating strongly for the establishment of dedicated federal funding for water infrastructure in the form of a National Clean Water Trust Fund since it is estimated that 80 per cent of local government expenditure on water quality management goes to maintaining wastewater infrastructure (Great Lakes Commission 2008, iii).

Water infrastructure is also where a significant federal investment gap exists. A Great Lakes and St. Lawrence Cities report released in 2008 attempts to frame federal funding of the Great Lakes as an urgent infrastructure problem by quoting a study released by the Environmental Protection Agency in 2008 titled *Clean Watersheds Needs Survey: 2004 Report to Congress*, which estimates that \$276.8 billion of investments are needed to maintain existing water and wastewater infrastructure in the United States and quoting the Great Lakes and Regional Collaboration Strategy estimate that \$13.7 billion is required to upgrade wastewater infrastructure in the Great Lakes region alone (Great Lakes Commission 2008, 4). The report also quotes a study released by the Federation of Canadian Municipalities which estimates that water and wastewater infrastructure in Canada requires a (CDN) \$31 billion investment. Therefore, the Great Lakes and St. Lawrence Cities Initiative has tried to reframe the debate over dedicated funding for the Great Lakes in terms of an urgent infrastructure problem. As an official with the Cities Initiative stated in the July 16, 2008 meeting of the board of directors, “it’s all about the economy. We need to link it to the economy” (GLSLCI, Board of Directors Meeting, 2008).

Also indicative of reframing behavior is the concerted effort by the Cities Initiative to frame Great Lakes management as a national concern. Gilbertson and Watterson (2007) state that “within the United States, the Great Lakes tend to be regarded as a local or regional issue rather than a national or international one” hence “Congressional attitudes about funding have been ambivalent” (210). During a full committee hearing in front of the Senate Environment and Public Works Committee on March 16, 2006, the executive director of the Cities Initiative was asked by Senator Barack Obama to respond to these widely held assumptions that “restoration of the Lakes is a regional issue” (GLSLCI 2006, 9). Ullrich responded that “restoration of the Great Lakes is clearly a national issue. Much as the Everglades, the Rockies, Chesapeake Bay, and other features of our landscape help define us as a country, the Great Lakes are very much a part of the identity of the United States” (9).

The reframing of the Great Lakes as a national issue is one of the central tenets of the mission of the Cities Initiative and the comparisons to the Everglades and Chesapeake Bay are intentional. The elevation of the environmental protection of the Chesapeake Bay to a national concern led to the signing of the Chesapeake Bay Agreement in 1983 which set in motion three decades of intense and committed federal involvement in the bay’s restoration and, most importantly, the provision of \$300 million of federal funds. Similarly, the successful framing of the Florida Everglades as a national treasure led Congress to pass the Water Resources Development Act (2000) which committed \$8 billion of federal funds to the restoration of the Everglades. Many observers from the Great Lakes region viewed the Everglades restoration funding as an attempt to sway the Florida vote before the

upcoming 2000 U.S. presidential elections and this perception stoked resentment in the region. An official at the Cities Initiative argues, that “this evolved into something called ‘Everglades Envy’ where people felt that if the Everglades were worth \$8 billion, the largest source of fresh water in the world, the Great Lakes, must be worth at least 5 times that amount” (GLSLCI, official, interview, January 13, 2008). Thus, the leadership of the Cities Initiative views the successful reframing of Great Lakes restoration into a national concern as the necessary first step to securing federal funding on the scale of the Chesapeake and the Everglades.

The Cities Initiative also contributes to reframing Great Lakes issues by engaging in *symbolic politics*, for example, by using images of pristine waterfronts, marinas, children playing on sandy beaches, and recreational fishing on its website and in its publications to communicate to their audience the value of what is at stake and, furthermore, to emphasize that the quality of Great Lakes water not only has an economic dimension, but a social, cultural, and health dimension as well. This is an important task since as Dave Dempsey (2004) observes in *On the Brink: the Great Lakes in the 21st Century*, American and Canadian governments are “quick to recognize the Great Lakes as a treasure for human commerce” (133) and little beyond that.

Finally, Mayor Daley of Chicago explains that a public awareness campaign also needs to overcome the geographical bias against the Great Lakes, stating that “most capitals are located away from the Great Lakes, hence most politicians do not see the Great Lakes as an asset thus they never paid attention to the Great Lakes.

Smaller lakes take precedence over the Great Lakes” (GLSLCI, Board of Directors Meeting 2008).

Other forms of information politics include *recruitment* and *public relations* drives typical of non-state actors engaged in advocacy coalitions. In 2008, the Cities Initiative hired a communications firm with extensive experience with non-profits and local government—Carolyn Grisko & Associates Inc.—in order to “strengthen the membership” (GLSLCI Annual Report 2008, 9) by improving its ability to effectively communicate information about the network and to disseminate it more broadly.

The Cities Initiative also implemented an outreach program in 2007 to broaden membership, which included sending high level delegations to regional stakeholder meetings such as the Rural Ontario Municipal Association Conference in 2007 to identify potential recruits. During the most recent Annual Meeting in Trois-Rivieres, Quebec, in 2009, the Board of Directors emphasized recruitment as a top priority, recognizing that an expanded membership base is needed to pay for an expanded agenda. An official with the Cities Initiative observed, “we have moved from a narrow focus on water quality and quantity, thus we will need more horses” (GLSLCI, Board of Directors Meeting 2008).

Specifically, the Cities Initiative is anxious to finally recruit the City of Detroit which is the largest city on the Great Lakes and the city with the worst environmental record. Shortly after the Annual Meeting, David Ullrich and Mayor George Heartwell were scheduled to meet with the new Mayor of Detroit, David Bing, to discuss membership. As to why Detroit has resisted membership, Mayor Heartwell stated, “It was just not on [former mayor] Kilpatrick’s radar. I’m hopeful

that with Bing we have a new opportunity to fill this big, gaping hole” (GLSLCI, interview Heartwell 2009).

The Cities Initiative also engages in *leverage politics*, calling on more powerful actors, such as members of Congress and state legislatures, even its own influential member cities such as Chicago and Toronto, to provide political muscle without which the efforts of the weaker members of the network would prove ineffectual. In 2004, President Bush issued an Executive Order calling on the EPA to organize “a regional collaboration of national significance for the Great Lakes”, in essence a task force, which would bring together key stakeholders across all levels of government including non-state actors to develop a protection and restoration strategy. When the Cities Initiative sought a seat within the Collaboration, they encountered resistance from federal agencies involved, a reminder of the previous era of competitive intergovernmental relations. As an example of leverage politics, an official with the Cities Initiative explains that “we had some help from the start from the States, because the Feds wanted to exclude us from the Executive Committee, and we pushed hard to be on, and the States supported us. We wound up on the Executive Committee, which really drove the process” (GLSLCI, interview, official, January 13, 2008).

Finally, the Cities Initiative engages in *accountability politics*, to “hold powerful actors to their previously stated policies or principles” (Keck and Sikkink 1998, 16). We demonstrate the use of accountability politics in the next chapter dealing with refinery expansion. Briefly, local governments opposed the granting of a pollution permit by the State of Indiana for the expansion of a British Petroleum

refinery in Whiting, Indiana, on the grounds that it would increase discharges of effluent into Lake Michigan. They were successful in large measure because they framed their opposition using language and arguments contained in previous environmental agreements, specifically the Clean Water Act (CWA) and the Great Lakes Water Quality Agreement (GLWQA). This lends support to the argument by Peters and Pierre (2004) that weak actors such as local governments are most effective when their informal actions are embedded in a regulatory framework, which they can lean on to support their position vis-à-vis more powerful actors (89).

Beyond Resource Dependence as a Motivating Factor

The second reason that previous conceptualizations of policy networks are insufficient is the fact that the emergence and behavior of policy networks is considered mainly to be driven by resource dependencies, the notion that actors are dependent on each other for certain resources in order to be able to achieve their aims, and that in the case of policy networks the redistribution of these resources is the ‘explanatory motor’ for why different levels of government and non-state actors interact. In this so-called *Rhodes model*, these resources include funding, information, organizational capacity, political support and legal-constitutional powers (Rhodes 1997, 3).

Granted, resource-sharing is often cited as an important reason why local governments joined the Great Lakes and St. Lawrence Cities Initiative. For example, Mayor Vance Badawey, of Port Colborne, Ontario, states that the Cities Initiative serves as a platform for port cities to coordinate and showcase their assets to

international investors. Mayor Heartwell states, “for me the principle reason to be a member is our collective advocacy around policy issues. Our little voice of 200,000 people is suddenly magnified through our collaboration into 13 million people. It gives us clout around issues that are important to Grand Rapids” (GLSLCI, interview Heartwell 2009).

Yet the Rhodes model underplays the role of ideas in network creation and operation, and as Kern and Bulkeley (2009) observe transnational municipal networks in particular appear to be bound together “more by cognitive than bargaining processes” (313). For example, in the most recent Board of Directors meeting, the issue came up whether the Cities Initiative should take a strong stance in calling for the elimination of phosphorous loading from agricultural sources into the Great Lakes or whether to temper their demands and their language. In response, Mayor Heartwell argued that, “we are an organization whose business is to protect the water of the Great Lakes, why shouldn’t we be a strong voice?” (GLSLCI, Board of Directors Meeting 2009). Toronto Councilman Gordon Perks recalled the political battles over phosphorous in the 1970s and argued that “I think these principles we have to stand up for,” (GLSCLI, Board of Directors Meeting 2009). Thus, taken together these sentiments reflect an ideological, normative motivation behind their decision to collaborate within the Cities Initiative to protect the Great Lakes that goes beyond simple resource dependency and rational, utility self-maximization.

Beyond Lobbying

The third reason that traditional conceptualizations of policy networks are insufficient is that they overemphasize lobbying as their primary function, whereas transnational municipal networks divide their energy between a wide variety of internal and external relations. Furthermore, especially in North America, the same tax law which provides the Cities Initiative with charitable non-state status, 501(c)3, explicitly forbids the network from dedicating significant time and resources to lobbying, which explains why the Great Lakes and St. Lawrence Cities Initiative does not have a lobbying office in either the federal, state or provincial capitals nor does it employ a lobbyist, unlike transnational municipal networks in Europe which more-often-than-not have opened up bureaus in Brussels. For example, the Union of Baltic Cities opened up an Antennae Office in Brussels in 2006 with its central mandate to direct member city lobbying of the European Union. Nonetheless, lobbying represents only a small fraction of the internal and external repertoire of transnational municipal networks even in Europe.

External Recognition, Political Opportunities and Support Structures: A Tale of Cities on Two Continents

Political opportunity literature states that “*exogenous* factors enhance or inhibit prospects for mobilization, for particular sorts of claims to be advanced rather than others, for particular strategies of influence to be exercised, and for movements to affect mainstream institutional politics and policy” (Meyer and Minkoff 2004, 1458). A fundamental exogenous factor in the development and behavior of transnational municipal networks is the overarching supranational institutional

structure above the level of the nation state, and the main difference between European and North American transnational municipal networks are the different opportunities and obstacles presented by the political and institutional structures operating at the supranational level under the auspices of the European Union and the North American Free Trade Agreement. As Duina (2006) points out in *The Social Construction of Free Trade*, just as “traditions, structures, values, and norms, along with the preferences of powerful actors, define the range of what is possible” (3) and, consequently, how each free trade area functions, these same trade areas in turn have a profound impact on those same traditions, structures, values, norms, and preferences of the actors who live under its shadow.

Illustrating the different effects of these distinct supranational institutional structures on the mobilization of collective action is best served by offering here a brief account of the development of the women’s rights groups in Europe and North America in comparative perspective contained in Duina’s (2006) study of the two free trade areas. Europe experienced a dramatic surge in women’s rights groups in the 1960s and 1970s which transformed national domestic law across the continent, but most of the groups and legal changes were largely national in character with little transnational activity across borders. The European Union began to respond by replicating many of the principles established at the domestic level into the supranational level in the form of directives i.e. the 1975 directive (76/207) establishing the principle for equal treatment of men and women regarding employment. The following year, the European Court of Justice (ECJ) intervened, ruling that Article 119 in the Treaty of the European Union (1957) regarding equal

pay for equal work had *direct effect*, meaning that every EU member state was legally obligated to enact and enforce this Article domestically even in the absence of national laws or even if it contravened national law.

By becoming active and visible in the debates surrounding women's rights, the European Union, a transnational institution, had made itself a target for lobbying and thus acted as a catalyst for the mobilization of a transnational women's rights movement in Europe. In 1990, the largest and most prominent group—the European Women's Lobby (EWL)—was established linking over three thousand member organizations across the continent representing over one hundred million individuals. The rise of the EWL can be tied to the symbiotic relationship that was forged between the supranational structures of the European Union and the women's movement. The EWL is not only financially supported by the European Commission, but serves as a policy advising body for the European Parliament which provides the group with instant political legitimacy.

The availability of these political opportunities and resources in Europe, and their relative absence in North America, led to the diverging development of these transnational networks. As Duina points out, “this impressive mobilization on the part of European women has no parallel in NAFTA. To this date, in North America there simply does not exist a truly transnational organization dedicated exclusively to the representation of women at the NAFTA level” (Duina 155). The lack of similar legal-institutional structures at the supranational level under NAFTA meant there was no target above the nation state—no EU-type Commission, Court or Parliament—to serve as a mobilizing and legitimizing factor for transnational cooperation and to

serve as a source of funding. In short, the same resources, political opportunities and pressures generated by the European Union, which spurred the organization and operation of a truly transnational women's movement in Europe, were absent in NAFTA. Consequently, the political-institutional structures of the EU promoted transnational integration in the area of women's rights while NAFTA did not.

If these fundamental political-institutional differences are, as Duina argues, “*systematic, meaningful, and enduring*” (186), one would expect that these same kinds of differences will manifest themselves in the emergence and development of transnational municipal networks in Europe and North America. This research demonstrates that such is in fact the case but with the crucial caveat, however, that although supranational structures are important factors in the subsequent development of transnational municipal networks, they are not necessary for their initial emergence. By this argument this dissertation distinguishes itself from both Duina (2006) and Brunet-Jailly (2004), who view the presence of supranational structures as a precondition for the emergence of transnational networks.

Rich Soil, Deep Roots, Ample Sun: the Effects of Institutionalization and Supranational Support on the development of TMNs in Europe

The political opportunities and resources afforded local governments by European integration and specifically its supranational institutions goes hand-in-hand with, and is reinforced by, a broader and deeper integration in general of local government policy capacity, local government cross-border cooperation, and transnational municipal networks in the more formal, Type I governance architecture.

Long before the creation of the European Union, the position of local government in European integration was recognized, in particular by the Council of Europe, which established the “Conference of Local Authorities in Europe” as early as 1957. In 1994, the Conference became the “Congress of Local and Regional Authorities” and this institution continued to provide a forum for regional and local governments to present their interests before higher authorities (Kern 2007). In addition, the Council of Europe adopted a “European Charter of Local Self Government” in 1985 which guarantees a significant measure of local government independence. The level of respect shown the Charter is measured by the fact that it is signed by all current member-states of the European Union and all future members as a condition of membership. More pertinently, *Article 10* of the Charter provides the legal basis for the establishment of transnational municipal networks and municipal foreign policy by stating that “the entitlement of local authorities...to belong to an international association of local authorities shall be recognized in each State. Local authorities shall be entitled...to cooperate with their counterparts in other States” (quoted in Kern 2007, 6). Such a formal document embedding local governments within the very process of integration has yet to appear in North America, thus transnational municipal networks such as the Great Lakes and St. Lawrence Cities Initiative lack that formal recognition, that formal legitimacy, that institutional anchor, which could provide them with some measure of protection and a sense of permanence.

The proliferation of direct membership transnational municipal networks in Europe during the 1980s can be accounted for by the signing of the Single European

Act (1986), which transformed the Commission and other EU institutions into mobilizing and legitimizing factors for transnational local government cooperation, in large measure because the Commission began to have a direct impact on local governments. According to Kern and Bulkeley (2009) “there were almost no (direct) impacts of European legislation on subnational governments before the Single European Act of 1986” (312). The Single European Act dramatically changed that fact, as did the subsequent Maastricht Treaty (1993), the Treaty of Amsterdam (1999) and the Treaty of Nice (2003), which expanded the competencies of supranational actors, especially the Commission and the European Parliament, to the degree that decision-making in these supranational arenas became “far more important than domestic policy-making” (Kern and Bulkeley 2009, 312) and more pertinent to local government where roughly two-thirds of all laws implemented by local governments now originate (Kern 2007). The Commission in particular attained a central position within the legislative process through its formal right of initiating and drafting legislation (Heinelt and Niederhafner 2005, 77), thus it also became a target for the mobilization of local governments.

Consequently, local governments and transnational municipal networks underwent a process of “Europeanization”, for example, by adapting their organizational structures to the decision-making structures of the European Union, most obviously by locating offices in Brussels, dedicating staff members to interpreting EU policy, and directing their lobbying efforts at the Commission. For example, the Council of European Municipalities and Regions (CEMR) was founded in 1951 with a secretariat in Paris, but the office established in Brussels in 1969 has

since attained de facto headquarter status, again illustrating the effects of Europeanization (Heinelt and Niederhafner 2005).

Far from a unidirectional interaction, the Commission has actively cultivated a symbiotic relationship with local government which has provided them with an expanded role within European decision-making structures. In part, the expanded role of local government is a product of the Commission's small bureaucracy and limited administrative capacity which makes it dependent on external resources that come from local governments, in particular their on-the-ground expertise.

Cities are the implementing agents of EU legislation and as such provide the Commission with invaluable information about ground-level conditions before policy is crafted. Furthermore, as implementing agents that have an electoral mandate, cities can "generate legitimacy for and increase the acceptance of the Commission's initiatives" (Heinelt and Niederhafner 2005, 77). Once the policy is in the implementation stages, the cities act as watchdogs, making sure that national and sub-national governments are applying EU law properly, thereby assuming "the role of a functional equivalent of monitoring agencies of the Commission" (Heinelt and Niederhafner 2005, 79), in essence as the oft-repeated 'complementary back-up institutions' (Andersson and Ostrom 2008). Furthermore, the Commission prizes the ability of transnational municipal networks to aggregate the interests of local government and speak with one voice. Therefore, cities are far from being passive recipients of top-down dynamics, or simply "affected objects" (Kern 2007, 4) that adapt to EU structures, but they themselves influence the behavior and structure of the European Union and hence actively take part in the top-down and bottom-up

dynamics of Europeanization which Radaelli describes as “co-evolution between the domestic and the European level” (2006, 59).

Several key institutional changes took place in the 1990s which cemented this ‘two-way’ exchange of resources. Since the original Treaties made no mention of regional or local government, much as the American and Canadian constitutions ignored local government, their first formal recognition came in the Maastricht Treaty (1993) which contained a provision for the creation of the Committee of the Regions (CoR) in 1994. The Committee is a consultative forum for representatives of regional and local governments to present their policy positions and interests to the Commission, and the Amsterdam Treaty (1999) obliges both the Commission and the Council to consult with it in various policy areas including the environment. Furthermore, in 2004, the Commission introduced a “systematic dialogue” with local governments to,

involve regional and local actors—via European and national associations of regional and local authorities—by giving them the opportunity to express their views on the European policies they help to implement before the formal decision-making processes start (and) to ensure a better understanding of the policy guidelines of the EU and European legislation, thereby making the activities of the Union more transparent and meaningful to the public” (Commission of the European Union, COM 2003: 3).

The systematic dialogue opened yet another official channel of communication between local governments and the Commission. Consequently, as Heinelt and Niederhafner (2005) argue, “European cities gain new room for political maneuver because the process of Europeanization implies an opening up of a political sphere as a result of which traditional structures of domestic policymaking ... can...be bypassed” (76).

Finally, intensive lobbying by networks such as the Council of European Municipalities and Regions, with support from the European Parliament, proved successful in including Article I-5 into the EU's Constitutional Treaty which states, "The Union shall respect the equality of Member States before the Constitution as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local government" (quoted in Kern 2007, 7). This provision is significant considering that neither the previous Treaties, nor any of the constitutions in the North American context, contain a constitutional recognition of local government which embeds local government so firmly within the governance structure.

These connections with the Commission provide the transnational municipal networks not only with political legitimacy and a *raison d'être*, but the Commission also provides tangible resources in the form of substantial project funding. The *Cities for Climate Protection Campaign*, for example, depends on EU funded projects for 45 per cent of its revenues (Kern and Bulkeley 2009, 324). Membership fees only account for approximately one-third of European transnational networks, which means that without some government and EU funding, these networks "could not maintain their services and campaigns without these resources" (Kern and Bulkeley 2009, 324). The most important source of revenue is the Cohesion Fund which is a redistributive mechanism that funds environmental and infrastructure projects in regions that have lower-than-average socio-economic status. Important reforms in the late 1980s introduced a 'partnership principle' requiring cooperation between all

levels of government, including the local, in the planning implementation of projects funded by the European Union, including the Cohesion Fund.

Of particular importance were the so-called Community Initiatives which required little input from national governments other than general approval by the member states, but instead fostered the creation of direct relations between the EU and local government and thereby allowed local governments to bypass higher tiers of government and gain a new measure of independence. Within this sub-set of programs, the INTERREG program has been particularly effective in fostering transnational cooperation of local government. The INTERREG program provides funding for cross-border projects that mostly involve public authorities and non-governmental organizations. It differs in its requirements from all other Cohesion Policy initiatives in that these projects must involve participants from at least two-member states and the submission of joint bids for funding. The partners can belong to contiguous or non-contiguous regions. The current INTERREG IV program (2007-2012) has a budget of roughly \$11 billion. For example, the INTERREG III program (2000-2006) provided \$277 million in funding for the Baltic Sea Region Neighborhood Program which covered 120 projects. The program encouraged local and regional governments across eleven Baltic Sea countries to submit joint bids for project funding in the area of sustainable development. Projects included, for example, the establishment of a network or association of cities and research centers in countries located across the region dedicated to the promotion of research, innovation, and construction of wind farms. The EU contribution to this one collaborative project alone was close to \$500,000.

Other programs fostering transnational cooperation between local governments include RECITE (Regions and Cities for Europe) which had a budget of \$6 million between 1991-1994 to promote the exchange of information and best practices, and URBAN which fosters the regeneration of economically depressed cities with the help of \$1.3 billion in EU funds.

The Commission has also fostered cooperation between transnational municipal networks. The European Sustainable Cities Towns campaign, created in 1994, was funded in part by the Environment Directorate of the European Commission. The campaign provides a framework for over 1,800 local and regional authorities to implement sustainable development policies and thus fulfill the mandate of the United Nations Conference on Environment and Development held in 1992 in Rio. The campaign brought together eight European transnational municipal networks including among them the *Council of European Municipalities and Regions* (CEMR), the *Union of Baltic Cities* (UBC), the *Climate Alliance*, and the *Energie-Cites*. Although networks do cooperate together without assistance from EU funds, as when the *Climate Alliance* and the *Energie Cites* collaborated on a “Car Free Day” campaign, Kern (2007) argues that “it has proven relatively difficult to maintain co-operation between the networks in the absence of EU support” (326).

The proliferation of these networks in Europe, and in certain policy fields such as climate change, has resulted in competition between networks for EU funding, access, and representation, which in turn has added pressure and incentive for these networks to improve their internal efficiency and external efficacy. At the same time, EU funding of both bilateral local government cross-border cooperation

and funding for transnational municipal networks has mitigated the ‘competitive city paradigm’ described by Brunet-Jailly (2004). According to Marshall (2005), the “regional management of successive Structural Fund initiatives—a bedrock requirement of European Commission regulations—has...served to lessen intra-metropolitan rivalries” (677), thus preparing the ground for the cultivation of new and expanded networks and cross-border cooperation.

Finally, in addition to the Commission, the European Parliament has also become an important venue for the mobilization of local governments and networks, particularly after its original consultative role was expanded to include cooperative and co-decision competencies alongside the Council of Ministers. When it is time to make amendments to legislation affecting local governments, the Members of the European Parliament (MEPs) will approach transnational municipal networks for expertise. Cities also join parties and groupings in debates surrounding the legislation.

Poor Soil, Shallow Roots, Little Sun: The Effects of Weak Institutionalization and Anemic Supranational Support on the Development of Transnational Municipal Networks in North America

Relative to the European Union, the institutionalization of local government and transnational municipal networks within the Great Lakes environmental governance structure runs shallow, and the overarching supranational superstructure is far less developed in the North American context and hence far less supportive of transnational municipal networks and other forms of cross-border cooperation between local governments.

Starting with the supranational structures, there is no equivalent to the European Commission, the European Court of Justice, or the European Parliament in North America and nothing really approaching these institutions. However, there are two institutions above the level of the nation-state—the International Joint Commission (IJC) and the Commission for Environmental Cooperation (CEC)—which provide minimal resources for local government but who have nonetheless played a significant role in opening up political space for non-central government actors in the policymaking process. Furthermore, the IJC, and especially the CEC, do have some influence over environmental and economic policy in a way that directly affects local government, hence it serves as a target above the level of the nation state, much like the European Commission, and therefore as a mobilizing and legitimizing factor for non-central state actors such as transnational municipal networks. In addition, their own, weak policy capacity and limited resources forces them to seek closer collaboration with non-central state actors such as local governments on whose resources and political legitimacy these institutions have come to rely to achieve their aims. Nonetheless, compared to the institutions in the European Union, their potential utility as catalysts of multilevel governance and champions of transnational municipal networks has never been fulfilled and, more accurately, has been purposefully curtailed rather than cultivated by federal and sub-national governments.

(i) Between Mobilization and Marginalization: The International Joint Commission as an Instrument of Multilevel Governance

The International Joint Commission (IJC) was created in order to administer the Boundary Waters Treaty of 1909, which was the first environmental treaty to address international water rights. The IJC is the first permanent joint institution between the United States and Canada. It is composed of three American and three Canadian commissioners that are appointed by their respective governments. The two principle purposes of the Treaty it to guarantee that the boundary waters are shared equitably and that jurisdictions are held responsible for any injury to health or property from pollution to the other party.

Although the IJC was not given any enforcement powers, it was given a broad mandate and broad authority to disseminate information and data on water quality, coordinate activities across jurisdictions, set the research agenda, recommend water management goals and assess progress of bi-national agreements. One instrument in particular has been influential. *Article IX* established a quasi-judicial reference procedure whereby the two governments can refer a concern or conflict to the IJC and request that the IJC produce a non-binding comment or decision. In its first seven decades of operation, the IJC was involved in one hundred cases including the high profile Garrison Dam project and the Trail Smelter dispute (Parrish 2006, 11). Early critical references relating specifically to the Great Lakes included a determination of the health risks of transboundary pollution in 1912, an investigation into pollution levels in Lake St. Clair and the Detroit River in 1946, and an analysis of water quality in Lake Erie and Lake Ontario in 1964. During the IJC's 'golden era' from 1945 to

1965, its powers were expanded and the IJC was mandated to provide continuing supervision over the Great Lakes basin.

By the 1970s, during the period of competitive-cooperation, the activism of the IJC began to be interpreted as an encroachment on government jurisdiction and a threat to sovereignty (Parrish 2006), and as a result it began to be marginalized. Between 1977 and 1991, the two countries referred only two cases to the IJC for investigation (Parrish 2006, 15) and only three more between 1995 and 2001 (Klinke 2008), which demonstrates that both federal governments were interested in reining in the IJC. Parrish (2006) argues that “in the last few years, the IJC has been bypassed completely” (15) and that in the most recent major disputes “the IJC was rendered powerless, or at least kept out of the picture” (16). Parrish adds that the recent ratification of the Great Lakes Water Compact, which transfers oversight over out-of-basin water diversions from the IJC to a Council composed of states and provinces, essentially replaces a longstanding international regime with a sub-national regime, and provides further evidence that the “the IJC is in disfavor and has lost much of its political effectiveness” (4).

With diminished political clout, a very limited budget and limited staff, the International Joint Commission at present cannot provide the level of resources, access to decision-making structures, or the political legitimacy that European transnational municipal networks draw from supranational actors such as the European Commission in the European Union. However, the IJC does serve and support the Great Lakes and St. Lawrence Cities Initiative in three significant ways.

First, the story of the rise-and-descent of the IJC provides a good template for the kind of strategy the Cities Initiative should employ and which strategies to avoid. The agenda-setters within the Cities Initiative understand that it must be careful not to overstep its bounds or move too far ahead of what federal, state and provincial governments are willing to consent to or they will face the same kind of ‘push-back’ experienced by the IJC. Throughout its history, the authority of the IJC has been highest when it takes a ‘low-key’ approach, helping to nudge governments towards solutions they are prepared to accept (Schwartz 1992). Gradualism is very much the only speed the bi-national structures around the Great Lakes are able to bear. Mayor Anderson, of Blue Mountains, echoes this approach by stating, “plans for the future have to be gradual, realistic and solid so that they can actually proceed. It’s an evolution” (GLSLCI, interview Anderson 2009).

Furthermore, there is a recognition that the authority of the IJC, and the authority of transnational municipal networks, is based very much on the power of *persuasion*, specifically, on its ability to provide bi-national advice “relying on the best scientific and socio-economic expertise available from the government and private sectors as well as from affected or concerned interest groups” and formulating that information “in a less adversarial atmosphere than would exist in [traditional] binational discussions” (Chandler and Vechsler 1992, 281). Mayor Ross, of Superior, echoes this approach when describing the strategy employed by the Cities Initiative in its standoff with British Petroleum and the State of Indiana over the expansion of the refinery in Whiting, Indiana. He states, “I tell you what gave us credibility. There are organizations that get up and just scream, and they tell tales of disaster and

impending calamity without coming to the table with science, or reasoning, for their opposition. The credibility of the Great Lakes mayors happens because we came to the table with real science” (GLSLCI, interview Ross 2009).

In addition to adopting the strategy of gradualism and non-confrontation, while embracing its role as a source of information and expertise, the Great Lakes and St. Lawrence Cities Initiative has been very careful to also establish itself as an organization that rises above the special interests either of government, non-state actors, or industry, and to cultivate an organizational identity that is independent and impartial. Mayor Ross points out what could very well be the mission statement of the Cities Initiative when he states,

As mayors we want to be responsible for the environment in our cities, but we are also responsible for the economic development of our cities, the vitality that we bring to our city that creates jobs and livelihood. So the balancing part of the cities organization is that all of us wear more than one hat. We don't come from a strictly special interest viewpoint that says our viewpoint and only our viewpoint is the lens which we interpret everything we see. We are balancing the interest of every single group (GLSLCI, interview Ross 2009).

To underline the similarities of the IJC and the Cities Initiative, the Commissioner of the IJC, Pierre Trepanier, in a recent speech underscored the structural similarities between the two organizations and their similar strategies for reaching out to people and fostering cooperation (GLSLCI, General Assembly 2009).

The second way in which the IJC supports the Cities Initiative, is that it has been an early champion of, and a significant contributor to, the institutionalization of a multilevel governance system in North American environmental policymaking, in which, according to Klinke (2008), the participation of multiple actors across all jurisdictional levels both inside and outside government is “systematically and

purposefully developed and structured” (10). Klinke (2008) identifies several instruments employed by the IJC to enhance multilevel governance including (i) public hearings (ii) workshops and roundtables (iii) public advisory bodies.

The IJC organizes biannual public hearings to raise a wide-spectrum of issues related to the basin, and these hearings are open to all American and Canadian citizens, attracting on average 400-500 participants, including senior government officials, the scientific community, representatives of industry and non-governmental organizations. The most frequent platforms for collaboration provided by the IJC are workshops and roundtables which bring together 20-30 carefully selected people to deliberate on specific issues and these are structured more as focused and dialectical exchanges of ideas. The IJC deliberately selects the participants of these workshops based on their expertise and background. Finally, the IJC also helps to coordinate public advisory bodies on lakes Superior, Erie and Michigan composed of public and private actors which help develop and implement Lakewide Management Plans (LaMP) as well as Remedial Action Plans (RAP) for heavily polluted Areas of Concern (AOC).

These three broadly defined instruments constitute part of the governance structure around the Great Lakes which are similar to the Open Method of Coordination (OMC) practiced in the European Union, and discussed in the previous chapter, and which complements the traditional, formal, rationalist decision-making structures, since, according to Klinke (2008), these instruments are “characterized by equal standing of the members, equal rights to speak, freedom of expression, and

argumentative practice towards consensus orientation” (10). The International Watershed Initiative (IWI) also reflects these more open governance instruments.

Consequently, one of the prime functions of the IJC is to act as a catalyst or incubator for the development of epistemic communities which are “networks of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge” (Haas 1992, 3). These epistemic communities are organized around the system of comitology already situated within the IJC structures such as the Water Quality Board (WQB), the Science Advisory Board (SAB), the Council of Great Lakes Research Managers (CGLRM) and the International Air Quality Advisory Board (IAQAB). In turn, these networks “can counterbalance power asymmetries by providing additional channels of influence beyond the formal structures” (Borzel 1998, 262) for non-central actors and organizations such as the Great Lakes and St. Lawrence Cities Initiative. For example, during the IJC’s Biennial Meeting held October 7-8, 2009, in Windsor, Ontario, the Executive Director of the Cities Initiative, David Ullrich, addressed the delegates and ran a workshop on Beaches and Recreational Water Quality, an issue so central for local government that Ontario municipalities have called for the establishment of an office within the Ministry of the Environment dedicated to beaches. This issue would not have appeared on the agenda of the IJC’s Biennial Meeting without the participation of the Cities Initiative.

Finally, the IJC has supported the Cities Initiative by actively promoting the organization, externally and also within its own institutions, and bestowing its political legitimacy upon its activities. For example, since 2005, the Executive

Director of the Cities Initiative has served as a member of the Great Lakes Water Quality Board (WQB) which is the principal advisory body to the IJC, making sure it understands its roles and fulfills its obligations under the Great Lakes and Water Quality Agreement (GLWQA). In addition, as mentioned earlier, a pending IJC report will address local government directly for the first time in its history. This reflects a new approach which, according to IJC Commissioner Pierre Trepanier, “reflects the IJC belief that cities must be at the decision-making table” (GLSLCI, Trepanier speaking at General Assembly 2009).

At the same time, the Great Lakes and St. Lawrence Cities Initiative has taken great care to reciprocate and thus help shore up the political clout of its humble yet erstwhile ally. Commissioner Trepanier noted that when the IJC began its public consultations on the pending review of the GLWQA in 2005, fourteen mayors offered the use of their offices and public buildings thereby leveraging the limited resources of the IJC in order to expand the number of meetings held at venues across the basin thus permitting more than 4,000 people to take part (GLSLCI, General Assembly 2009). Out of the 14 public meetings, 11 were held in cities belonging to the Great Lakes and St. Lawrence Cities Initiative.

Furthermore, in 2008, the Cities Initiative supported a plan initiated by one of its active members, the Regional Municipality of Niagara, to nominate the IJC for the 2009 Stockholm Water Prize, which is the most prestigious international award for water-related activities, in hopes of augmenting the IJC’s political clout, increasing its international standing, and cementing its partnership with local governments.

Finally, the Cities Initiative has been a strong proponent of revitalizing the IJC by urging both federal governments to use the neglected Article IX mechanism of the Boundary Waters Treaty which invites the IJC to mediate transboundary conflicts between Canada and the United States. For example, in 2005, the Cities Initiative called on the United States to join Canada in referring their heated dispute over Devil's Lake to the IJC after the United States had chosen to reject that option. In a speech, Canadian Minister of the Environment, Stephane Dion, praised the Cities Initiative for supporting the IJC, stating that "failing to use the IJC appropriately would undermine one of the most significant international environmental agreements ever signed" (Dion, speech May 26, 2005).

(ii) Untapped Potential and Bottled Ambitions: NAFTA's Commission for Environmental Cooperation

The most important and visible component of the supranational infrastructure is the North American Free Trade Agreement (NAFTA), which went into effect on January 1, 1994. In addition to regulating trade between Canada, Mexico and the United States, NAFTA included two sub-agreements called the North American Agreement on Labor Cooperation (NAALC) and the North American Agreement on Environmental Cooperation (NAAEC) which contributed their own unique supranational governance structures to the continent.

The NAAEC established the Commission for Environmental Cooperation (CEC) which was the first, truly North American international organization dealing with environmental management, and it was endowed with broad and autonomous authority and resources. In their evaluation of the CEC's first decade in existence,

Kirton and Richardson (2006) argue that the CEC has become “the premier North American institution for environmental issues” (26). The mandate of the CEC is to carry out the broad aims of the NAAEC, which is to promote sustainable development, increase cross-border cooperation, improve environmental laws, enhance compliance, promote transparency, and in the process avoid erecting new trade barriers. Consequently, Kirton and Richardson (2006) argue that the creation of the CEC “represented an acknowledgement of the deep environmental interdependence of the countries of North America in the context of their economic interdependence” (6) and instigated for the first time an institutionalized integrated dialogue on trade and environmental matters—the economic-environmental nexus—at a senior level (5).

As is the case with the International Joint Commission, the preferred approach utilized by the CEC parallels the European Union’s Open Method of Cooperation (OMC), in that, according to Kirton and Richardson (2006),

the CEC has provided a safe harbour for Canadian government officials to communicate with US government officials they may not otherwise be authorized to contact, on matters they would not otherwise be authorized to discuss, and to explore these in an informal, non-committal, more open way. It has provided a forum to explore partnerships on a neutral, third-party ground, *without first engaging the formal machinery of all three national governments* (12).

The bulk of the activities of the CEC are intergovernmental, carried out predominantly by representatives of the federal governments in consultation with the provinces and the states. However, within the formal, Type I governance structures, the CEC also opens up informal political space for Type II governance structures.

The CEC is made up of three pillars, the Council, the Secretariat and the Joint Public Advisory Council. The *Council* is the intergovernmental, governing body of the CEC, which meets once a year and is composed of the environmental ministers and the representatives of federal departments and agencies in their respective countries. The Council sets the agenda parameters and the budget, it is responsible for general oversight of the CEC's work, and also establishes external links with other organizations such as the International Joint Commission and the International Boundary and Water Commission (Kirton and Richardson 2006). Working groups, such as the Sound Management of Chemicals (SMOC), have been established which include state and provincial government representatives engaged in a multilevel dialogue or, perhaps more appropriately, a two-level dialogue. The *Secretariat*, headquartered in Montreal with a satellite office in Mexico City, provides technical and operational support to the Council and the working groups, and it is headed by an executive director. The Council and the Secretariat comprise the powerful, intergovernmental machinery of the CEC.

The third major pillar of the CEC is the Joint Public Advisory Council (JPAC) and it introduces a multilevel governance approach to the NAAEC which is inclusive of non-central state and non-state actors. The fifteen members appointed to the Advisory Council equally by the three parties to the NAAEC are independent of government. The official role of the JPAC is to advise the Council on any issue related to the NAAEC and to fulfill any function assigned to it by the Council. Over the years, however, the JPAC has expanded its role. As the main channel of public input and participation, JPAC has become the main interface connecting government

and civil society. Consequently, its connection to the grassroots level has allowed it to quickly identify emerging issues, such as invasive species, and transmit them to the Council and thus raise their profile. Less frequently, the JPAC has served as a critic of the Council. As a result, according to Kirton and Richardson (2006), the JPAC has become “the leading instrument to ensure the NAAEC’s commitment to inclusiveness, transparency, and public participation in CEC governance” (10). The JPAC comes together on average four times a year, in addition to more informal interactions through workshops, public meetings, and conferences. The JPAC is unique, in that the formal meetings often take place in different locations across North America, thereby improving the CEC’s accessibility.

In addition to acting as a platform for broader trilateral intergovernmental interactions, the CEC has three distinct instruments which have set the ground for the expansion of multilevel governance in the region and the inclusion of non-central actors in environmental governance.

Under *Article 13*, the Secretariat has the authority to initiate and conduct independent studies investigating any issue under the scope of the NAAEC. The issues investigated are complex and the process consumes significant resources, which is why the CEC on average releases one such report every two years. Although resource intensive, the facts established by Article 13 reports are potential ‘game-changers’, affecting the substance and style of bilateral relations. For instance, two reports entitled *Continental Pollutant Pathways* (1997) and *Environmental Challenges and Opportunities of the Evolving North American Electricity Market* (2002) established the link between transboundary pollutants and health, and

confirmed that the United States transmits significant air pollution to Canada. The findings in these reports were used by Canada in its bilateral relations with the United States. These reports were also directly relevant to local government bilateral relations around the Great Lakes. For instance, the petition submitted by the thirteen Canadian municipalities to the EPA in 2006 regarding transboundary pollution from Midwestern coal-fired plants was based on, and directly quoted, these and other CEC reports. Findings from the *Continental Pollutant Pathways* (1997) and the *Long-Range Transport of Ground-Level Ozone and Its Precursors* (1997) reports, which concluded that pollutants from the upper Midwest and the Ohio River Valley travel upward across Southern Ontario, were used to justify the petition process under Section 115(a) of the US Clean Air Act. Section 115(a) states, that the EPA must respond when it receives reports or studies from ‘any duly constituted international agency’ which indicate that transboundary pollution from the United States is endangering the public health or welfare of citizens in a foreign country. The CEC satisfied the requirement of a ‘duly constituted international agency’, therefore these Article 13 reports were used as a basis for the mobilization of non-governmental organizations and local government in the basin.

Kirton and Richardson (2006) argue the process employed in producing the Article 13 reports has been more important than their content. The resource intensive nature of the process, and its reliance on principles and methods found in the physical, natural and social sciences, forces the CEC to mobilize external stakeholders in support of their projects, thereby creating epistemic communities by fostering communication and cooperation among government officials, business

leaders, academics, scientists, and non-governmental organizations. These epistemic communities provide rare forums for experts from different policy fields, such as energy, trade, and the environment, to collaborate. For example, according to Kirton and Richardson (2006), the report on the electricity market in North America, for instance,

served as the only way for the trilateral environmental community to react to a highest-level, ad hoc intergovernmental economic development initiative, and to inject environmental considerations into trilateral discussion on energy from which environmental actors were institutionally shut out. In this case, the CEC engendered a move from primary national identities and conceptions of interest to transnational ones. It provided a way, not otherwise available, for environment departments in North America to react to the intergovernmental process on energy co-operation initiated by heads of government and state (14).

The CEC has yet to cooperate with the Cities Initiative directly on an Article 13 report, and thus the potential for supranational-local cooperation in this manner remains untapped.

In addition to Article 13, the CEC possesses two legal mechanisms which endow it with 'soft law' enforcement capacity. *Article 5* is a government-to-government dispute resolution mechanism, whereby any one of the three signatories to NAFTA can request the Council to concur that "a persistent pattern of failure" by any other party to enforce its environmental laws has occurred. In the case of such a positive finding, the Council proposes a plan to remedy such non-compliance and has the authority to assess fines and suspend benefits under NAFTA to any party in breach of its environmental laws and in non-compliance with the Council's remedial plan. Although giving the CEC some potential 'teeth', the Article 5 process has never

been used and “is widely expected to remain a dead letter under a de facto non-aggression pact in which no country will initiate the first dispute for fear of unleashing a spiral of retaliation” (Kirton and Richardson 2006, 18).

The second legal instrument, *Articles 14 and 15*, has great potential to extend multilevel governance by authorizing non-governmental organizations or persons to make a submission to the Secretariat against a government failing to enforce environmental laws. After investigating the submission, the Secretariat can recommend to the Council that a factual record of the violation be developed. The Council then determines, by a two-thirds vote, whether the Secretariat should proceed with the factual record and whether to make it public. As a result, Kirton and Richardson argue that the process does embed the participation of civil society within a process traditionally monopolized by governments. Furthermore, the ability of a citizen of one country to bring a case forward against any one of the three national governments means that they can “behave as if they are North American environmental citizens” (15). In a sense, these two articles have the potential to catalyze the mobilization of non-central state actors as has the European Court of Justice and the European Commission.

However, although in theory these two articles have the potential to expand multilevel governance and mobilize non-central-state actors, they have had limited practical effect. Kirton and Richardson (2006) argue that “under this process, there is no further remedy for the submitter through the CEC and no ultimate challenge to national sovereignty” (15). Furthermore, the “slow, cumbersome, government-controlled process that produces, at best, a factual record” (15) shorn of any real

consequences, makes it a less effective instrument. The process is quite lengthy, and a factual record on average takes three years to produce. In two cases, the Council has rejected recommendations by the Secretariat that a factual record be produced, thus demonstrating the persistent and powerful role of states as ultimate gatekeepers. Over the first decade, only 11 factual records were produced, meaning, roughly 20 per cent of the submissions reached a successful conclusion for the submitter.

Consequently, the lead counsel for the thirteen Canadian local governments in the 2006 EPA petition case stated that his non-government organization, Ecojustice, had submitted more petitions to the CEC than any other group, but had decided against filing the petition with the CEC in this particular instance in favor of the EPA route because the CEC “litigation is prohibitively expensive” and that “there is no accountability with the CEC route” (Ecojustice, interview, November 27 2008). In addition, the counsel argues that the main problem with the CEC is political interference which causes undue delays in the process.

For these and other reasons, Hsu and Parrish (2006), in a paper entitled “Embracing Reciprocity: Revisiting Domestic Legal Solutions to Ontario’s Transboundary Pollution Problems” argue that Canadian governments at all levels, including non-state actors, should depend less on supranational mechanisms such as the IJC and NAFTA and make more use of the U.S. domestic courts when seeking redress for transboundary pollution violations. At least at this point, non-governmental organizations and local governments seem to prescribe to these guidelines and eschew NAFTA instruments in favor of the domestic route, which can be interpreted as a sure sign of their severe practical limitations as vehicles for

increased participation by non-central state actors and local governments. Furthermore, the Article 14 and 15 route only provides a post hoc enforcement instrument, however feeble, and does not provide a mechanism for planning long-term strategies for basin management.

One of the major structural bases for the ineffectiveness of the CEC is its inadequate budgetary resources. The Council agreed in 1994 to set the annual budget of the CEC at \$9 million, with each government contributing one-third of the total, and this level has not changed despite the institution's expanding roles and despite annual inflation. Furthermore, voluntary contributions by any one party above and beyond the agreed upon budget are subject to agreement by the other two parties. Secondments, where officials are paid directly by national governments instead of from the CEC budget, have not been considered, nor have private sector donations, in order to alleviate the fiscal strain on this institution (Kirton and Richardson 2006, 25).

Taking together, in their study *Greening NAFTA: The North American Commission for Environmental Cooperation*, Markell and Knox (2003) come to the rather harsh conclusion that, "the CEC has no great budget to induce others to follow its lead, and in practice it cannot impose environmental standards or economic sanctions" (309) and thus "the CEC has largely failed to create an environmental voice within the NAFTA institutions" (309). Asked about the relationship between his city and the CEC, the Mayor of Toronto responded, "There is no relationship with the CEC. None of us know what it really is. They are not down the street, and they don't do anything" (GLSLCI, interview David Miller, 2010).

(iii) Cut Short: The North American Fund for Environmental Cooperation (NAFEC)

It has been argued in this dissertation that both the intergovernmental relations within Type I governance structures and the overarching supranational structures affect the development of multilevel governance and the development of informal, Type II governance structures. These, in turn, provide political opportunities and resources for non-central state actors such as non-governmental organizations and local governments to increase their policy capacity and take part in the governance structure. In the North American case, the three federal governments pursued policies that have led to a truncated CEC thereby leading to a truncated multilevel governance structure, with truncated Type II governance structures that limit the participation and policy capacity of non-central state actors.

Nowhere in North America is this relationship between Type I and Type II multilevel governance structures more evident than in the creation and elimination of the North American Fund for Environmental Cooperation (NAFEC). It demonstrates both the potential of the North American multilevel governance system and the reality of its deliberate restriction. It also demonstrates the role federal governments and supranational actors play in determining the size of the gap between that potential and reality.

The Fund was an un-mandated program established by the CEC in 1995 and operated from 1996 until its elimination in 2003 with the purpose of funding grassroots environmental projects across Canada, Mexico and the United States. In the first four years of operation, the NAFEC received 2,014 proposals from various non-governmental organizations and in that time awarded 142 grants, illustrating the

terrific hunger on the part of grass-roots organizations for EU-style supranational funding. By 2003, a total of \$9.36 million dollars were dispensed in its eight years of operation. Furthermore, during this time, the NAFEC was exceptionally successful at leveraging additional funding in the amount of \$4,592,800. Projects included citizen monitoring of pollution and health hazards, improving access and dissemination of environmental information, conservation of migratory species and habitat, and fostering sustainable development through the promotion of green goods and services.

Compared to the \$11 billion the EU INTERREG program is set to dispense between 2007-2012, the total NAFEC funding is meager, but it is significant when considering that no such prior supranational funding mechanisms existed, and significant when considering the scale of mobilization it precipitated. Furthermore, close to half of the grants awarded ranged between USD \$77,000 and \$100,000. To illustrate the value of such a grant to a non-governmental organization or transnational municipal network, a grant of \$100,000 would represent 25 per cent of the annual expenses of the Great Lakes and St. Lawrence Cities Initiative. On average, NAFEC funding represents 45 per cent of any one project's funding. Almost half of the grants were awarded to organizations with an annual budget between \$100,000-500,000, a category that would include the Cities Initiative (CEC 2000, 5).

More relevant to the Great Lakes and St. Lawrence Cities Initiative, the NAFEC placed a special emphasis towards fostering transboundary cooperation, targeting those organizations which build cross-border or regional networks (CEC

2000, 18). Almost half of the projects funded brought two or more organizations together. Approximately thirty projects funded by NAFEC explicitly involved the establishment and development of cross-border networks including six between Canada and the United States and ten between Canada, Mexico and the United States (CEC 2000, ii).

Furthermore, special attention was given to cross-border management of shared ecosystems between Canada and the United States. For example, NAFEC gave two grants to the Canadian Parks and Wilderness Society for their Yellowstone-to-Yukon Conservation Initiative (YTY) which conserves and restores grizzly bear habitat. A complementary project was also funded by NAFEC to support binational cooperation between the East Kootenay Environmental Society and the Montana Wilderness Association (CEC 2000, 16).

An internal review of the NAFEC conducted by the CEC in 2000 argued that the NAFEC fulfills a particular role as a ‘transboundary grantmaker’, concluding that “NAFEC’s support of transboundary environmental work is not currently funded by other groups. NAFEC’s niche allows it to support NGOs to work across borders on shared environmental issues and reinforce CEC objectives” (CEC 2000, ii). What is particularly relevant to the Great Lakes and St. Lawrence Cities Initiative, is that in addition to its emphasis on cross-border cooperation, JPAC had recommended to the Council in 2003 that the Call for Proposals for the upcoming year should focus primarily on projects related to water quality and specifically the management of freshwater systems such as the Great Lakes.

For this reason in particular, the elimination of the NAFEC shortly after the creation of the Cities Initiative in 2004 represents a lost opportunity for the Cities Initiative as it would have represented a significant source of resources, political legitimacy, and motivation for mobilization and deeper cross-border collaboration. Eliminating the NAFEC eliminated an important linkage that potentially could have sustained a more robust, EU-style, local-supranational nexus.

NAFEC was eliminated despite the fact that an internal review conducted by the CEC in 2000 concluded that the NAFEC was a resounding success. The review also stated that it fulfilled the mission of the NAFEC and, in particular, that it fulfilled Council Resolution 95-09 establishing the NAFEC, which directed the CEC to dispense funding in order to “directly engage the energy and imagination of the people of North America in achieving the goals of the NAAEC” (CEC 2002b, 4). The prescient report also concluded that the discontinuation of the NAFEC would lead to the impoverishment of the CEC and the multilevel governance system, specifically, by (i) severing of contacts between the CEC and the public (ii) contributing to the loss of public participation (iii) leading to a loss of credibility of the CEC within the NGO community (iv) precipitating a loss of internal capacity for grassroots projects within the CEC (v) causing a loss of capacity within civil society (CEC 2000, 31). This attack on civil society is significant considering that, as Swyngedouw (2005) argues, “civil society is...the pivotal terrain from which social transformative and innovative action emerges and where social power relations are contested and struggled over” (1996).

The immediate cause of the NAFEC's demise is a lack of funding. The NAFEC was instituted in 1996 with a budget of US \$1.5 million, which was significant considering that the CEC's overall budget from which it drew its funding was only \$9 million. Since the CEC's budget remained static, even in the face of increasing responsibilities and expenses, the cuts came from the NAFEC. Funding in 1998 was reduced to \$950,000, then to \$500,000 in 2000. The former chair of the JPAC argues that in essence the funding "was cut because it was not a priority for the three federal governments" (ex-JPAC Chair, correspondence, August 1, 2009). On October 23, 2003, the former Chair had written a letter on behalf of the JPAC to the Council members expressing his 'deep concern' regarding the Secretariat's recommendations to conclude the NAFEC, warning the CEC of "the likelihood of a very strong adverse reaction from the public" (ex-JPAC Chair, correspondence October 23, 2003) since the demise of the NAFEC will be interpreted as "shots at public participation" and tantamount to "closing a door" (ex-JPAC Chair, correspondence October 23, 2003). This is in stark contrast to Europe, where more 'doors' are being opened.

Top-Down or Bottom-Up Dynamics? The Emergence and Development of Transnational Municipal Networks

European local governments and transnational municipal networks benefit from greater formal institutionalization in Type I governance architecture and benefit from thicker and denser relations with a significantly more resourceful supranational infrastructure than their North America counterparts. Some supranational institutions do exist in North America in the form of the IJC and the CEC, which have provided

some resources, political legitimacy, and institutional capacity for the expansion of multilevel governance and the mobilization of non-central state actors including local governments. Although not insignificant, nonetheless, at this point, their potential value greatly outweighs their actual value for local governments.

Hence, North American local governments simply do not have access to the same resources and political opportunities available to European transnational municipal networks. Consequently, whereas transnational municipal networks are a common fixture in European governance, there is only one such network operating within North America, and its organizational complexity and the scope of its activities are limited by the deficiencies in its external environment. As a result, they are therefore relatively truncated compared to their European cousins.

Thus, one can conclude, there is definitely a positive relationship between the transfer of authority and resources from the supranational, national and sub-national levels of government downward to the level of local governments and the degree of institutional development of transnational municipal networks. At the same time, whereas a positive relationship does exist between the transfer of resources and constitutional authority downward and the development of transnational municipal networks, the gradual expansion of the internal functions and structures of the Great Lakes and St. Lawrence Cities Initiative, which has taken place *absent* such transfers suggests that they are not absolutely necessary for the development of these networks. Therefore, the transfer of constitutional authority and resources downward to local governments acts as a kind of synthetic fertilizer accelerating the development of

these networks and expanding their policy capacity and repertoire, which could still otherwise take place organically albeit at a slower pace and to a lesser extent.

The essentially ‘bottom-up’ genesis of the Great Lakes and St. Lawrence Cities Initiative absent the downward transfer of authority and resources also indicates that whereas top-down dynamics may be important factors in conditioning the structure and behavior of transnational municipal networks once they come into being, which supports the thesis put forth by Duina (2006) about the positive relationship between the development of supranational structures and the development of transnational networks, the existence of the Cities Initiative indicates that these transfers are not essential for the emergence of transnational municipal networks, which contradicts Duina’s argument.

This suggests that ultimately what is required for these networks to emerge from the ground is the opening up of political space by higher tiers of government and the political willpower at the local level to occupy that space. Again, it seems, we are witnessing the restatement of an old formula. In his presidential address to the Canadian Political Science Association in 1977, Alain Cairns was explaining the recent assertion of sub-national authority occurring at the time in Canadian politics by suggesting that, “passivity, indifference, and the absence of strong opposition from the [political] environment may be all that provincial governments need to thrive and grow” (quoted in Smiley 1984, 45). Cairns’ thirty-year old explanation applies, with minor adjustments, to the emergence of transnational municipal networks, in that the absence of strong opposition from higher tiers of government, and a collaborative

political climate, may be all that local governments need to thrive and grow and establish cooperation across borders.

Coincidentally, the findings in this dissertation support Jeffery's (2000) "more comprehensive conception of multi-level governance" (9) which argues that sub-national actors such as local governments are not merely 'passive players' and that their mobilization is not merely an 'an incidental by-product' of the rebalancing of relations at higher tiers of government nor of the passing down of decision-making powers or resources. Rather, these findings also lend support to Jeffery's (2000) hypothesis that sub-federal actors actively seek to change "the dynamics of intra-state relationships between central and sub-national authorities" (8). However, whereas Jeffery (2000) ultimately concludes that sub-national actors and local governments succeed in changing those dynamics "in ways which facilitate European policy mobilization" (8), the findings from the North American context allow us to generalize Jeffery's conclusions more broadly, by stating that local governments actively seek to change and succeed in changing intra-state dynamics in ways which facilitate the expansion of multilevel governance, be it in Europe or North America or elsewhere.

Kern and Bulkeley (2009) allude to a kind of self-reinforcing mechanism, or iterative relationship, between the expansion of multilevel governance and the expansion of local government policy capacity stating that the emergence and development of transnational municipal networks "reflects and constitutes...the multilevel nature of European governance and the dynamics of Europeanization" (311). A virtuous circle forms wherein a robust system of multilevel governance

creates conditions for robust transnational municipal networks which in turn reinforce and expand the system of multilevel governance further and so forth. It is somewhat reminiscent of neofunctionalism's assumption of self-sustaining integration, except that students of multilevel governance and transnational municipal networks are aware that opposition from higher tiers of government can, at any moment, derail the development of both processes if one of the actors steps outside the bounds of accepted political latitude. It is neofunctionalism tempered by the realities of having to operate in the 'shadow of hierarchy' (Scharpf 1997).

One of the elements at the heart of this self-reinforcing mechanism within the European Union is the interdependent relationship between the European Commission and sub-national actors which include local governments. The Commission shapes local governments by downloading resources and ideas to local governments (Risse, Cowles and Caporaso 2001; Olsen 2002), while local governments shape the Commission by uploading of resources and ideas. This two-way exchange has come to be known as *Europeanization* which, according to Ladrech (1994), entails "an incremental process of reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organization logic of national politics and policy-making" and vice-versa (69). For instance, Marshall (2005) analyzes the effects that interactions with EU institutions and programs has had on two cities in the United Kingdom, Birmingham and Glasgow, and found that "whereas many British urban authorities seem to operate to the hymn sheet prepared by central government, those drawing down funding from the EU display a more strategic approach, reflecting their higher degree of

Europeanization” (680). At the same time, the Commission adapts its own organizational structure, institutionalizing a systematic dialogue with local governments because it is dependent on local government for the ground-level expertise required for developing sound policies which in turn generate political legitimacy. Europeanization, therefore, seen in this case as a mutual and self-reinforcing embrace between supranational and local actors, is the “means by which multilevel governance is accomplished” (Kern and Bulkeley, 2009) and, we should add, expanded.

This kind of mutual reorientation of the organizational logic of supranational and local government institutions characterized by a significant degree of interdependence demonstrative of a mature iterative relationship between these two levels of government, is quite weak in North America because the supranational institutions such as the IJC and CEC are quite underdeveloped and under-resourced, while potential avenues for meaningful collaboration and exchange between supranational and local governments which could expand the system of multilevel governance, such as NAFEC, have remained limited or have been eliminated altogether. The condition at the supranational level reflects a similar institutional anemia at the local level. Furthermore, there is also no formal platform connecting the IJC to the CEC, even though many of their policy spheres overlap. Consequently, the expansion of multilevel governance in North America lacks the robust internal, self-reinforcing functional inertia which Europeanization provides the multilevel governance system within the European Union. As a result, the system of multilevel

governance is not as expansive or entrenched in North America and nor are the transnational municipal networks themselves.

From Embedded Networks to Emboldened Networks: A Change of Tactic at the Five Year Anniversary

The overarching goal of the Great Lakes and St. Lawrence Cities Initiative in its first five years of existence, 2003-2008, was to establish its presence at various decision-making tables across the basin. During the Annual Board Meeting held in Trois-Rivieres in 2009, Mayor Heartwell declared that the organization succeeded in “imbedding ourselves in the system” (GLSLCI, Board of Directors Meeting 2009). Such a declaration represents a remarkable achievement for institutionalized environmental cooperation between local governments in the basin, especially when one considers the political impotence of the International Mayors Association, the precursor to the Cities Initiative.

Furthermore, the success of the Cities Initiative represents a steep learning curve that the organization has had to undergo in such a short period of time. A prominent environmentalist and former chair of the Great Lakes Basin Commission states that when the City of Chicago first began seriously considering transforming institutionalized local government cooperation around the basin, they hired her in 2000-2001 as a consultant to help them understand Great Lakes water governance. This was before David Ullrich, former EPA senior official, was hired as the Executive Director and brain of the Cities Initiative. Illustrating just how weak local government engagement in Great Lakes issues had been until that time, and demonstrative of the kind of naivety on the part of local government, the former

Chair of the Commission states that they wanted her to present to them a one-page matrix listing all the significant Great Lakes agencies and organizations including their history and political status as well as all the main issues. She states, “they had no idea how complicated [Great Lakes governance] was” (ex-Chair Great Lakes Basin Commission, interview October 1, 2009). Needless to say, the sophistication, and hence the political standing, of the Great Lakes and St. Lawrence Cities Initiative has undergone a transformation since that time, as reflected in the degree to which it has embedded itself in the governance structures.

The most significant example of this institutional imbedding was the signing of the Canada Ontario Agreement Memorandum of Cooperation (COA MOC) on July 17, 2008 between the Ontario Government and the Great Lakes and St. Lawrence Cities Initiative. The MOC commits the Cities Initiative to facilitate a new process of collaboration between the mayors of Ontario’s local governments and the signatories from the three provincial government ministries including the Ministry of the Environment (MOE), the Ministry of Natural Resources (MNR), and the Ministry of Agriculture, Food and Rural Affairs (MAFRA) thereby establishing a new forum for provincial-municipal cooperation regarding the environmental management of the Great Lakes.

This agreement is significant for bringing local governments closer to the COA process. The COA is the primary mechanism by which the governments of Canada and Ontario manage water quality and quantity in the basin. The COA establishes both the shape of the programs and the size of the budget dedicated to those programs. Furthermore, COA is the primary agreement through which Canada

meets its bi-national obligations under the Canada-United States Great Lakes Water Quality Agreement. The timing of the memorandum of cooperation is also very significant. Since 1971, the COA has been renegotiated seven times, and the current version is scheduled to expire in 2010. Therefore, the signing of the COA MOC indicates that local governments will have, for the first time, through this new forum, a strategic voice in shaping the discussions within the most important intergovernmental institution on the Canadian side of the Great Lakes. After signing the agreement, John Garretsen, the Ontario Minister of the Environment, announced that “today we *formally* recognize the importance of engaging municipalities as key partners in sustaining the health and vitality of the Great Lakes” (GLSLCI, City of Toronto News Release, July 17, 2008). The Minister of Natural Resources, Donna Cansfield, stated that the memorandum “marks the beginning of an exciting new era of collaboration among municipal, provincial and federal governments” (GLSLCI, City of Toronto News Release, July 17, 2008), while Leona Dombrowsky, the Minister of Agriculture, Food and Rural Affairs, stated that “this agreement reinforces the collaborative approach of the Government of Ontario” (GLSLCI, City of Toronto News Release, July 17, 2008).

The work of the Cities Initiative was central to attaining greater inclusion of municipal governments in the COA process, and it played a key role in facilitating the finalization process which led up to the signing of the COA MOC. As early as February 16, 2007, in a letter to Carolyn O’Neill, the Manager of the Great Lakes Office, Land and Water Policy Branch at the Ontario Ministry of the Environment, the Executive Director of the Cities Initiative, David Ullrich, called on the provincial

government to give the Cities Initiative a greater role in future renegotiations of the COA than the heretofore normal mechanisms which had been reserved for NGOs, business, academic institutions and cities. In the letter Ullrich implied that these were inadequate mechanisms. Rather, Ullrich argued that it was essential that the future renewals of the COA “involve municipal governments as full partners” (GLSLCI, Ullrich letter to Carolyn O’Neill). The Cities Initiative played a key role in convincing the provincial government to expand the COA process to include local government.

Furthermore, during the six-month run-up to the signing of the memorandum, the Cities Initiative helped organize a Great Lakes Municipal Working Group which organized and prioritized municipal issues into common positions. The Municipal Working Group was made up of nine mayors from the Great Lakes and St. Lawrence Cities Initiative, sixteen senior officials from municipal governments including chief administrative officers, managers of various departments including the environment, transportation, public utilities, and water infrastructure, three directors from the secretariat of the Cities Initiative and the senior policy advisor from the Association of Municipalities of Ontario. On this last point, it is quite important that the Association of Municipalities of Ontario, the chief provincial association of municipal governments, supported the fact that the Cities Initiative was the key player in breaking new ground not only on behalf of the members of the Cities Initiative, but on all municipal governments in Ontario, in its relationship with the Province and, indirectly, the federal government.

While working together to prioritize its set of common positions, the members of the Municipal Working Group were simultaneously working within a Joint-Municipal-Provincial Committee which included twelve senior officials from the MOE, MNR, and the MAFRA, as well as participants from the Ministry of Tourism, Ministry of Health and Long-Term Care, and the Ministry of Economic Development, to identify areas of common interest and to produce recommendations that the province could potentially act upon both within and outside the parameters of the COA. From this new collaborative process emerged a report produced by the nine mayors from the Great Lakes and St. Lawrence Cities Initiative who participated in the Municipal Working Group entitled *At the Shoreline: A Mayors' Collaborative Action Plan to Protect the Great Lakes* in May 2009, which presented a five-point plan directly to the cabinet ministers representing the MOE, the MNR, and the MAFRA.

During the Annual Board Meeting of the Cities Initiative in Trois-Rivieres, while congratulating the members for embedding the network deeper into the governance structures through the COA MOC and the Regional Collaboration, a senior official of External Affairs for the City of Chicago stated that the network can “declare victory on getting seats, but now we must exercise those seats” (GLSLCI, Board of Directors Meeting 2009), thus signaling a subtle shift from a focus on embedding and empowering the network to a focus on effectively employing their new influence.

A document handed out at the Board Meeting contained a section on the “Future Direction” of the Cities Initiative which stated there are two overarching

goals for the network in the next five year period, 2009-2014. The first is to continue to better integrate environmental, social, and economic concerns in the policies and agendas of local government, in what has been termed by the members the Triple Bottom Line. The second goal is to expand and deepen collaboration with higher tiers of government.

Towards this second goal, on May 5, 2009, a month before the Annual Board Meeting, several members of the cities initiative presented the Ontario Ministers of the Environment, Natural Resources, and Agricultural, Food and Rural Affairs their report *At the Shoreline* which included a five-point action plan. Building on the success of the COA memorandum of cooperation, the first and most important point called for the establishment of “a new collaborative relationship among federal, provincial and municipal governments to reinvigorate and reorient Great Lakes protection” (GLSLCI, *At the Shoreline*, 2009, 5). In light of the fact that no such intergovernmental forum exists for cooperation and collaboration between all levels of government on Great Lakes issues, the mayors of the Cities Initiative called for the establishment of a federal-provincial-municipal *Great Lakes Table* (GLSLCI, *At the Shoreline*, 2009, 5). Towards that goal, the first ever tripartite meeting was held in October, 2009, thus fulfilling Prime Minister Paul Martin’s vision of breaking through the old silos of traditional intergovernmental relations.

The establishment of the COA memorandum of cooperation between provincial and municipal governments, combined with the fact that plans have been put forth for the establishment of a federal-provincial-municipal forum in the form of the Great Lakes Table, demonstrates that the Cities Initiative has been an active

catalyst not only for the expansion of the multilevel governance system around the Great Lakes but, more accurately, they have been an active catalyst for the expansion of their own policy capacity and role within an expanding multilevel governance system around the Great Lakes, thereby lending support yet again to Jeffery's (2000) argument that local governments are more than passive recipients of authority and resources bequeathed from on high. As in Europe, the expansion of local government policy capacity 'reflects and constitutes' (Kern and Bulkeley 2009, 311) the growth of multilevel governance around the Great Lakes basin.

Having established the increased participation of local governments within the governance structures around the basin, in the next chapter we analyze whether and to what degree the increased participation of local governments within environmental policymaking around the Great Lakes translates into effective influence.

CHAPTER VI

TRANSNATIONAL MUNICIPAL NETWORKS AND THE EFFECTIVE DEPLOYMENT OF INFORMAL POWERS: OPPOSITION TO THE EXPANSION OF BRITISH PETROLEUM'S (BP) WHITING REFINERY

Introduction

In chapter four we established that federal, and in particular provincial and state, governments cast long shadows over local government through their constitutional ability to define functional responsibilities, prohibit activity, reduce funding, or terminate its existence altogether at any time. Further underscoring the vulnerability of local governments, Peters and Pierre (2004) state that, “all actors have the option to resort to the constitutional definition of their institutional capability if and when it is believed to be necessary to safeguard important institutional interests” (89). Certainly the higher tiers of government can resort to their constitutional powers to reign in local government at any point. However, local governments lack recourse to such constitutional protection and are thus fully exposed to federal and sub-national prerogatives as the forced amalgamations under the Mike Harris Conservative government amply demonstrated in Ontario. As a result, despite finding greater opportunities for action during the present period of collaborative intergovernmental relations, local governments must tailor their strategies to this context of having to operate permanently “in the shadow of hierarchy” (Scharpf 1997).

Under these conditions of uncertainty, Peters and Pierre (2004) raise a fundamental question about the informal basis of multilevel governance in general and the informal basis for the expansion of local government policy capacity, which is, “to what extent informality entails inequality”? (87). In other words, “the absence of any clear and comprehensive rules for institutional exchange in multi-level governance raise[s] questions about its ability to cater to the interests of the weak actors to ensure that multi-level *governance* means something more than multi-level *participation*” (87). It is one thing for local government to be invited to the decision-making table, but the question remains whether local government can affect policy.

Peters and Pierre were addressing their remarks to governance in the context of the European Union, where, as discussed in the previous chapter, weak non-central actors such as local governments at the very least have recourse to powerful supranational allies such as the European Commission, the European Parliament and the European Court of Justice, which provide resources, political legitimacy and political cover for local governments in their relations with more powerful tiers of domestic government. In the Great Lakes, local governments are fully exposed, with few allies and none with substantial formal powers that could provide support when local government interests clash with those of national and sub-national governments.

Therefore, one would expect local governments around the Great Lakes to avoid conflict especially in a situation where the interests of both American and Canadian national governments align with the interests of provinces and states, big oil, and public opinion. In the rare instances that such conflicts did arise, one would not expect local government to have much influence in altering the trajectory of a

given policy to better reflect its own interests. And yet, in such a difficult case, if it could be demonstrated that local governments decided to challenge these entrenched interests and actually succeeded in altering the trajectory of policy, such a series of events would go a long way to answering the Peters and Pierre dilemma by stating that the *informality* within multilevel governance networks does not necessarily entail a degree of *inequality* that leads to the *ineffectuality* of sub-central actors.

The present chapter begins by describing the evolution of oil sands development into a principal political and economic interest of the federal, provincial and state governments of Canada and the United States, and the forging of those strong interests to the profit motive of the powerful multinational, but primarily American and Canadian, oil industry. Of particular interest is the period of historical oil prices between 2007-08 when a looming tidal wave of political inertia evolved in favor of accelerated oil extraction and refinery expansion as a result of three confluent factors (i) political pressure from the federal level to establish secure sources of energy (ii) from the state, provincial, and local levels to expand the tax base and increase revenue from oil profits, a desire that was particularly evident in the so-called 'rust-belt' region around the Great Lakes suffering a period characterized by precipitous economic decline (iii) and from the oil industry and business community seeking to maximize profits during a period of record oil prices.

Intense and ubiquitous political and economic pressure was placed on upgrading all the components of the petro-infrastructure of North America (Israelson 2008) to expedite the delivery and processing of Canadian heavy crude oil from the oil sands, which manifested itself in one of the largest build-ups of refinery capacity

around the Great Lakes, resulting in increased discharges of pollution into the lakes and atmosphere. In essence, a mammoth ‘pollution delivery system’ was being constructed connecting Western Canada to the Great Lakes with the explicit support of federal, state and provincial governments which remained largely indifferent to the environmental costs (Israelson 2008).

Yet, despite this overwhelming inertia, significant opposition was mobilized in one instance—the case of British Petroleum’s refinery expansion in Whiting, Indiana. Specifically, the opposition formed against Indiana’s Department of Environmental Management (IDEM) and Indiana’s Governor Mitch Daniels who supported and facilitated the granting of a pollution permit to British Petroleum that would allow the expanded refinery to increase the amount of pollution discharged into Lake Michigan in order to facilitate the processing of Canadian oil sands oil. The opposition faced a difficult task since Indiana’s Department of Environmental Management already had the reputation of being a proponent of industry at the expense of environmental concerns, while the state itself was considered an environmental laggard. In a report titled “America’s Greenest States”, Forbes magazine ranked Indiana the second-worst state in terms of its environmental record based on air and water quality (Wingfield and Marcus 2007). Furthermore, the resistance came from an unlikely source: local governments, heretofore considered ‘bit players’ and nothing more than an ‘attentive public’, captives of ‘big business’ and creatures of the provinces and the states, spearheaded a campaign alongside other societal groups against British Petroleum on environmental grounds that delayed the expansion of the refinery and thus simultaneously defied the large-scale plans of

government and industry backed by massive investments of financial and political capital.

The resistance was also significant because it was waged at a time when the United States was experiencing record gasoline prices which sparked a national outcry for increased refinery capacity to increase supply and lower cost. Local government was not only pitting itself against the powerful higher tiers of government and industry, but was moving against the current of national public opinion. Gasoline prices were highest in the Midwest. The City of Chicago, the founding member of the Cities Initiative, which spearheaded the protests against the British Petroleum expansion, had the highest gasoline prices in the country. The political climate for any action that would delay the expansion could not be worse.

Yet, local governments entered the fray, a significant phenomenon on its own, and their success in altering the policy process and the policy results went significantly beyond delaying the expansion. The campaign forced British Petroleum to voluntarily commit to reducing the amount of pollution it emits, expanded the policy process to include a greater array of actors by establishing an epistemic community around the issue and, most importantly, the opposition provoked the State of Indiana to undertake a comprehensive two-year review of its regulatory process, in particular its anti-degradation rules, with the explicit purpose of making it more open, transparent, and accountable. Thus, the Cities Initiative played an important role in determining the balance of the economic-environmental nexus.

Using a ‘within case analysis’, this chapter analyzes the dispute between the proponents and opponents surrounding the expansion of the British Petroleum

refinery in Whiting, Indiana, and specifically the developments before and after the State of Indiana's decision to grant British Petroleum its new pollution permit, a decision which set the stage for the expansion, the opposition, and the regulatory review. Consequently, the case study is presented as a local 'decision event' ensconced in a regional, national, and international context with ramifications across multiple levels of government and also across different policy issues. Hence, the British Petroleum case represents an excellent example of multilevel governance in its broadest and truest application.

Thus far, most studies of multilevel governance, and the role of cities within it, analyze the behavior of actors in one policy field—usually cohesion policy (John 2000; Schultze 2003; Goldsmith 2003; Marhsall 2005), though also urban and environmental policy—in isolation from the rest, whereas this case study focusing on the environmental ramifications of the expansion of domestic petroleum capacity analyzes the behavior and efficacy of local governments that find themselves at the nexus, or crossroads, of foreign, energy, and environmental policy, thus drawing in and tying together more actors across borders and across continents, and more interests, which reinforces and magnifies the decisions taken. In such a manner, the degree to which the global concerns of national governments and the regional concerns of state and provincial governments are interwoven with local concerns of local government is fully demonstrated, and the terms multilevel governance and 'glocalization' more fully appreciated.

In this multilevel context, although the constitutional vulnerability of cities motivates them to become bridge builders, seeking cooperation and avoiding

confrontation and thus becoming catalysts for deeper integration of the entire environmental management network, local governments sometimes utilize the “weapons of the weak” (Cram 1, 2007) such as lobbying, dissemination of information, referencing values, and public shaming to achieve their environmental aims and to affect environmental policymaking around the Great Lakes. Success is defined in terms of improving the democratic legitimacy of the *policy process* and in attaining a better balance between economic and environmental interests in the final *policy result*. Although paying attention to the effects the opposition had on the policy result in this one instance, namely, the effluent reductions voluntarily undertaken by British Petroleum, the greatest interest and analysis is reserved for the changes the opposition precipitated in the decision-making process and in long-term environmental governance of the basin in general. The focus will be on the democratic legitimacy of the decision-making process of the State of Indiana’s permit process.

The decision-making process will be evaluated using five criteria set out by Bukowski (2004) in her analysis of the democratic legitimacy of decision-making within multi-level networks. Bukowski was responding to research by Peterson and O’Toole (2001) who found that decision-making within network governance suffers from negative tendencies including ambiguity, a lack of transparency and accountability, as well as a lack of leadership and drift. Bukowski analyzed the performance of sub-central governments and non-state actors within such a network and whether their mobilization could improve the democratic legitimacy of the process. Bukowski conducted a process-tracing analysis of the construction of

Portugal's Vasco da Gama Bridge in Lisbon which, similarly to the British Petroleum case, pitted proponents of economic and environmental interests against each other in a decision-making process that relied on both formal and informal relationships and exchanges. The five criteria used by Bukowski (2004) to evaluate the democratic legitimacy of the decision-making process are (278):

Criteria 1: Transparency and Accountability in Policy Processes and Result

Criteria 2: Access

Criteria 3: Responsiveness

Criteria 4: Authoritativeness

Criteria 5: Representativeness and Consensus-Building Capacity

Using a cross-case comparison method and applying these five criteria to the British Petroleum case, it will be possible to determine and compare the democratic legitimacy of the decision-making process before *and* after the mobilization of opposition by local governments around the Great Lakes basin as well as the Great Lakes and St. Lawrence Cities Initiative.

This comparative analysis produces two important findings. First, as with the Vasco da Gama Bridge, part of the success of local government in the British Petroleum case stems from the fact that the opposition gained legitimacy and thus power by using the extant regulatory framework—in this case the *anti-degradation* provisions in the Clean Water Act—to frame their opposition, thus reinforcing the argument by Peters and Pierre (2004) that, “multilevel governance embedded in a regulatory setting that enables weaker actors to define a legal basis for their action might be the best strategy to escape the Faustian bargain and to cheat darker powers”

(89) that are inherent in network governance. Second, the European environmental groups provoked a more robust response and won farther reaching concessions from the Portuguese government and industry than the local governments and North American environmental groups achieved from the State of Indiana and the refinery in the British Petroleum case because the former had access to, and took advantage of, the political resources available at the supranational level in order to pressure their own domestic actors into striking a more equitable balance between economic and environmental concerns in the final policy result and in improving the democratic legitimacy of the process. Nonetheless, despite important differences, both cases demonstrated that the mobilization of local governments and environmental groups was effective, improved the quality of environmental governance, and therefore proved that multilevel governance means something more than multilevel participation.

These improvements in the accountability of the governance structures of our water systems are significant considering the continued deterioration of the regulatory system as described in the New York Times article, “Toxic Waters” which we discussed in the Introduction to this dissertation, detailing the failure of the EPA to protect water quality from polluting industries. The significance of local government mobilization effectively as oversight agents is a critical development especially in the light of Minnesota Congressman James Oberstar’s observation that “the EPA and states have completely dropped the ball. Without oversight and enforcement, companies will use our lakes and rivers as dumping grounds—and that’s exactly what is apparently going on” (Duhigg, 4). The British Petroleum case further illustrates the

negative consequences of the decentralization of North American water policy, and the retrenchment of both federal and state governments from water management. To repeat, as former EPA administrator William Reilly states, “unless the EPA is pushing state regulators, a culture of transgression and apathy sets in” (Duhigg, 8), while Matthew Crum, an employee of West Virginia’s Department of Environmental Protection, observes, “if you don’t have vigorous oversight by the feds, then everything just goes limp” (Duhigg, 8). In such a context, the mobilization of local government as oversight agents, as catalysts for the improvement of accountability structures within the water governance system, takes on a new imperative, even if that role is still rather limited at this point.

The Need for New Oil

According to the International Energy Agency’s *World Energy Outlook 2004*, in less than a decade the world will enter a period of ‘peak oil’ where a yawning gap will exist between the world’s increasing demand for oil and the dwindling discoveries of fresh resources. The world depends on oil for 40 per cent of its energy supply. Some individual sectors such as transport depend on oil for 95 per cent of its energy needs (International Energy Agency 2004). That gap is growing as global oil consumption increases by almost two per cent per annum, fueled in large part by the rapid industrialization of China and the pace of globalization that relies on the transportation of goods across vast distances. In fact, it is estimated that the transport sector will account for over half of all oil consumption by 2030, compared to just a third in 1971 (International Energy Agency, 2004). This trend is driven largely by

economic integration programs such as the North American Free Trade Agreement (NAFTA) and the European Union (EU), which have precipitated exponential growth in the trucking and shipping industry.

At the same time, while the demand for oil consumption continues to increase, discoveries of new oil have dwindled. New discoveries in the Middle East, a region which accounts for 58 per cent of world oil reserves (Energy Information Administration, 2006), are drying up, decreasing from a peak of 187 billion barrels uncovered between 1963-1972 to just 16 billion between 1982-2002 (International Energy Agency, 2004).

North American concern over the dwindling oil reserves in the Middle East is exacerbated by deep concerns over the security and reliability of the delivery chain. This stems from continued regional political instability in the Middle East and Africa and the potential threat of blackmail from major suppliers such as Russia and Venezuela. That concern is especially pronounced in the United States which is the world's largest net importer of oil at 21 million barrels a day. Unlike neighbors Mexico and Canada which are self-sufficient and net exporters of petroleum, the United States depends on oil imports to satisfy 65 per cent of its total consumption which accounts for a quarter of the world's oil supply. According to the National Energy Policy (2001), it is estimated that by 2020 United States oil consumption will increase by a third, which will require the country to import two out of every three barrels of oil consumed (National Energy Policy Development Group, 2001, x).

The Development of Canadian Oil as an American Political Imperative

The National Energy Policy (NEP) submitted to President Bush on May 16, 2001 recommended that the administration make energy security a national priority in its foreign and trade policy. It added a sense of urgency to the debate by stating that “America in the year 2001 faces the most serious energy shortage since the oil embargos of the 1970s” (National Energy Policy Development Group 2001, viii) and underlined the political imperative “to add supply” (xiii). Responding to this clarion call, Congress passed the so-called Clean Energy Act on August 8, 2005, with the objective “to create jobs for our future with secure, affordable, and reliable energy” (Energy Policy Act 2005, preamble). For the most part, the Energy Act implemented the NEP’s recommendations to stimulate domestic energy production by providing an \$85 billion subsidy to various sectors of the energy industry, with the largest tax-breaks reserved for fossil-fuels and nuclear power.

However, the National Energy Policy also recognized the limited potential of increasing domestic oil supply, and therefore initiated the start of a process of significant policy reorientation that would place America’s near abroad at the center of United States energy security, for example, by stressing to the administration its need to explore opportunities for closer cooperation with Canada and Mexico on energy policy. As a first step, the national policy report recommended that the administration embrace the North American Energy Working Group (NAEWG) which was established by the energy ministers of the United States, Canada and Mexico just a month prior to the release of the NEP. The NAEWG was established as a vehicle for trilateral consultations on energy policy.

Shortly thereafter the United States began to move much more aggressively, and in April, 2003, the American ambassador to Canada, Paul Cellucci, laid out his country's plans by declaring forthright that "part of what the president's national policy is about is a complete integration of the North American energy market" (quoted in Dobbin 2003, 158). In March 2005, as the Energy Policy Act was moving through Congress, President Bush signed the Security and Prosperity Partnership (SPP) of North America with Canadian Prime Minister Paul Martin and Mexican President Vincente Fox. The partnership institutionalized continental collaboration on economic and security matters and emphasized the need for the establishment of a self-sufficient energy policy, meaning, the need to coordinate and facilitate the development and production of oil primarily in Canada for delivery to the United States. Congress followed the administration's lead by establishing a Commission on North American Energy Freedom to study continental energy policy and submit recommendations for making North America energy self-sufficient by 2025.

The reorientation towards an integrated hemispheric energy policy culminated in President Bush's 2006 State of the Union Address, in which he framed America's addiction to oil and its reliance on unstable countries for its supply as a matter of national security. He signaled a dramatic reorientation of American energy policy by promising to replace three-quarters of America's oil imports from the Middle-East by 2025 and pledging to "make our dependence on Middle Eastern oil a thing of the past" (Bush 2006). This change of United States energy policy was premised to some degree on increased domestic production, conservation measures, and investments in sustainable energy technology. For instance, in the address, President Bush

announced the start of the Advanced Energy Initiative which introduced a 22 per cent increase in clean-energy research at the Department of Energy. Nonetheless, the unstated but essential component of America's reorientation strategy towards hemispheric self reliance was Canada and its oil. Paul Michael Wihbey, a Washington-based lobbyist analyzing the geostrategic implications of oil policy, was quoted as saying, "although he [Bush] did not mention Canada, that is in fact where the replacement supply will come from" (CBC, January 18, 2007; Israelson 2008).

Specifically, the administration was interested in an area the size of Florida located in the northeast corner of the Canadian province of Alberta along the Athabasca River. It is the location of the Athabasca Oil Sands and the site of North America's most important energy resource. Estimated at 174 billion recoverable barrels of oil—and 2.5 trillion discoverable barrels—the sands are capable of satisfying the world's demand for oil for the next one-hundred years (National Energy Board 2004). The harvest of this resource ranks Canada second only to Saudi Arabia in terms of the world's known oil reserves with approximately fourteen per cent of global supply.

The United States itself has been interested in domestic oil sands since the 1930s and had undertaken numerous pilot projects and studies of the major oil sand fields in Alaska, California, Kentucky, Utah, and Texas which contain 11 billion barrels of recoverable oil (Task Force on Strategic Unconventional Fuels 2006, 8). These studies have largely concluded that the rough terrain, small and scattered deposits, and the lack of natural resources necessary for their recovery has made the development of U.S. oil sands economically infeasible (Congressional Research

Service 2008, 6-7). For this reason, and the widely acknowledged fact that the United States is behind Canada in developing the infrastructure and technological capacity to begin efficiently extracting its own oil sands, the short-to-medium term strategy remains the development of Canadian heavy crude oil from Alberta.

Despite the technical obstacles of harvesting domestic oil sands, the reorientation of America's energy policy towards greater reliance on an integrated North American energy supply is based on a total reconsideration of the utility of oil sands in general—both foreign and domestic. For instance, the National Energy Policy early on described oil sands as a potential 'pillar' of North American energy (National Energy Policy Development Group 2001, 8.8). In the Energy Policy Act, Congress identified oil sands and other nonconventional fuels as “strategically important domestic resources that should be developed to reduce the growing dependence of the United States on politically and economically unstable sources of foreign oil imports” (Energy Policy Act 2005 sec. 369).

However, the reorientation towards a hemispheric energy system depended primarily on an identification of Canada—with 90 per cent of the world's oil sands—and not the United States as the major supplier. For example, while extolling the virtues of oil sands in general, Congress established a Task Force to initiate a partnership with the Province of Alberta in the production and development of Canadian Oil Sands (Energy Policy Act 2005, sec. 369). At the same time, one of the first acts undertaken by the newly created trilateral Security and Prosperity Partnership (SPP) was the formation of the Oil Sands Expert Group, composed of representatives of American and Canadian federal and sub-national governments as

well as oil industry leaders. The Group met at a two-day summit in Houston, Texas, organized by Natural Resources Canada and the U.S. Department of Energy in January 2006 and filed a report underscoring not only that oil sands will be a “significant contributor to energy supply and security for the continent” (Oil Sands Experts Group, 2006, 1), but that the United States expects a “five-fold expansion” of oil sands production and a concomitant increase in Canadian exports to the United States (CBC January 18, 2007).

Canada Responds: a Willing and Eager Partner

The United States federal government enjoys unqualified support from their Canadian counterpart in large part because the development of the oil sands is a critical driver of the Canadian economy. A study by the Canadian Energy Research Institute (CERI) found that Canada’s economy stands to gain \$885 billion from oil sands development over a twenty-year period ending in 2020 (quoted in Canadian Association of Petroleum Producers, 2008b). According to the Canadian Association of Petroleum Producers (CAPP), the total government revenue forecast from taxes and royalties amounts to \$123 billion with the Canadian federal government receiving the largest share at 41 per cent (CAPP 2008b). It is also worth considering that the development of the oil sands is motivated in part by fresh memories of the 1980s, when Canada was a net importer of crude oil, relying on imports to satisfy as much as 25 per cent of domestic consumption (Finlayson and Haglund 1984, 282). The development of the oil sands is therefore also a guarantee against Canada’s return to dependence on foreign oil.

However, the Canadian government’s enthusiastic support of investment in oil sands development stems less from calculations of its own fiscal benefits than from a

desire to placate two of the most powerful provinces in the federation which happen to have the greatest stakes in the oil sands. The CERI report indicates that Alberta stands to gain the largest share of total oil sands investment with 44 per cent, while Ontario is second at an estimated 16 per cent (CAPP 2008b). The lion's share of the anticipated 6.6 million person years of employment generated from the oil sands and spinoff industries are expected to accrue in these two provinces—Ontario and Alberta.

Although Ontario has historically been the economic and political center of Canada, and the electoral kingmaker accounting for the largest proportion of seats in parliament, it is the Alberta government which dictates Canada's energy policy and the development of the oil sands. Regardless of the political party in power, the federal government has for decades taken at minimum a 'hands off' approach to energy policy. The deference shown primarily to Alberta has its roots in the politically disastrous National Energy Program (NEP) established in 1980 and the severe provincial pushback that led to its gradual dismantling shortly thereafter until its complete elimination by 1986.

In the wake of the energy crisis during the 1970s, then Prime Minister Pierre Trudeau and his Liberal Party enacted the NEP as a means to make Canada energy self-sufficient and protect the industrial heartland in eastern Canada from record oil prices by a near-nationalization of the oil industry in Alberta. The federal government increased its stake in the oil industry three-fold, imposed higher taxes and royalties per wellhead, and ordered the National Energy Board (NEB) not only to redistribute revenue from the oil industry across Canada, but artificially set the price of Canadian oil well below world prices which prevented the Province of Alberta from capitalizing on those record oil prices. As a result of this program, it is estimated that the Province of Alberta lost between \$50 billion and \$100 billion in revenue.

Popular anger towards the federal government for federal intrusion into provincial jurisdiction led to the ouster of the Liberal Party in 1984 and the election of Prime Minister Brian Mulroney whose Progressive Conservative Party campaigned against the NEP. That resentment still permeates relations between Alberta, the federal government and the rest of Canada in general. That tension also plays a significant role in electoral politics with whatever political party in power anxious to avoid being perceived as meddling in the province's oil driven economy in order to avoid stoking that resentment and sharing the same electoral fate as the Liberal Party in 1984.

More than just deference, however, the federal government has been subsidizing the development of the oil sands since 1996 under the "accelerated capital cost allowance" program which has provided generous tax breaks to the oil sands industry and indirectly curried favor with the province. Pandering to Alberta's economic interests has been even more pronounced since 2006 with the election of a Conservative Party government which draws the bulk of its political support from Alberta. In the 2006 election, the Conservative Party won all 28 seats in the province. In the last federal election in 2008, the party won all but one.

Finally, Canada was also eager to facilitate American involvement and investment in the oil sands in part because it had learned a hard lesson about the impact of Canada's energy policies on Canada-United States relations from the fallout of the National Energy Program. Under the NEP, the federal government undertook a program to 'canadianize' (Finlayson and Haglund 1984, 271) the oil and gas industry. By 1980, American firms controlled almost half of the oil and gas industry and growing (Finlayson and Haglund, 273) while the Canadian government wanted to ensure that at least 50 per cent of the energy sector would be owned by Canadian companies by the end of the decade. The government set about accomplishing this goal by purchasing small

American firms already in operation and discriminating against foreign multinational companies by offering more generous tax breaks, subsidies, exploration and mining grants to Canadian companies. The government also imposed a retroactive 25 per cent stake in all fossil fuels discovered on federally owned lands.

The American response was swift and harsh. In addition to filing grievances with multilateral forums such as the OECD and GATT, the U.S. Congress introduced and passed bills which placed limits on Canadian investments and the raising of capital in the United States, placing moratoriums on foreign purchases of American companies that held mineral rights on federal land, and categorizing Canada as a 'non-reciprocal' country. The NEP poisoned other areas of bilateral policy, including ongoing negotiations on acid rain and fisheries, where the Americans became non-cooperative.

As Finlayson and Haglund argue,

It is no exaggeration to state that this one issue soured relations between the two countries to a degree not experienced in a decade, when the Nixon administration's August 1971 imposition of across-the-board surcharges on all imports into the United States signaled to many in Canada that the "special relationship" they believed their country enjoyed with the United States was no more (Finlayson and Haglund 1984, 271).

In essence, Canada's present policy of facilitating American investment in the oil sands is motivated not only by Alberta's economic interests, but to a large degree by the desire on the part of the federal government to protect and strengthen the most important thread binding Canada-United States bilateral relations—oil production and trade.

Oil Sands, Big Business, and the Economic Imperative

The oil sands (also called tar sands) are composed of three-quarters inorganic matter and fifteen per cent silt, clay and water. What government and oil companies covet is the remaining ten per cent called bitumen. Bitumen is a thick, black, viscous, tar-like substance, and is the dirtiest form of petroleum, often referred to as heavy crude oil. Bitumen is classified as a nonconventional oil because of its heavy composition, containing higher concentrations of metals and impurities, and because of the intensive energy input required for its development which differentiates it from conventional oil. First, unlike conventional oil mined from wells, bitumen is found underground in a solid or semi-solid state requiring an injection of vast amounts of heat and water before it can be drawn from the ground as a liquid. Second, unlike conventional well-oil, the extracted bitumen-slurry must then undergo an extra step called “upgrading” in special facilities that convert the heavy bitumen into a higher quality state resembling conventional light crude oil by removing carbon (through a process called coking) and adding hydrogen (a process called hydro-processing). Upgrading allows the bitumen to be transported via pipeline to refineries for its final conversion into petroleum products.

The complicated process of extracting and converting oil sands into fuel is a capital and resource intensive process. Compared to the cost of producing conventional oil—which fluctuates between \$1 and \$6 depending on the country of origin—the cost of bringing a barrel of oil derived from bitumen to market ranges between \$36 and \$40 (National Energy Board 2006, xi). Since the pace of development of the oil sands is driven in large part by market forces and specifically the price of oil, the development of oil sands only became cost effective when the

price of oil began its dramatic ascent a few months after the September 11, 2001 attacks on New York. The development of the oil sands grew at its fastest pace between 2004 and 2008 when the price of a barrel of oil broke the \$30 mark for 60 consecutive months and reached a peak of \$126.33 in June, 2008. During this period, described as the greatest oil rush in modern history, enormous inertia was generated and sustained by the fusing of political and strategic imperatives of the North American federal governments to the profit motive of the oil industry and the wider business community.

According to the Canadian Association of Petroleum Producers (CAPP), the industry invested approximately \$30 billion (CDN) in the oil sands in 2007 alone, which represents a ten-fold increase over the last ten years with no indication of abating (CAPP 2009, table 4.1b). American companies such as Sunoco, Chevron, Exxon/Mobil, ConocoPhillips have already invested \$100 billion in the sands. These companies are planning to invest an additional \$100 billion to increase production from the current 1.3 million barrels a day (b/d) to 3.5 million b/d by 2011 (Vidal 2008). Massive investment is not just limited to the oil industry or American and Canadian business interests. Between 2004 and 2007, there were over 151 financial institutions from at least 18 countries financing the development of the oil sands including giants Citigroup, JP Morgan Chase, Societe Generale, Deutsche Bank, BNP Paribas, and Barclays (Marriott, Stockman and Kronick 2008, 15). With such massive investment, it is little wonder Time Magazine described the activity along the Athabasca River as “the site of some of the greatest engineering feats of mankind, comparable to the pyramids of Giza and the Great Wall of China” (Heinrich 2008).

The Oil Sands and the Great Lakes: an Intimate Relationship

The massive political and financial investment in the oil sands could not proceed efficiently without concomitant investment in the expansion of refinery capacity to process the anticipated five-fold expansion of heavy Western Canadian crude oil. All stages of oil sands production—extraction, pipeline, refinery—are interdependent and must expand in lock-step to ensure the efficient movement of oil from ground to market, thus the same pressure put on oil sands extraction by government and industry is applied to pipelines and refineries to expedite production.

Presently, Canadian refineries are operating at 90 per cent capacity (National Energy Board 2006, 19), which would create a massive potential bottleneck if not for Canada's reliance on American refinery capacity and markets. A Congressional Service Report (2008) states that three-quarters of all nonconventional oil produced in Canada and exported abroad is piped into American refineries situated in the Petroleum Administration for Defense District II (PADD II)⁵ which comprises states located in the Midwest including the Great Lakes states of Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin as well as North and South Dakota, Kansas, Iowa, Kentucky, Oklahoma and Tennessee. It is the largest American market for western Canadian crude oil. The region processed 1.1 million b/d of Canadian crude oil and is expected to increase that production by 120 per cent by 2015 (CAPP 2008, 9). It has been estimated that 70 per cent of all refining capacity in PADD II will be dedicated to refining western Canadian heavy crude oil by this date. Three-quarters of PADD II refining capacity takes place within states situated along the Great

⁵ PADDs were created in the Second World War to coordinate fuel allocation in the U.S. These districts are now used only as statistical tools to track national fuel allocation.

Lakes—otherwise known as sub-districts Northern and Eastern PADD II—with the largest refining capacity in the United States concentrated in two states: Illinois and Indiana. In essence, the Alberta oil sands and the Midwest refineries around the Great Lakes basin are locked into a tight relationship, underscoring again the kinds of cross-continental interdependencies which confound jurisdictional boundaries.

The National Energy Board states that the United States possesses “the greatest potential for increased penetration of oil sands derived crude” (2006, 21), while the Oil Sands Expert Group states that in order for that potential to be realized “producers and refiners need to ensure that refinery capacity is available” (4) meaning “new build will be required” (4). A significant proportion of that refining capacity will be located around the Great Lakes. Refining of oil sands in Northern and Eastern PADD II is expected to increase from 637,000 b/d in 2007 to 1.725 million b/d in 2015, representing nearly a three-fold increase.

There are several reasons for concentrating and expanding refining capacity around the Great Lakes. First, the Great Lakes are uniquely suited to meet the processing requirements of the oil sands. Separating the bitumen from the sands (extraction) and to prepare the bitumen for refining (upgrading) requires enormous inputs of heat and especially vast amounts of water. One barrel (159 liters) of oil sands requires four barrels of water to deliver the bitumen from ground to market. Four barrels of water are required just to upgrade five barrels of bitumen. For example, to sustain current oil sands development in Alberta, the oil sands industry annually draws 150 million cubic meters of water from the Athabasca River although it is permitted to draw roughly twice that amount—enough to sustain a city of two

million people like Toronto or Chicago (Congressional Research Service 2008, 21). Approximately 90 per cent of that water is not returned to the river due to contamination but instead it is stored as wastewater in large tailing pools. To understand the scale of water withdrawal, the tailing pond at one refining facility belonging to the Syncrude company, for example, now holds 540 million cubic meters of wastewater, which makes it one of the largest dams in the world, second only to China's Three Gorges Dam. The Great Lakes, as the largest surface freshwater system in the world, containing 95 per cent of the U.S. surface freshwater and representing some 6,500 cubic *miles* of total fresh water capacity, provide a vast and cheap supply of water for the processing of tar sands oil and a convenient sink for the dilution and disposal of waste product that minimizes the need for expensive tailings ponds.

Second, the upgrading and refining of oil sands requires a large input of energy, as the bitumen must be boiled in temperatures around 500 degrees Celsius. The Great Lakes states have the energy infrastructure in place. For example, Illinois, where much of the refining capacity is located, is also the fifth largest coal power generator in the United States, and accepted more proposals for adding new plants than any other state in the country under the Blagojevich administration. The Great Lakes states also possess the largest concentration of nuclear power plants in the United States. Illinois, for example, has the most nuclear reactors in the United States with eleven. The nuclear option is strategically important for refineries and offers flexibility. Nuclear power does not generate greenhouse gas (GHG) while the use of coal for upgrading and refining bitumen produces 50 per cent more GHG than

processing conventional oil. Consequently, the use of coal fired power plants to fuel oil refineries runs counter to the national policy to lower emissions. In July 2008, the G8 countries, including the United States and Canada, announced that they would cut global CO₂ emissions by 50 per cent.

Although no new nuclear reactors have been built in the United States since 1973, the Nuclear Regulatory Commission has since 2007 received applications to build 34 new plants, one of which is being constructed in the middle of the Great Lakes region in Detroit, Michigan. States like Ohio are considering the nuclear option, while legislatures in states that have moratoriums on new nuclear reactors such as Minnesota, Wisconsin and Illinois are reconsidering those bans. The Energy Policy Act (2005)—which provided subsidies and tax breaks to the energy industry—has fueled much of the expansion in both coal and nuclear capacity.

Third, the strategy of concentrating refinery capacity around the Great Lakes creates economies of scale for the oil industry that lower operational costs. Describing this relationship, Leslie Cookenboo (1979) writes that, “the refineries...would have to be closely consolidated geographically in order that the economies of scale of large trunk [pipe]lines might not be offset by many expensive small lines branching out to individual plants” (55). The expansion in refinery capacity around the Great Lakes has created incentives for the construction of two large trunk lines connecting Alberta to the Midwest which are currently under construction. TransCanada Pipelines, a Canadian company, is building its Keystone pipeline which will transport 590,000 b/d from Alberta to Wood River, Illinois. Another Canadian company, Enbridge Inc., has begun construction of its Alberta

Clipper pipeline that will transport tar sand oil from Alberta to Superior, Wisconsin at a rate of 800,000 barrels per day.

The interdependence of the various components of the delivery chain is further underlined by the company's statement that, "with supply from Western Canada oil sands developments expected to grow by as much as 1.8 million barrels per day by 2015, the industry has asked for more capacity out of the oil sands and into the U.S. Midwest markets. *The request is driven by oil sands producers and refiners that have long development timelines and need assurance that adequate pipeline infrastructure will be put in place in time to serve their projects*" (Enbridge 2009). The U.S. Congressional Research Service (CRS) states that close to \$32 billion has already been invested in the expansion of oil sand pipelines. According to the CAPP, there are 36 pipeline plans or actual expansions underway (CAPP 2008). Most of these pipelines will deliver heavy crude oil from the Canadian oil sands to the Midwest.

Fourth, by locating the refineries in the Great Lakes states, the United States takes advantage of Alberta's generous royalty system. American companies pay 1 per cent of the gross value of the bitumen they mine until all capital costs are recovered, after which they again pay either 1 per cent of the gross value of the bitumen or 25 per cent of net profit—whichever is larger. Downstream processing of the excavated bitumen does not fall within the royalty system, which means that the value added to the bitumen in U.S. upgraders and refineries—which accounts for most of the bitumen's value—is not subject to Canadian royalties. Furthermore, by locating upgrading and refining capacity outside Alberta, the American companies

evade provincial corporate taxes and instead pay corporate taxes to the state in which their refineries operate. In this manner, both oil and wealth are transferred to the United States, a politically questionable practice which has gone on for decades. As former Canadian energy ministry Marc Lalonde discussed in 1981,

In spite of all the rhetoric about how much we needed the multinationals and about how they were doing such great things for Canada, all the money that they were spending in this country had been raised inside Canada, out of the Canadian taxpayers and the Canadian consumers, and ... since 1974 the industry had been a net exporter to the tune of about \$3.7 billion (quoted in Finlayson and Haglund, 281).

The one difference, of course, is that the amount of wealth transferred has increased substantially.

What has remained the same, is that by locating heavy crude oil refineries around the Great Lakes, the United States not only secures most of the profits on the development of oil sands for itself, but it also shares the environmental costs with Canada. In the 1980s it was evident that refineries and coal plants in American Midwest were responsible for a significant amount of acid rain and air pollution entering Ontario. Today, it is well established that almost half of all airborne pollution in Ontario comes from the United States from coal fired power plants and refineries located downwind. Furthermore, the Great Lakes are a shared resource and while the profits remain on the American side of the border, the effluent discharged into the waters is shared.

A further critical consideration in the wake of the devastation wrought by Hurricane Katrina in 2005, locating refinery capacity around the Great Lakes shields the American energy supply from disruptions caused by natural disasters such as hurricanes in the Gulf Coast. For example, the inability to deliver crude oil from the

Gulf Coast in the aftermath of Hurricane Katrina forced two of the largest refineries in Illinois to temporarily shut down and halt petroleum production.

Finally, the Great Lakes region provides a convenient market of 40 million consumers for expanded refinery production, and a large industrial base with growing demands for petroleum. The combined Canadian and American populations of the Great Lakes region constitute 36 per cent of the population of both countries (Austin et al., 2008, 7). The region also contains 44 per cent of the combined manufacturing jobs in both countries, and can be considered as the second largest economic unit on earth in terms of wealth generation (Austin et al., 2008, 7).

Refinery Expansion around the Great Lakes: Costs and Benefits

As Alberta was undergoing its oil rush from 2004-2008, the Great Lakes began undergoing a simultaneous expansion of refinery capacity as major oil companies competed in a kind of arms race for the privilege of processing Canadian heavy crude oil. Seventeen refinery expansions around the Great Lakes are now either in the planning, approval, or construction stages. The major expansions include three refineries in Illinois, one in Indiana, Michigan, Minnesota, Ohio, Wisconsin including one in Ontario (Israelson 2008, 6). See Table 3.

Just as the scale of this latest round of refinery expansions is unprecedented around the Great Lakes, so too are the environmental costs. A report entitled “How the Oil Sands Got to the Great Lakes Basin” published by the Program on Water Issues at the Munk Center for International Studies at the University of Toronto (2008) argues that “we are already well into the development of a continent-wide

industrial supply chain—a pollution delivery system—that could cause irreversible damage to the Great Lakes” (Israelson, 2).

Table 3: Major Refinery Expansions around the Great Lakes

| | |
|-------------------|--|
| Refinery: | Detroit Heavy Oil Expansion |
| Company: | Marathon Oil |
| Location: | Detroit, Michigan |
| Investment: | \$1.9 billion (USD) |
| Bitumen Capacity: | 115,000 bpd |
| Refinery: | Whiting Refinery Conversion |
| Company: | British Petroleum |
| Location: | Whiting, Indiana |
| Investment: | \$3.8 billion (USD) |
| Bitumen Capacity: | 205,000 bpd |
| Refinery: | Wood River Refinery Conversion and Expansion |
| Company: | WRB Refining (ConocoPhillips and Encana) |
| Location: | Roxana, Illinois |
| Investment: | \$4 billion (USD) |
| Bitumen Capacity: | 495,000 bpd |
| Refinery: | Toledo Refinery Conversion |
| Company: | Bp/Husky |
| Location: | Toledo, Ohio |
| Investment: | \$2.5 billion (USD) |
| Bitumen Capacity: | 131,000 bpd |
| Refinery: | Lima Refinery Conversion |
| Company: | Husky |
| Location: | Lima, Ohio |
| Investment: | \$1.9 billion (USD) |
| Bitumen Capacity: | 146,000 bpd |
| Refinery: | Superior Refinery Expansion |
| Company: | Murphy Oil |
| Location: | Superior, Wisconsin |
| Investment: | \$6 billion (USD) |
| Bitumen Capacity: | 235,000 bpd |

Source: Alberta Federation of Labour 2009

The threat of pollution affects both air and water. Refineries in the Midwest which already account for a significant proportion of greenhouse gas emissions in the United States are expected to increase carbon emissions by 40 per cent by 2018, while toxic pollutants, such as sulfur dioxide and nitrogen oxide which cause acid rain, will also increase substantially. At the same time, refinery expansion will result in increased withdrawals of water from the Great Lakes and increased discharges of pollutants such as ammonia, mercury, and total suspended solids (TSS).

Despite the fact that public opposition to the environmental costs of refinery expansion has meant that no new refineries have been built in the United States since 1976, the current expansion projects around the Great Lakes basin are being carried out for the most part with little opposition. The predominant pattern in the economically depressed Great Lakes states is that the economic benefits of these refinery expansions outweigh the environmental concerns and the projects move forward with few problems.

In 2007, Murphy Oil unveiled its plans for a \$6 billion expansion of its refinery in Superior, Wisconsin, on the shores of Lake Superior. The construction of the largest refinery expansion in the region appeared imminent but is presently on hold due to economic considerations as a result of the dramatic decline in gasoline prices. Nonetheless, once the plan goes forward it will increase oil sands processing capacity by 670 per cent, from 35,000 b/d to 235,000 b/d by 2015. The refinery will be connected directly to the oil sands by the Alberta Clipper pipeline which will eventually transport 800,000 b/d of Canadian heavy crude from Hardisty, Alberta directly to the new refinery. Wisconsin's Department of Natural Resources considers

the expansion to be the largest project in the state's history. In the process, the refinery will also expand its ecological footprint. Energy consumption is expected to increase twelve times. The refinery expects to withdraw 18 million more liters of water per day. Carbon emissions are expected to increase by 1 million tons per year, equivalent to adding 225,690 vehicles on the road (Israelson 2008, 39). Nonetheless, environmental opposition has largely been muted on account of the economic benefits expected to accrue to the community and the state. The investment is four times larger than the entire value of the city of Superior. The refinery expansion will add 5,000 temporary construction jobs and 400 full-time positions. State Senator Bob Jauch (D-Poplar) states, "for the region, this would be the equivalent of getting the Olympics, and having them five years in a row" (Egan 2008).

Marathon Petroleum Company received its final permits in June 2008 and has begun a \$2.2 billion expansion of its refinery in Detroit, located on the Detroit River which feeds directly into Lake Erie, making it the only Michigan refinery able to handle Canadian heavy crude oil from the oil sands. When construction is completed in 2012, the refinery will process 35,000 more barrels of Canadian heavy crude oil per day. The expansion will also increase carbon emissions by 183,056 tons per year, equivalent to adding 39,452 vehicles on the roads, and will increase the emission of carbon monoxide and other particulates by 30 per cent. The refinery will increase water consumption by 2,893,000 liters of water per day (Israelson 2008, 35). Illustrative of the primacy of economic over environmental concerns, an editorial in *The Detroit News* entitled, "Refinery Expansion Benefits Region's Economy, Oil Supply", states that "a steadier supply of refined oil, more jobs and an expanded tax

base are worthwhile tradeoffs for any worries about the impact of the refinery expansion” (The Detroit News 2008).

In 2005, ConocoPhillips (USA) and TransCanada Corp. (Canada) signed an agreement to build 2,148 miles of pipeline that will transfer 590,000 b/d of bitumen from Harbist, Alberta directly to the refinery in Wood River, Illinois, located at the confluence of the Mississippi and Missouri rivers, and sitting adjacent to the City of St. Louis located just across the state-line. To meet the new demands for processing capacity, ConocoPhillips began its \$3.6 billion refinery expansion at Wood River in 2008, doubling its refining capacity of Canadian heavy crude oil to 240,000 barrels a day. The Wood River refinery expansion is part of the company’s \$15 billion transcontinental expansion of its oil sands extraction and refining capacity from 60,000 b/d to 555,000 b/d—an increase of 817 per cent (Israelson 2008, 36). The increase in tar sands oil refining would add 836,400 tons of carbon emissions per year, equivalent to 180,259 additional cars on the road. The refinery would increase its water consumption to 13,228,800 liters of water a day.

Environmental groups were able to delay the start of construction on the refinery after a federal EPA appeal board upheld a challenge which argued that the refinery’s flares were not being sufficiently controlled. The company was ordered to negotiate the drafting of a new permit with the environmental groups, after which ConocoPhillips agreed to establish an inventory for greenhouse gases, offset emissions from its San Francisco refinery expansion project, and donate \$3.4 million for various environmental projects in the local community (McGuire 2008). On the whole, however, the predominant pattern prevailed as the economic benefits of the

expansion outweighed environmental concerns for the residents living in the greater St. Louis area. The expansion at Wood River would bring an estimated 3,000 temporary construction jobs and 100 full-time jobs. Congressman Jerry Costello (D-IL) echoed the majority opinion by arguing that “this is a significant investment in our region, producing good-paying jobs and supporting other businesses” (U.S. Fed News Service 2008). Beyond the minor delay in the permit process, no significant change to the regulatory process resulted from the opposition by the non-governmental groups.

The pressure to increase refinery capacity in order to process Canadian heavy crude from the oil sands was intense and ubiquitous especially when oil prices peaked in 2007-08 and gas prices were rising. The combined pressure from the federal level to establish secure sources of energy, from the state, provincial, and local levels to expand the tax base, and increase revenue in a period of economic decline, and from the oil industry and business community to maximize profits during a period of record oil prices, came together to form a political tsunami overwhelming environmental opposition and moving the expansion of the petro-infrastructure forward. When the report published by the Munk Center for International Studies was released in December 2008, it stated that what we are witnessing is a “massive upgrading of the petro-infrastructure of North America, transcending the imperatives of one particular company and either the support or resistance of any particular jurisdiction” (Israelson, 12).

Yet, despite this overwhelming inertia, significant opposition was mobilized in one instance—the case of the refinery expansion in Whiting, Indiana, by British

Petroleum. The resistance came from an unlikely source: local governments, heretofore considered ‘bit players’ and nothing more than an ‘attentive public’, captives of ‘big business’ and creatures of the provinces and the states, spearheaded a campaign against British Petroleum on environmental grounds that delayed the expansion of the refinery and thus defied the large-scale plans of government and industry backed by massive investments of financial and political capital.

The resistance was also significant because it was waged at a time when the United States was experiencing record gasoline prices which sparked a national outcry for increased refinery capacity to increase supply and lower cost. Gasoline prices were highest in the Midwest. In supporting the expansion of the British Petroleum refinery in Whiting, Indiana Governor Mitch Daniels argued, “the number one reason for \$3 gasoline is the lack of refinery capacity in this country, and here’s one of the biggest steps forward for the Midwest and really the whole nation” (Schaper 2007). Hence, the political climate for any action that would delay the expansion could not be worse. Yet, the success of local governments went beyond delaying the expansion. The campaign forced BP to commit to further reductions in the amount of pollution it emits and, most importantly, the process instigated a significant regulatory review and reform in the state of Indiana with ramifications for environmental governance in the Great Lakes. The following section analyzes the case surrounding the British Petroleum refinery in Whiting, Indiana.

The Case of British Petroleum and the Whiting, Indiana Refinery

British Petroleum began as the Anglo-Persian Oil Company which was founded in 1909 and over the course of one hundred years grew into one of the largest and most powerful companies in the world. The company operated mostly in what is now present-day Iran, but was forced to expand its operations to other gulf states after the nationalization of Iran's oil industry in 1951. The company renamed itself British Petroleum in 1954, and entered the American market towards the end of the 1960s after discoveries of oil were made in Alaska and the North Sea. To distribute the petroleum across the country, the company began a partnership with Standard Oil of Ohio (Sohio) in 1970. On August 11, 1999, BP and American Oil Company (Amoco) announced the largest industrial merger in the world. Today, British Petroleum is the third largest energy company in the world, with 115,000 employees worldwide and \$366 billion in revenue in 2008.

Until the last two or three years, British Petroleum was reluctant to enter the oil sands business. The company did not consider the oil sands to be profitable, nor politically viable, and decided that the environmental costs undermined its campaign to rebrand itself as a good citizen. Under the chairmanship of John Browne (1995-2007), British Petroleum successfully rebranded itself as an environmentally conscious company, adopting a new logo depicting a green and yellow sun and a motto "better people, better products, beyond petroleum". Browne's landmark speech at the Stanford Business School in 2007 was the first time a company had publically recognized the problem of greenhouse gas, and it announced the company's goal of reducing emissions. Towards that goal, British Petroleum

supported the Kyoto Protocol and increased its investment in solar power technology. As early as the 1990s, the company was highly critical of oil sands development and sold all of its remaining interest in the oil sands by the end of the decade.

By 2006, it became clear that considerations of the rising price of oil and the potential of losing out on substantial profits to rival oil companies, coupled with Washington's long-term political and financial commitment to develop Canadian oil sands, forced British Petroleum to overcome its hesitations and enter the oil sands as the last of the major oil companies to do so. Spurred by the announcement in October 2006 that rival oil company ConocoPhillips and EnCana, a company based in Calgary, Alberta, would enter into a \$15 billion partnership to integrate and develop their upstream (mining and extracting) and downstream (upgrading and refining) oil business, British Petroleum and Husky Energy Inc., also based in Calgary, Alberta, responded by signing an \$11.7 billion deal the following year. The blueprint was identical. The extraction of Husky's 3.2 billion barrels of oil sand reserves in Alberta would be accelerated, while BP's refinery in Toledo, Ohio, located on the shores of Lake Erie, would undergo a \$2.5 billion expansion. The refinery would double its output of western Canadian bitumen from 60,000 b/d to 120,000 b/d by 2015.

British Petroleum's entry into the oil sands actually took place in November 2006 when it announced its plan to invest \$3.6 billion to expand and upgrade its refinery in Whiting, Indiana. To put the scale of that investment in perspective, a plan to build a new Honda automotive plant in Greenburg, Indiana, by 2008 that would produce 200,000 cars per year and employ 2000 workers is expected to cost \$550 million. The plan, referred to as Operation Canadian Crudes, would increase

the refinery's ability to process Canadian heavy crude oil. As the second largest British Petroleum refinery in the United States, producing 405,000 b/d of petroleum products used for diesel, heating and jet fuels as well as asphalt, the Whiting refinery is of strategic importance to America's energy supply. Presently 30 per cent of that refining capacity is dedicated to processing bitumen from the oil sands, but the upgrade will result in upwards of 90 per cent of capacity dedicated to refining Canadian heavy crude oil. The refinery expansion will nearly triple the processing of Canadian heavy crude oil from 90,000 b/d to 260,000 b/d by its completion in 2011.

The refinery is located on 1,700 acres of land on the shores of Lake Michigan in the Northwest corner of Indiana, which includes the small towns of Whiting and Hammond as well as East Chicago in Illinois. The refinery has been vital to the local, regional and national economy for over one hundred years. The refinery was built by the Standard Oil Company in 1890 and at that time it stood as the largest refinery in the world. The refinery was purchased by British Petroleum in 1998 when it acquired Amoco, and it is now the fourth largest refinery in the United States. The entire economy of Whiting, with a population of 5,137 people, and the surrounding communities are dependent upon the refinery which employs 1,700 workers. It's average daily production of petroleum produces enough fuel to fill 430,000 cars, 10,000 farm tractors, 22,000 semi-trucks, 2,000 commercial jet airliners, and 350,000 propane cylinders (British Petroleum website, 2005 Environmental Statement: Whiting Business Unit).

The expansion of the refinery has important economic benefits for the city of Whiting and the region. In 2007, Indiana had the fourteenth highest unemployment

rate in the country. The economic situation is especially dire in Northwest Indiana, where Whiting is situated, which has witnessed over two-thirds of its 89,000 manufacturing jobs disappear since 1979. An article in the Chicago Tribune summed up the unemployment problem in the area by stating that “the labor market in Northwest Indiana is vanishing” (Chicago Tribune, May 30 2008). In this context, the expansion of the refinery, which is expected to create 2,500 temporary construction jobs and 80 permanent jobs, is being hailed as the most important economic development opportunity in the community and the state with much more than just refinery capacity at stake. Indiana Governor Mitch Daniels stated that “in capital investment this is the largest we’ve had...the eyes of the whole state are on Northwest Indiana today, as they should be. This marks another huge step in Indiana’s economic comeback” (British Petroleum 2006). Marilyn Krusas, a member of Gary City Council, states, that the refining industry “has built Whiting and provided health insurance and benefits We need jobs. We want to make sure the company stays and improves their operation, especially along the lakefront. It's kept the economy going in the region and the area” (Laasby 2007). In short, the economic merits of the project were well understood and, true to the pattern established in previous refinery expansions in the region, took precedence over environmental concerns in the political calculus.

Traversing the Regulatory Road: The Water Permit

In early 2007, British Petroleum submitted an application to the Indiana Department of Environmental Management (IDEM) to renew its National Pollution

Discharge Elimination System Permit (NPDES) as required every five years (Augustine 2008, 5). The NPDES was established under the Clean Water Act in 1972 and regulates the discharge of pollutants in the form of wastewater, storm water and cooling water from point sources directly into any surface waters in the United States. Point sources are readily discernible inputs of pollutants such as drains, pipes, and smokestacks and typically refer to publically owned treatment works (POTW) and industrial facilities. The permit must also abide by the EPA's Effluent Limitation Guidelines (ELG) for industrial effluent discharged into surface waters, which were formulated specifically for the petroleum refining industry in 1974 and again in 1982. The EPA authorizes states like Indiana to administer the NPDES program, although the EPA is given an opportunity to review the permit for ninety days once it is issued and offer any objections or comments. Once accepted by the EPA, the effluent limits established by the permit are enforced by the state, the EPA, or any individual citizen, and it is the responsibility of the permit holder to self-monitor and report the discharges.

British Petroleum attained its first permit for the Whiting refinery in 1974, and new ones in 1980, 1985, and 1990. The 1990 permit was renewed in 1995 and remained in effect until the IDEM issued the latest new permit in June 2007. The latest application was submitted in anticipation of increased disposal of ammonia, total suspended solids (TSS) and other elements anticipated as a result of processing the Canadian heavy crude oil and the upgrades and expansion taking place between 2008 and 2012. The permit would allow the refinery to increase the discharge of total suspended solids (TSS) from a monthly daily average of 3,646 pounds-per-day (lbs/d)

to 4,925 lbs/d and from a daily maximum of 5,694 lbs/d to 7,501 lbs/d. Both of those new targets exactly match the limits set by the federal Effluent Limitation Guidelines thus satisfying federal regulations. The permit also allows Whiting refinery to increase discharges of ammonia from a monthly daily average of 1,034 lbs/d to 1,584 lbs/d and from a daily maximum discharge of 2,060 lbs/d to 3,572 lbs/d. These new limits are well below the federal ELG monthly daily average (3,528 lbs/d) and daily maximum (7,387 lbs/d). In short, as subsequent independent analyses would determine, the EPA administrator Stephen Johnson concluded that “Indiana issued a permit that is fully compliant with the Clean Water Act” (The Associated Press 2007) and federal regulations.

The Whiting permit process moved forward in compliance with all of the guidelines. According to the permit granting guidelines, the IDEM passed along a draft permit to the EPA for review, which, as would be expected, issued a notice of no objection on April 5, 2007. The IDEM also notified local authorities about the draft permit, posted the document in government departments and libraries in Whiting and Hammond as well as online, and began a standard review process over the next three months. This review process included a period for public review which took place from March 7 until May 11, where the agency accepted written commentary from the public. The IDEM also organized a public meeting at Whiting City Hall on April 26, 2007. Forty-six submissions from the public were received, the vast majority opposing the expansion on environmental grounds (Hawthorne 2007). Despite the small verbal protests, the IDEM approved the permit on June 21 and the EPA followed suit, arguing that all state and federal regulations were met and that the

limits established were consistent with the EPA's "Final Water Quality Guidance for the Great Lakes System" which was adopted in 1995 and established water quality criteria for 29 pollutants (Augustine 2008, 6). Peter Swenson, the EPA official responsible for wastewater permits in the Great Lakes deemed the Whiting effluent levels were safe (Augustine 2008, 6).

Unsettled and Obscured Waters: The Lack of Transparency and Accountability at the Heart of the Permit Process Controversy

The speed and relative ease with which the permit process was conducted belied a tension under the surface. Prior to submitting their permit application, British Petroleum had been collaborating with five technical advisors composed of five retired EPA officials and one retired university professor, indirectly representing environmental groups, in order to bring to the fore environmental concerns regarding their expansion plans. Such a forum for the exchange of information between British Petroleum and environmental groups was not unique, as the two sides worked together in the past on issues of common interest, for example, by forming a consortium to lobby for the passing of the Water Compact in the Indiana Legislature or pressing IDEM to process the backlog of air and water permits. However, in this case, although the environmental concerns were entertained by British Petroleum, they were ultimately ignored. A prominent American environmentalist, who was appointed by President Carter to head the Great Lakes Basin Commission in 1978, and who worked in the Department of the Interior, the EPA, and Chicago's Department of the Environment under Mayor Harold Washington, helped orchestrate the collaboration between British Petroleum and environmental groups. She states

that in this case, British Petroleum “did not take us seriously, they blew us off” (ex-Chair Great Lakes Basin Commission, interview October 1, 2009).

Very little attention was being paid to the British Petroleum permit process. The ex-Chair of the Basin Commission argues that at the public meetings organized by IDEM to discuss the permits, very few people attended. The Gary Post-Tribune first reported on the permit process in a series of stories starting on May 9, 2007, but it provoked very little public attention. Augustine (2008), a researcher at the William Davidson Institute at the University of Michigan Business School, observes in her report “BP and the Whiting Refinery: Beyond Petroleum” that the permit process was progressing ‘smoothly’ until an article appeared in the Chicago Tribune on July, 15, 2007, entitled “BP Gets Break on Dumping in Lake”. A week earlier, the reporter from the Chicago Tribune had been approached by several key environmental group leaders and informed of what was transpiring in Indiana.

The resulting article highlighted the fact that the permit allowed British Petroleum to increase its discharges of ammonia into Lake Michigan by 54 per cent and to increase its discharges of TSS by 34 per cent (2008, 6). Although the numbers were accurate, the article’s mischaracterization of the effluent as ‘sludge’ seemed to spark further outrage. Subsequent newspaper articles observed that the IDEM also allowed British Petroleum to use a controversial practice, called *mixing zones*, for discharging their pollution into Lake Michigan, the first such allowance since Indiana banned mixing zones in 1990. As an aside, the ban on mixing zones was not absolute. The Indiana legislature granted an exemption in 1994 to the same Whiting refinery which was then owned by Amoco which allowed Amoco to use mixing

zones in Lake Michigan in what is known as the ‘Amoco Amendment’. The present exemption allows British Petroleum to place a diffuser on the floor of Lake Michigan about 3,500 feet out from the shore in a designated mixing zone where the discharged ammonia and TSS would be diluted by the lake-water at a ratio of 37 to 1. It is only after the effluent is diluted with the waters in Lake Michigan that water samples would be taken to measure if the water column meets water quality standards. According to environmental groups, the use of mixing zones is a cheap way of circumventing water quality standards since, without a diffuser, the effluent from the Whiting refinery would most likely be in violation of water quality standards at the point of discharge.

Subsequent articles in the Chicago Tribune and USA Today newspapers reported that the permit granted British Petroleum a five-year grace period in which to meet federal mercury standards. The permit would allow the refinery to continue to discharge up to two pounds of mercury per year into Lake Michigan, an exception that ran counter to the EPA’s long-standing campaign beginning in the 1990s to virtually eliminate direct discharges of mercury into surface water. Under EPA standards established in 1995, the annual discharge of mercury should be reduced to 8/100th of a pound. Nonetheless, the permit would allow the British Petroleum refinery to be one of only two industrial pollution sources to dump mercury directly into Lake Michigan—the other being the power plant in nearby Chesterton, Indiana. Although most of the mercury deposited in the Great Lakes comes from air emissions from coal fired plants—880 pounds per year into Lake Michigan alone—the refinery discharges are still disconcerting since mercury does not degrade in the ecosystem but

instead accumulates in the waters and animals, and it is harmful even in small traces to human and animal brain and nervous system development (Hawthorne, 2007b).

Although the permit ostensibly adhered to federal and state regulations, the opposition centered primarily on the argument that the increases in discharges violated an anti-backsliding provision in the Clean Water Act under section 402 (o) which prohibits the EPA from re-issuing an NPDES permit which is less stringent than the previous one. This backsliding provision has been the object of contention since its insertion. The anti-backsliding provision was inserted to fulfill the explicit policy aim of the Clean Water Act (1972) to attain zero discharges of pollutants into swimmable and fishable waters by 1983 and navigable waters by 1985. Hence, the general spirit of the Clean Water Act dictates that subsequent permits be more, not less, strict in their adherence to environmental standards and goals.

However, the backsliding provision does allow the adoption of less stringent effluent limits in very limited circumstances. In situations where the permit satisfies state and federal water quality standards, as was the case with British Petroleum, the NPDES administrator, in this case, the IDEM Commissioner Thomas Easterly, can exercise discretion and lower effluent standards as long as the permit remains consistent with the state's *anti-degradation* policy.

According to Indiana Code (13-11-2-50.5), degradation is defined as “any new or increased discharge of a pollutant or pollutant parameter that results in a significant lowering of water quality for that pollutant or parameter ... unless the activity causing the increased discharge results in an overall improvement in the outstanding state resource water”. In his post-mortem account of the conflagration

surrounding the British Petroleum permit, Dr. John Barnes, a professor of Public and Environmental Affairs at Indiana University who was tasked by Indiana Governor Daniels to provide an independent review of the permit process, stated that the anti-degradation policy is “at the heart of the controversy, from a legal and policy standpoint” (Barnes 2007, 11).

The anti-degradation policy was explicitly encoded in the Clean Water Act in 1987 through amendments to section 303(d)(4)(B) and in 1990 through amendments to section 118(c)(2). The purpose of the policy is to ensure that the permit maintains the overall level of water quality in the watershed and protects *existing* uses of the water from that watershed. The commissioner can calculate, on a case-by-case basis, an allowable increase in the monthly average effluent limitation as long as the overall water quality of Lake Michigan is not threatened. Furthermore, according to federal regulation policy, the increase in effluent discharge can be justified on the basis that such an increase in pollutants is “*necessary* to accommodate important economic or social development” [40 C.F.R Section 131.12(a)(2)]. Commissioner Easterly used these broad discretionary powers to defend IDEM’s granting of the wastewater permit to British Petroleum, by stating,

It is the position of the Indiana Department of Environmental Management that... The additional jobs, the long-term viability of the existing jobs/business and the value to our Nation’s overall security resulting from utilizing a new source of petroleum from a neighboring friendly country have justified the proposed increase in the effluent limits for ammonia and total suspended solids (IDEM Post Public Notice Addendum June 2007, 5).

The clear argument by the proponents of the pollution permit and the expansion of the Whiting refinery—namely British Petroleum, Indiana Governor Daniels, and IDEM

Commissioner Easterly—was that the permit process did not violate federal or state laws and the increase in pollution was justifiable on economic grounds.

However, according to Barnes, the conflict surrounding the British Petroleum permit was not without merit and arose for two reasons. First, IDEM’s interpretation of how to apply anti-degradation policy is inherently subjective. Barnes argues that “a critical question in anti-degradation policy is—how much, if any, deterioration in water quality (while still not going below the established minimum levels) will be allowed in order to obtain certain economic or social benefits?” (Barnes 2007, 12). The normative conceptions of how to balance competing environmental and economic and social interests is heavily subjective, and depends on whether the point of view belongs to the public, the regulators or the regulated. In the British Petroleum case, the vocal public opposed to the new permit applied the strictest interpretation of the anti-degradation policy to mean *no* increases in effluent discharges. The regulated community, on the other hand, argued that some deterioration was necessary in order to achieve its business objectives and certain economic and social goals, while the regulators sought to strike a middle-ground (Barnes 12). The problem is, of course, that there are few objective signposts within the State of Indiana’s regulations that provide guidance on how such a balance between economic, social and environmental concerns should be struck.

Hence, the second factor that precipitated an open conflict is that the anti-degradation guidelines themselves are loose, incomplete and incoherent and fail to provide clear rules and standards that would provide a measure of objectivity and transparency to the permit process. In a nutshell, the IDEM’s anti-degradation

policies represented a microcosm of the problems identified by the International Joint Commission in its aforementioned 13th Biennial Report on Great Lakes Water Quality (2006) focusing on the lack of accountability. Part of that confusion stems from the fact that different bodies of water are afforded different levels of protection and it is not clear in this instance what the level of protection afforded Lake Michigan should be applied. Under the Clean Water Act, the EPA requires that states implement an anti-degradation policy that has three tiers of protection. See Figure 6.

The first tier—Tier I—provides minimum water quality standards for all waters in the United States. Tier II waters that exceed water quality standards are termed High Quality Waters (HQW) and these are given greater protection. Regulators must strive to maintain those levels unless the state deems that lowering the water quality is necessary for economic or social purposes as long as the first tier minimum standards are not breached. Waters that are designated as Outstanding *National* Resource Waters (ONRW) are given the highest level of protection, and the degradation of these Tier III waters is strictly prohibited. Indiana has designated Lake Michigan an Outstanding *State* Resource Water (OSRW), and is often referred to as a Tier II.5 water because it is entitled to protection that is greater than a High Quality Water but less than an Outstanding National Resource Water (Barnes 13).

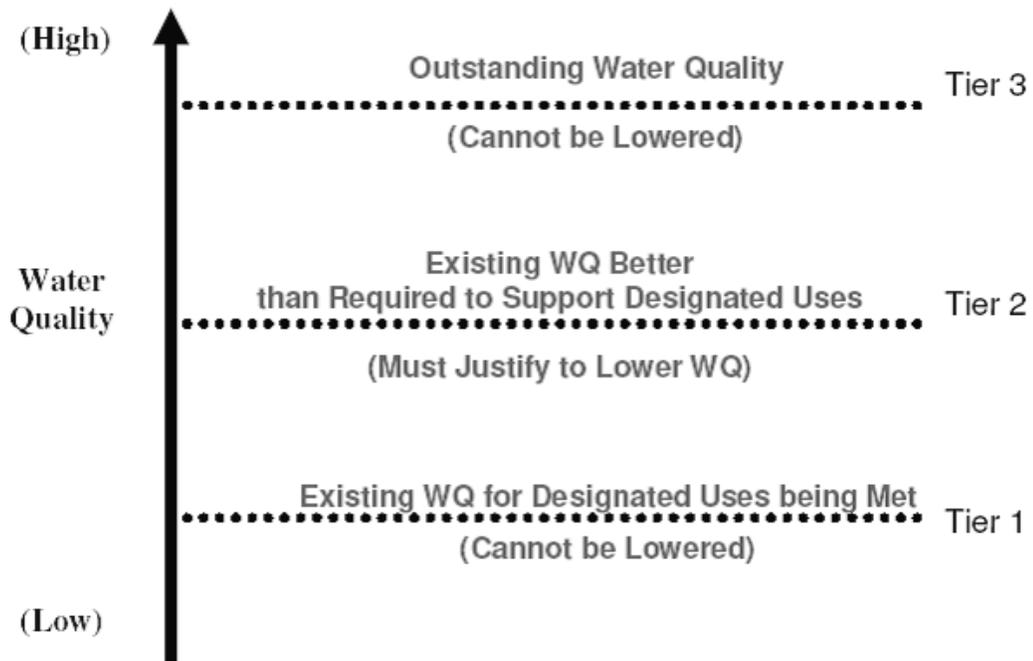


Figure 8: Three Tiers of Water Protection
 Source: IDEM 2009

What this level of protection actually means in practice is open to interpretation, and the question of whether the effluent limits set by the IDEM for ammonia and TSS discharges violate anti-degradation policy for Lake Michigan is open to debate. Hence, the process lacks concrete measures for accountability.

One of the key components of both federal and state anti-degradation policy guidelines which *could* have provided some clear direction in the debate was the “anti-degradation demonstration”. Before approving any new or increased discharges of pollutants, the EPA requires that the permit applicant submit an “anti-degradation demonstration” for any permits that will result in new or increased discharges of bioaccumulative chemicals of concern (BCC) which include metals such as mercury and lead and other compounds such as PCBs. Among other things, the applicant must

demonstrate in a written report (i) why an increase in BCC discharges is *necessary* (ii) they must outline the economic and social benefits as well as the potential environmental and health costs (iii) and they must provide an evaluation of the availability, practicality and cost of implementing alternatives.

However, in this case, since the British Petroleum permit foresaw only an increase in discharges of *conventional* pollutants such as TSS or ammonia, and not the more serious bioaccumulative chemicals of concern, the EPA concluded that such an “antidegradation demonstration” was not required since it was not applicable (Barnes 13). Consequently, there was a gap in the federal and state regulatory system which allowed British Petroleum to attain a new permit without having to justify the necessity for increasing their effluent discharges.

Indiana’s anti-degradation regulations do provide for an “anti-degradation demonstration” that go farther than the EPA concern with BCC. An applicant seeking a permit for new or increased non-BCC discharges into High Quality Level waters must submit an “anti-degradation demonstration” to the IDEM commissioner when those discharges are expected to lead to “a lowering of water quality that is greater than a *de minimis* lowering of water quality” (IAC 5-2-11.3-Bii). These regulations also provide mathematical equations to quantify what a violation of the *de minimis* rule would entail with regards to pollution loading, and they state in clear terms the content of such a demonstration including, among others, a presentation of alternatives and the costs and benefits of their implementation.

These same Indiana regulations however are much less clear when discussing the application of anti-degradation policy to *Outstanding* State Resource Waters

(OSRW) such as Lake Michigan. The regulations do not stipulate the circumstances under which a demonstration would be triggered nor the required contents of such a demonstration in the same forthright and clear manner in which they are presented with regards to Tier II High Quality Waters (Barnes 14). Since Lake Michigan is considered a Tier II.5 water, and thus should be afforded a higher level of protection, one can only *assume* that at minimum the same regulations governing “anti-degradation demonstrations” in High Quality Waters is applicable to Outstanding State Resource Waters, but assumptions and regulations are not the same thing. Therein lies the origin of the accountability gap.

The IDEM recognized this gap in the regulations when it requested that British Petroleum voluntarily submit an ad-hoc *anti-degradation analysis*, even though such an analysis was not required by the letter of the law, in order to be able to make its determination according to the principles of anti-degradation policy. The IDEM asked British Petroleum to identify measures or technology that could minimize the detriments to Lake Michigan water quality including considerations of non-discharge alternatives such as alternative locations, considerations of discharge minimization such as reductions in the scale of the project, and failing these two alternatives a consideration of end-of-pipe treatment scenarios (Barnes 23). IDEM also stated that

BP North America must demonstrate that all economically and technically feasible measures have been taken to avoid the action that will result in the new or increased discharge of the pollutant or pollutant parameter including a demonstration that it is not feasible to limit the new or increased discharge to a temporary or short term period. BP North America must demonstrate that any increase in pollutant loading is *necessary*” (British Petroleum 2007, 15).

British Petroleum appeared to cooperate with this request and submitted its “Case-By-Case Antidegradation Analysis” in November 2006.

However, Barnes argues that the “anti-degradation demonstration submitted by BP to IDEM fell short of what IDEM required and short of what ideally would be submitted” (24). A coordinator of the Indiana Chapter of the environmental group, Sierra Club, argues that British Petroleum’s demonstration “made a mockery of the anti-degradation process” and that “their anti-degradation was one page long, and it was ridiculous” (Sierra Club interview September 25, 2009). British Petroleum stuck to a strict interpretation of the letter of the law and stated in the report that it was not legally required to provide an evaluation of non-discharge or discharge minimization alternatives as requested by IDEM and therefore did not provide one. The report briefly and half-heartedly evaluated possible treatment alternatives but rejected them as infeasible while offering very limited information or justification that, according to Barnes, made it “almost impossible, for a reviewer or the public to know whether the rejection of the alternative is reasonable” (Barnes, 24).

Unimpressed, IDEM subsequently requested that British Petroleum submit an addendum which it did on November 30, 2006, entitled “Evaluation of Ammonia-N Mass Discharge After Refinery Reconfiguration and use of CXHO”, with CXHO meaning Canadian Extra Heavy Crude Oil. The report stated that ammonia discharges could be reduced from the monthly average of 1,584 lbs/day anticipated in the new permit to its original daily average of 1,030 lbs per day with the addition of water tanks to the British Petroleum’s Lakefront wastewater treatment plant. However, the report states that the lack of space needed to accommodate the 12,000

square foot expansion at the wastewater plant precluded such a project, and the company concluded that on this basis it was not appropriate to provide the capital or operational costs of this alternative even though IDEM specifically requested that such information be provided. Barnes states in his report that, “the shortcomings in the anti-degradation demonstration raised questions in the public’s mind as to whether there had been sufficient inquiry/effort to avoid the increased discharge to Lake Michigan” (25), arguing that a “better decision record” may well have satisfied the concerned public. This state of affairs parallels a central concern in the IJC’s 13th Biennial Report on the lack of accountability within the governance structures around the basin by concluding that “the public has neither an accounting of specific progress...nor confidence that any reports tell the full story” (2006, 17). In this particular case, in short, British Petroleum failed to demonstrate convincingly that an increase in discharges of ammonia and TSS was *necessary* and unavoidable.

In addition, neither the IDEM nor British Petroleum provided a rationale for the five year grace period the refinery was given to align its mercury discharges with federal standards. The public’s sensitivity over any mercury discharges had been heightened over the years by numerous fish consumption advisories due to mercury levels, and in this context, although the provision accorded with both federal and state regulations, and the actual level of mercury discharged would remain below the level of detection and below what would be permitted in drinking water, a better decision record and a more transparent line of communication between the public, the regulated and the regulators could have mitigated some of the conflict.

The final criticism directed at the quality of the decision-making process leading up to the granting of the permit dealt with the openness of the entire process to participation from actors outside the traditional federal-state duopoly, namely, local government. What made the criticism more remarkable is that the City of Chicago, specifically, demanded that it be included in a decision-making process taking place outside the boundaries of its own state. Sandhu Johnston, the commissioner for the City of Chicago's Department of the Environment, protested that the city should have been consulted even though the refinery expansion and the permit process were outside state boundaries, stating "we were not approached by BP or IDEM. We are a big neighbor to the north, and we would have hoped we'd have been reached out to" (Buchtal 2007).

The Opposition and Local Government Mobilization

The City of Chicago was in essence the staging ground for the protests against the British Petroleum permit, and the main organizer of the opposition was in fact Chicago's local government. However, the Great Lakes and St. Lawrence Cities Initiative also played an important role by mobilizing its membership base behind Chicago and by acting as an information and coordination hub, crafting a strategy and a common message that was adopted by individual mayors. Hence, rather than a series of isolated and ad-hoc protest activities, the opposition around the Great Lakes was synchronized and succeeded in delivering a clear and focused message that the failure of IDEM and British Petroleum rested in their inability, and perhaps their

disinterest, in finding a better balance between economic and environmental concerns.

On July 18, just three days after the controversial article appeared in the Chicago Tribune, the Great Lakes and St. Lawrence Cities Initiative circulated a press release condemning the State of Indiana's pollution permit for British Petroleum, quoting Chicago Mayor Richard Daley that "we must find ways to demonstrate that economy and environment can co-exist" (GLSLCI, Press Release, 2007). The next day, Timothy Mitchell, the superintendent and CEO of the Chicago Park District—a separate agency of the City of Chicago and the largest park district in the United States with a \$385 million budget—announced that, in partnership with the City of Chicago and various local environmental organizations such as the Alliance for the Great Lakes, the Park District would organize a petition drive on July 21-22 called "Save our Lake" protesting the refinery expansion. The petitions were collected at fourteen locations throughout the city including beaches, Navy Pier and the Museum Campus, and would eventually deliver close to 100,000 signatures to Indiana Governor Daniels.

On July 20, the two founding members of the Great Lakes and St. Lawrence Cities Initiative, Mayor Daley of Chicago and Mayor Miller of Toronto, as well as the Chairman of the Cities Initiative, Mayor Gary Becker of Racine, Wisconsin, published a letter to the editor in the Chicago Tribune in the section titled "Voice of the People" under the heading "We must all protect, not contaminate, lake". The letter stated that "BP's plan and the precedent it sets jeopardize all of the efforts of the last 30 years to protect the Great Lakes" and emphasizes again the need to balance

both economic and environmental interests (GLSLCI, Chicago Tribune letter to the editor, 2007).

On August 2, the executive director of the Great Lakes and St. Lawrence Cities Initiative, David Ullrich, testified in front of the City Council of Chicago and the Joint Committee on Energy and Parks, explaining their stance and stating that “the resounding answer from United States and Canadian mayors across the Great Lakes and St. Lawrence is that increased pollution will not be allowed” (GLSLCI, Ullrich testimony in front of Chicago City Council, 2007). Economic sanctions were considered. One of the most powerful aldermen—Edward M. Burke—insisted on introducing a city-wide boycott of British Petroleum by putting forward a motion in front of Chicago’s City Council that would stop the city’s use of a 100 BP gas station cards, which are mostly used by police officers. Alderman Burke also proposed that the Council block three large banks with connections to British Petroleum, including Goldman Sachs, from receiving city bond deals worth millions of dollars. Legal action was also discussed by officials from the City of Chicago.

With the assistance of the Great Lakes and St. Lawrence Cities Initiative, the opposition also spread out to cities beyond Chicago. Two days before the letter to the editor was published in the Chicago Tribune, five Wisconsin mayors—Mayors Juan Perez of Sheboygan, Jim Schmitt of Green Bay, including three members of the Cities Initiative, Tom Barrett of Milwaukee, Mayor Dave Ross of Superior, and Gary Becker of Racine—wrote a letter directly to IDEM Commissioner Thomas Easterly criticizing the permit as “a careless disregard for the numerous communities across

the region...and undermines years of work by local governments” (Barrett et al., letter to IDEM Commissioner Thomas Easterly, July 24, 2007).

Individual local governments began passing resolutions condemning the British Petroleum permit that were based on a template resolution crafted and distributed by the Cities Initiative. For example, Highland Park, a member of the Cities Initiative, passed a resolution on July 26th, opposing the permit granted by the IDEM. Subsequent resolutions were passed by other city councils such as Marquette and Ferndale in Michigan, and Evanston, Illinois, on August 13. Canadian cities such as Niagara-on-the-Lake, Archipelago, and Salaberry-de-Valleyfield in Quebec passed their own resolutions in August. Mayors across the basin voiced their concerns in local newspapers, radio and television news which amplified the discontent even further. The discontent reached a crescendo in certain media markets. For example, after Windsor Mayor Eddie Francis commented on the British Petroleum dispute, the radio station AM 800 CKLW aired a commentary on July 24 by Paul McDonald stating that the British Petroleum permit “amounts to environmental homicide” (CKLW, commentary, 2007).

The early public relations campaign waged by Chicago and the Cities Initiative sparked and sustained a second wave of public protests. At the beginning of August, the annual rock-and-roll festival Lollapalooza brought hundreds of thousands of spectators to Grant Park in Chicago. On the closing night, August 5, the popular alternative rock band Pearl Jam led the crowd in a protest song called “Don’t Go BP Amoco”. The Chicago Sun-Times ran a series of editorials criticizing the expansion and on August 17 it proposed a total boycott of British Petroleum in an article titled

“Boycott BP (Big Polluter): Don’t Buy BP Gas Until They Agree to Not Dump In Lake” which states, “if BP insists on dumping more pollutants into our lakes, it’s time for us to stop pumping its gas into our tanks. We’re calling for an all-out boycott of BP gas.” (Chicago Sun-Times 2007).

Pressure was also coming from Washington. Congressmen Richard Durbin (D-II) and Rahm Emmanuel (D-II) sent letters on July 16, 2007 to the EPA administrator Stephen Johnson and the assistant administrator in the EPA’s Office of Water, Benjamin Grumbles, strongly opposing the EPA’s decision to grant the permit to British Petroleum and seeking clarification on how the EPA measured environmental and economic concerns, how it reconciled their decision with the anti-backsliding provisions in the Clean Water Act, and to what extent it examined the cumulative impact on Lake Michigan and the Great Lakes that would result from an increase in pollution discharges. On July 26 the U.S. House of Representatives overwhelmingly passed a resolution by 387 to 26 votes introduced by Illinois Representative Rahm Emmanuel and Michigan Representative Vernon Ehlers on July 18, condemning the British Petroleum permit and urging the IDEM to reconsider its decision (H.Con.Res. 187).

The Effects of the Opposition on the Policy Result and the Policy Process

Despite the public pressure, the IDEM Commissioner Tom Easterly refused to back down and approved the permit by stating, “This permit went through the most public process that any other permit has gone through ...[and]... the increase in ammonia is still limited to one half of the federal requirement” (quoted in Augustine

2008, 7). Governor Daniels refused to ask the IDEM to re-open the permit process. The British Petroleum chairman, Bob Malone, announced that the plan would move forward arguing that all federal and state regulations had been met. On August 23, British Petroleum chairman Malone stated that although the company maintained the legality of its permit, “ongoing regional opposition to any increase in discharge permit limits for Lake Michigan creates an unacceptable level of business risk for this \$3.8 billion investment” (Augustine, 2008b, 1).

Nonetheless, the opposition achieved four significant concessions from the State of Indiana and British Petroleum that will be discussed in turn: (i) it opened up the decision-making process by establishing an epistemic community surrounding the permit process and refinery expansion, and by holding a Lake Michigan Summit involving stakeholders from state and non-state actors from around the Great Lakes (ii) British Petroleum agreed to meet effluent limits set by the previous permit (iii) the State of Indiana undertook a comprehensive two-year review of their anti-degradation policy process with exhaustive multi-level stakeholder participation with substantial public input (iv) implementing a comprehensive anti-degradation rule will expedite the updating of lapsed pollution permits that will force heavy industry to finally adhere to stricter environmental standards because the long-time lack of an anti-degradation policy was the central impediment blocking the IDEM from processing its backlog of pollution permits.

Although the permit was granted, British Petroleum chairman Malone agreed to a proposal tabled by U.S. Representative Biggert, who advised British Petroleum to partner with Argonne National Laboratory and Purdue University Calumet to

organize a task force made up of scientists and water experts to review emerging technologies available to provide alternate solutions for the refinery's wastewater (Augustine 2008, 7). The two institutions had already cooperated on water quality issues through the Purdue University Calumet Water Institute which is located close to Whiting refinery. However, it was unique to see collaboration between industry, academia and government organized in such a way. Furthermore, British Petroleum also invested \$5 million in Purdue University to further research into the applicability of clean water technology to Whiting.

Shortly thereafter the EPA administrator for the Great Lakes states, Mary Gade, convinced chairman Malone to take part in a Lake Michigan Summit held on August 15, 2007 in Chicago focusing on issues surrounding the Whiting refinery expansion. Participants included representatives from British Petroleum, officials from state governments in Illinois, Indiana, Michigan and Wisconsin as well as from the City of Chicago and Cook County, members of Congress and representatives of environmental organizations (Augustine 2008, 8). Gade captured the mentality of this emerging epistemic community being organized by stating that the industry and government need to find "strategies for going beyond compliance" (quoted in Augustine 2008, 8).

British Petroleum also voluntarily agreed to defer from increasing pollution discharges into Lake Michigan by agreeing to abide by the effluent limits set by the previous seventeen-year-old permit at least until 2011. The significance of such a concession on the part of industry is tempered, however, by the fact that construction on the refinery expansion is only expected to be completed in 2012, and hence the

anticipated increases in effluent discharges would only come into effect thereafter. The concessions also provoked chairman Malone to draw a line in the sand, warning that these accommodations raise the risk of the investment being pulled altogether, stating that “if necessary changes to the project result in a material impact to project viability, we could be forced to cancel it” (Augustine, 2008b, 2). Nonetheless, a senior member of the Alliance for the Great Lakes, a major regional environmental non-governmental organization, states that the simple fact that a private corporation voluntarily committed itself to adjusting its permit limits indicates that there was room for improving the permit itself in the first place in terms of the balance between economic and environmental aims (Alliance for the Great Lakes, interview September 29, 2009).

The most significant concession the opposition secured was Governor Daniels commitment to a two-year regulatory review of the State of Indiana’s anti-degradation policy, a review that had been derailed two years earlier. Between 1997 and 2005, the IDEM attempted to develop a comprehensive anti-degradation rule but failed in large part as a result of pressure from industry. The process was shelved shortly after a letter by the law firm Barnes & Thornburg LLP was sent to the Office of Water Quality at the Indiana Department of Environmental Management on May 30, 2005, communicating its opposition to the anti-degradation review on behalf of the Indiana Water Quality Coalition (IWQC) composed of the Indiana Coal Council, Indiana Builders Association, Indiana Manufacturers Association, Hoosier Energy, Eli Lilly and Company, G.E. Plastics, American Electric Power, and British

Petroleum. The Indiana Manufacturers Association is a non-profit trade association that represents 2,000 companies and 600,000 manufacturing jobs (Evans 2009).

The opposition to the British Petroleum refinery in 2007 forced the state to revive and complete a regulatory review that had been delayed for twelve years. The ‘first notice’ informing the public that the IDEM intends to develop an anti-degradation rule was filed on October 15, 2008 and a “Draft Rule” was filed on ‘second notice’ in the Indiana Register for a 45 day public comment period on July 17, 2009. The Draft Rule fills the gaps in the current anti-degradation rules by outlining (i) the process applicants must follow (ii) under what circumstances the applicant must undertake an evaluation of alternative measures (iii) when an applicant must demonstrate social and economic benefits (iv) and when periods of public comment are necessary. In preparing the Draft Rule for the final promulgation process before being signed into law by the governor, the IDEM also opened up the process to unprecedented public scrutiny by organizing extensive consultations with stakeholders and the public. On March 7, 2008, Governor Daniels initiated the first of thirteen stakeholder meetings which included representatives of industry (British Petroleum, U.S. Steel, Indiana Manufacturers Association, Indiana Chamber of Commerce, Eli Lilly, and the Indiana Coal Council), environmental groups (Alliance for the Great Lakes, Environmental Law and Policy Center) as well as municipal governments. The Draft Rule was open to public commentary in four meetings organized from August 19, 2009 to September 21, 2009 in the towns of Portage, Garrett, Seymour and Vincennes.

Finally, the anti-degradation review process that is being undertaken will help eliminate the last major remnants of the major backlog of pollution permits that has plagued the IDEM. In 2005, the IDEM had close to 300 air permits and 276 water permits that were outstanding, meaning, they were not issued, renewed, or updated. Even though the Clean Water Act requires that water permits be updated every five years in order to meet stricter standards, the backlog has meant that major polluters such as coal and steel factories have been discharging pollution into the Great Lakes based on environmental standards that are out-of-date by as much as fifteen years, as is the case with U.S. Steel's Gary Works which is operating on a permit issued in 1994 and expired in 1999. The controversial British Petroleum refinery in Whiting was operating on a permit that expired in 1995.

By 2009, after a concerted effort on the part of IDEM, the amount of air and water permits outstanding has been reduced to five and six respectively. However, the six water permits pertain to the largest polluters in Indiana including five steel mills such as the U.S. Steel Gary Works and ArcelorMittal Burns Harbor. A high ranking member of a regional environmental group, Save the Dunes, argues that the absence of a comprehensive anti-degradation rule was a major reason why permits were not being issued thus creating a backlog (Laasby 2009). It is also the reason why the largest polluters still remain without updated permits. Governor Daniels has argued that there is no sense issuing the steel plants new permits at this point until the anti-degradation draft review is complete.

In addition to these concrete concessions on the part of IDEM and British Petroleum, the prominent environmentalist and former Chair of the Great Lakes

Basin Commission argues that the success of the opposition can also be measured by the fact that the public debate “stimulated attention not just to the local refinery, but the whole issue of developing heavy tar sands” (ex-Chair Great Lakes Basin Commission, interview October 1, 2009), and the dispute over the water permit brought increased attention to British Petroleum’s subsequent air permit required for the expansion of the Whiting refinery. On October 19, 2009, the EPA ordered the Indiana Department of Environmental Management to reconsider and revise within 90 days the air permit it issued to British Petroleum in 2008, which they argued was incomplete, demonstrating perhaps the dawn of a stricter regulatory regime.

Assessing the Case in Comparative Perspective: the British Petroleum expansion in Whiting, Indiana and the Vasco da Gama Bridge in Lisbon, Portugal

The dynamics taking place surrounding the permit process for the expansion of the British Petroleum refinery are very similar to the dynamics surrounding the planning and implantation of the construction of the Vasco da Gama Bridge in Portugal analyzed by Bukowski (2004). A brief comparative analysis will not only illustrate those similarities, but it will also highlight the differences between European and North American multilevel governance, specifically, the crucial role that the supranational level of government plays in empowering non central-state actors.

The Vasco da Gama Bridge

As in the British Petroleum case, there was considerable political support at the highest levels for the construction of a bridge spanning the Tagus Estuary in Lisbon which had been contemplated since the 1980s. The project was given a high

priority by the Social Democratic Party government which established in 1991 a special agency called the Office of the Tagus River Crossing in Lisbon (GATTEL) to “develop, coordinate, and control the activity of the promotion of the construction of a new road crossing over the Tagus” (quoted in Bukowski 2004, 283). The new office was composed of officials from the Ministry of Public Works, Transport and Communications (MOPTC), the Ministry of the Environment and Natural Resources (MARN), and the Finance Ministry (MF). Private interests, in particular the business community, were heavily invested in the project and influential in the decision-making process (Bukowski 2004).

The ensuing conflict centered on the location of the bridge crossing between proponents of the so-called Central corridor and those who favored the Eastern corridor. At the heart of the debate were two issues. The first issue dealt with policy results and specifically concerned the perceived imbalance between economic and environmental impacts and interests reflected in the final location of the bridge crossing. The second issue dealt with the quality of the decision-making process, specifically, with the transparency, accountability and openness of the process. The Portuguese government unilaterally settled on the Eastern corridor which not only disregarded environmental concerns raised by Portuguese environmental groups, but also went against the recommendations of its own agency, the GATTEL, and provided little technical or objective justification for that particular choice. As the process moved forward and environmental groups remobilized, developed new strategies and were able to muster a greater array of allies and resources, the

opposition to both the policy result and the policy process became more vocal and the pressure on government more intense.

Once the decision for the Eastern corridor was announced, the company which won the bid, Lusoponte, subsequently submitted an environmental impact assessment (EIA) which was opened for a two-month period of public consultations carried out through town-hall style meetings, postings on the internet, and through bulletins posted in public offices. The Portuguese environmental groups immediately criticized the EIA in very strong terms for lacking scientific rigor and criticized the selection of the Eastern corridor in general. As in the British Petroleum case, the Portuguese environmental groups argued that the final decision was based on subjective criteria and limited considerations of both the environmental impact and the possible alternatives reflecting in general a lackluster effort on the part of the government to solicit public input.

This initial round of pressure on the part of environmental groups succeeded in provoking the first serious response from the Portuguese government. In February 1995, a few months before the construction of the bridge was set to commence, the government attempted to placate the NGOs and quell the initial criticism by establishing the Commission for Oversight and Construction (CAO) composed of representatives of the various government agencies involved in the project, several municipal governments that were directly affected by the project, a representative from GATTEL and representatives from environmental NGOs (Bukowski 2004, 290). Nonetheless, the CAO was viewed as ineffectual and Bukowski (2004) argues that “there existed a consistent lack of public participation, and an attitude on the part

of government authorities that while they must ‘suffer’ the process of public debate, it largely did not figure into their decisions” (287). Thus concluded what can be considered the first stage of the confrontation, wherein the environmental groups, highly motivated but largely on their own, elicited a mild or moderate response from the government.

During the second stage of the confrontation, as the construction unfolded, the Portuguese environmental groups developed, and began to employ, new strategies and new resources, characterized by a turn toward supranational institutions in order to increase the pressure on their own government by referring specifically to European Union laws and norms. The environmental groups undertook an intense and public lobbying and information campaign directed at the European Commission, specifically the Directorate General for the Environment and the Directorate General for Regional and Cohesion Funds, as well as the European Parliament and the European Court of Auditors.

The environmental groups demonstrated that the bridge project violated the European Union’s Birds Directive (79/409/EEC) and the Habitats Directive (92/430/EEC) as well as the rules and practices of the European Union’s Cohesion Funds. The Portuguese government had previously applied for and attained Cohesion Funding for the project, and so the criticisms leveled at the bridge’s financial foundations proved to be especially effective. At the apex of the dispute, an official delegate of the European Commission acknowledged, according to Bukowski, that “the position of the environmental groups was very strong, and that if they wanted to force the issue, the Commission would have to halt all funding to the bridge” (292).

This second stage of mobilization by the environmental groups relying on supranational institutions provoked three new responses on the part of the Portuguese government which dramatically altered both the policy result and the policy process. First, the process became more open and the network involved in the decision-making process was expanded as supranational actors such as the European Commission become more intimately involved in the project. For example, the effective lobbying provoked the European Commission to send a delegation to investigate the construction project. Furthermore, the Commission, the European Parliament, and the European Court of Auditors, all released individual reports critical of the bridge project, identifying severe flaws and violations related both to the location of the bridge and the decision-making process.

Second, accountability was augmented as oversight of the process was enhanced. For example, the activities of private interests and industry in the project, in this case the Lusoponte consortium, were placed under more careful scrutiny by both national and supranational authorities. For example, in addition to increased oversight from the European Commission, the Portuguese Environmental Minister, Elisa Ferreira, threatened to impose fines after conducting an investigation of Lusoponte. The Ministry of Environment and Natural Resources (MARN), which until this point had been overshadowed by the Ministry of Public Works, Transport and Communication (MOPTC), only became assertive in its opposition to the Eastern corridor after the European Commission and the Directorate General for the Environment became actively involved in the process and itself highly critical of the project. The elevation of environmental concerns within the decision-making process

even led to Cohesion Fund money being suspended on three occasions for violations of various environmental directives. Furthermore, the Commission for Oversight and Construction (CAO) was reconstituted with new members and the CAO was given more effective oversight of the project which satisfied environmental groups.

Third, in addition to improving the policy process by introducing greater accountability and greater multi-level input from both state and non-state actors into the decision-making process, the Portuguese government and Lusoponte agreed to implement compensatory measures that would offset the negative environmental impact of the bridge by expanding environmentally sensitive Special Protection Areas (SPA) in other areas and by transposing long delayed European Union environmental directives into Portuguese domestic law. Hence, a better balance between environmental and economic interests was struck in the final decision due to the cooperation of local and supranational actors.

Comparing the Bridge and the Refinery Cases Before and After the Opposition

In both the Vasco da Gama Bridge and the British Petroleum refinery cases, we find support for the observation by Peters and Pierre (2004) that “multilevel governance embedded in a regulatory setting that enables weaker actors to define a legal basis for their action” (89) allows them to transcend the negative tendencies of network governance and is in fact “the best strategy to escape the Faustian bargain and to cheat darker powers” (89) inherent in a multilevel governance setting that weakens transparency and accountability. In the bridge case, local governments

based their opposition on the Birds and Habitat directives. In the British Petroleum case, the opposition used Indiana's anti-degradation policy and the Clean Water Act.

Furthermore, using Bukowski's (2004) aforementioned five-criteria for assessing the quality of decision-making, we find in both cases that the mobilization of non central-state actors improved the democratic legitimacy of the policy process and the policy result.

In the first criteria, *transparency and accountability in the policy process and policy results*, Bukowski asks whether the stakeholders and the public understand how and why decisions are made. In the case of the refinery and the bridge, we find that there was originally very little transparency and accountability in the decision-making process. Bukowski's observations about the early stages of the bridge deliberations, that "the final decision was made by government entities which were not able to justify their choice...based on objective criteria" (293), is entirely applicable to the decision undertaken by the Indiana Department of Environmental Management (IDEM) to grant British Petroleum its pollution permit. The IDEM's decision to move forward with the permit process was based on the State of Indiana's anti-degradation guidelines which were ambiguous to begin with and provided few concrete criteria that could provide the basis for an objective justification of the final decision by Commissioner Easterly. Ultimately, the final decision about the permit reflected Commissioner Easterly's and Governor Daniels' broad discretionary powers and their subjective calculations of the proper balance between economic and environmental interests, which opened them up to criticisms of bias in favor of industry that was partly justified. The Barnes inquiry concluded that the ad-hoc anti-

degradation analysis provided by British Petroleum failed to demonstrate or justify an increase in pollutant loadings into Lake Michigan by offering limited information that made it “impossible, for a reviewer or the public to know whether the rejection of the alternative is reasonable” (Barnes, 24). In other words, Professor Barnes pointed out that the decision-record was not transparent, and little technical data was provided upon which external observers could rely on to assess the final decision, and yet despite these flaws the permit was still granted.

As mentioned, one of the positive developments to emerge from the dispute over British Petroleum was the anti-degradation review undertaken by IDEM which seeks to clarify the process applicants must follow, the rules regulators must apply when granting the permits and the conditions under which an anti-degradation process is triggered including when public input is required.

In the second criteria, *access*, Bukowski asks whether all actors are given the opportunity to provide input into the process and whether that input is actively sought (278). The State of Indiana’s permit process provides the public and non-governmental organizations with access to the decision-making process by requiring a public consultation period, although one that is much shorter than the period required by European and Portuguese law, lasting only five days. As was the case with the Lusoponte consortium, the IDEM did notify local authorities about the permit, posted the documents online and in various departments and libraries in Whiting and Hammond, and organized one town hall meeting. However, input from local governments and organizations outside the immediate area surrounding the refinery, including major cities such as Chicago that would be directly impacted by the

increase in pollution discharges into Lake Michigan, were not actively sought by the Indiana authorities.

Bukowski argues that in the Vasco da Gama Bridge case, the expansion of access to the decision-making process only began after “very active environmental groups using a variety of tactics and acting through formal and informal channels forced their way onto the decision-making stage” (294) and in the same way access to the permit process in the British Petroleum case was only opened up only after local government and the Cities Initiative organized a fierce public relations campaign through the media and other informal channels. Shortly thereafter, the President of British Petroleum, Bob Malone, met with a delegation from Illinois led by Representative Judy Biggert who succeed in establishing an epistemic community around the issue by partnering British Petroleum with the Argonne National Laboratory and Purdue University Calumet to study alternate solutions to increased pollution discharges into Lake Michigan. Subsequently, the EPA administrator for the Great Lakes, and British Petroleum President Bob Malone, helped organize a Lake Michigan Summit focusing on the Whiting Refinery expansion which included public officials from the state governments of Illinois, Indiana, Michigan and Wisconsin, including officials from the City of Chicago and Cook County, members of Congress and other environmental organizations that were excluded from the original deliberations. Furthermore, Indiana’s anti-degradation policy review included an exhaustive series of stakeholder meetings and public consultations. Hence, the opposition did considerably expand access to the decision-making process.

In the third criteria, *responsiveness*, Bukowski asks, what were the responses of decision-makers to input from other parties and whether outcomes reflected that input (278). It was clear in both cases that public officials were not responsive to initial public concerns and public input which itself was limited, thus following a similar pattern in other refinery expansions occurring around the basin. For instance, a senior member of the Alliance for the Great Lakes, a major non-governmental organization, stated that his organization was collaborating closely with British Petroleum in the run-up to its formal application process as a technical advisor thereby introducing environmental considerations into the project. Nonetheless, despite these preparations, the formal permit did not reflect the state of the negotiations that had taken place. In other words, the input was entertained, but essentially ignored (Alliance for the Great Lakes, interview, September 29, 2009).

In a related criteria, *representativeness and consensus-building capacity*, Bukowski (2004) asks whether a variety of viewpoints are reflected in the policy process and whether some interests are given more weight than others (278). Not only was input limited, and responsiveness stunted, but in both cases, it was apparent that “private actors in the form of large corporations appeared to wield unaccountable, yet crucial, influence in the decision-making processes and results” (Bukowski 2004, 296) and that the government authorities responsible for the final decisions “were biased in favor of corporate and local business interests at the expense of other viewpoints, notably environmental concerns” (Bukowski 2004, 296). Nonetheless, in both cases, the opposition was able to delay the policy process long enough for dissenting voices to get traction and force the government to weigh

alternate (i.e. environmental) considerations. As Mayor Anderson observes, the British Petroleum process “was designed to be put right through. We were instrumental in making it put on hold” (GLSLCI, interview with Anderson, June 18, 2009). Eventually, the opposition succeeded in transforming what was a localized dispute involving few actors into a regional, and even national, process which involved officials from all the Great Lakes states, the United State Congress, and environmental groups and local governments from across the basin.

In the final criteria, *authoritativeness*, Bukowski asks whether public authorities provided clear leadership and whether innovative solutions, ‘especially’ in terms of public goods problems (i.e. bridge, water quality), were encouraged (278). In the Portuguese case, the government did in fact experiment with innovative solutions, by establishing the GATTEL at the very start of the bridge project thus formalizing an environmental policy network inclusive of a wide array of actors and viewpoints around the process which, not surprisingly, came up with innovative solutions reflecting a better balance of environmental and economic concerns. Its recommendations were eventually ignored by the government which, like the IDEM in the British Petroleum refinery case, responded primarily to pressure from industry and emphasized economic considerations. Such networks of public input quickly proved to be little more than window dressing. Only after opposition was mobilized around the Great Lakes, did Indiana Governor Mitch Daniels, and IDEM Commissioner Thomas Easterly, agree to take part in the Lake Michigan Summit and undertake a long-delayed anti-degradation policy review.

In both cases, the Portuguese environmental groups and the groups spearheaded by the City of Chicago and the Great Lakes and St. Lawrence Cities Initiative, improved all five criteria measuring the democratic legitimacy of the decision-making process, including transparency and accountability, access, responsiveness, authoritativeness, and representativeness. They also both succeeded in attaining what can be termed ‘first-stage’ responses from their respective governments that are fairly moderate. In Portugal, the response came in the form of the establishment of the Commission for Oversight and Construction (CAO), whose main purpose it has to be said was to deflect criticism rather than to genuinely augment accountability. With regards to British Petroleum’s permit process, the opposition succeeded in convincing the State of Indiana to organize a summit to invite previously excluded officials from other Great Lakes states to comment on the permit process, as well as to establish partnerships between British Petroleum and local research centers in order to search for alternative solutions. Furthermore, the opposition precipitated a review of the State of Indiana’s anti-degradation policies, a review which Governor Daniels himself admitted he was reluctant to initiate in the past due to the fact it would be costly both in terms of time and money.

Difference in Opportunity leads to Differences in Strategy and Outcome

The major difference between the effects non-central state actors had on the policy process and policy results of the Vasco da Gama Bridge and the British Petroleum refinery, is that the opposition in the former succeeded in provoking a ‘second stage’ response from the government that went significantly farther in terms

of environmental concessions and improvements to the policy process. This difference resulted from the fact that the Portuguese environmental groups were able to resort to a 'supranational option', recruiting allies in the form of the European Commission, the European Parliament, and the European Court of Auditors to place even greater pressure on the Portuguese government by cultivating a credible threat that not only could the financing of the bridge be withheld, but that its very construction could be halted by the European Commission on the legal grounds that it violated the Birds and Habitat directives as well as the general rules of Cohesion Policy that was funding the project.

Bukowski (2004) concludes that access to powerful supranational institutions gave the environmental groups the resources and legitimacy to provoke a second-stage response from the Portuguese government, stating that "access in Brussels ultimately gave them crucial means of forcing the government in Lisbon to respond to their viewpoints" (297), and not just entertain those viewpoints, and that "the environmental NGOs were able to use both formal and informal points of access at the supranational level to pressure the Portuguese government to agree to and implement compensatory measures to alleviate damage to the environment caused by the bridge construction" (297), and also that "particularly because of the characteristics and functioning of supranational institutions, sub-national societal groups may well have more points of access through which to influence decision making" (297). In short, Bukowski (2004) concludes, "the supranational level of the network becomes crucial" (294) to non-central state actors.

The virtual absence of supranational actors in the British Petroleum case and its effect verifies this argument. In the British Petroleum case, the Great Lakes and St. Lawrence Cities Initiative did not have the option to resort to powerful supranational actors, nor could they refer to a supranational layer of legislation, in order to initiate and sustain increased pressure on the State of Indiana by threatening either legal or financial repercussions. Neither the IJC nor the CEC were involved in the conflict, and thus could not provide any additional access points for local governments to influence decision-making. Consequently, the opposition led by local government and the Cities Initiative was not able to cultivate a credible threat, hence they were not able to escalate the dispute and elicit more than a first-stage response from the government.

Thus, we must temper our conclusions about the efficacy of local government mobilization in this case. Even in the case of the anti-degradation review, though the IDEM was forced to undertake a comprehensive review of their anti-degradation policy, environmental groups for the most part argue that the gaps in the anti-degradation policy identified in the Barnes Report are not being remedied. For instance, the new anti-degradation draft rule put forth by IDEM proposes to set an ‘insignificance’ threshold that will allow facilities to increase their pollution incrementally without triggering the anti-degradation demonstration. A senior counsel at the Environmental Law and Policy Center (ELPC), also argues, for example, that the IDEM wants to target only traditional pollutants of concern, which would allow many other pollutants—such as the ammonia and TSS involved in the British Petroleum case—to avoid stricter regulation. Such loopholes according to the

senior counsel at ELPC “guts the whole process” (Environmental Law and Policy Center, interview September 22, 2009). In short, whereas in the Portuguese case the sustained pressure applied from the European Union meant that the initial success of the opposition carried through to significant and long-standing legal and political improvements, in the British Petroleum case, once the dust settled, the lack of sustained scrutiny and pressure has meant that the IDEM has carried through a regulatory review that maintains many of the fundamental flaws of its anti-degradation policy.

Another key point raised by Bukowski is that the Portuguese opposition groups ‘were able to use both *formal* and *informal* points of access’, which indicates that they were imbedded in, and thus able to operate from, both Type I and Type II multilevel governance structures in pursuing their goals. The previous chapter demonstrated that European non-central-state actors such as local governments are embedded in formal governance structures to a greater degree than North American local governments. This is a key distinction with regards to the opposition groups in the refinery case whose influence depended almost completely on whether the IDEM was willing to grant them access to the decision-making process through informal channels, because IDEM controlled the permit process. Although the permit contravened the spirit of the Clean Water Act, it was compliant with both federal and state laws, however flawed those laws may have been. Hence, recourse to formal challenges, for example by mounting a successful legal challenge to the permit, was at best a strategy with uncertain results for the opposition. As a result, IDEM and British Petroleum could have chosen to restrict the permit process entirely to the

formal sphere, to Type I governance structures. They did not have to move beyond the formal procedures in order to establish epistemic communities, engage in a Lake Michigan Summit, or even undertake comprehensive stakeholder meetings during their anti-degradation review, in which case local governments and opposition groups could have easily been excluded from influencing the permit process entirely. In other words, they could have stuck to a strict, formal definition of the pollution laws and rejected all negotiations and all collaboration leaving local government 'on the outside looking in'. The IDEM held all the marbles. To maintain some influence on the decision-making process, local governments had to keep the IDEM from closing the informal sphere. In the Portuguese case, the opposition groups did not have to overly concern themselves with the government closing the formal avenues once they ascertained that recourse to formal supranational structures above the level of the nation-state would remain an open and viable alternative.

Such an awareness of the political context on the part of the opposition to the British Petroleum permit meant that, instead of adopting a strident, combative position, as the Portuguese environmental groups did by attacking the very legal and financial foundations of the project, the Great Lakes and St. Lawrence Cities Initiative, shorn of a credible threat, adopted a moderate response that emphasized a positive-sum result with the hope that this approach would persuade IDEM and British Petroleum to keep open the informal governance sphere and bring the discussion of the permit into Type II governance structures where non-central state actors could present their input.

IDEM and British Petroleum could easily have closed these informal spaces, and probably would have had that space presented a grave threat to the refinery project, but the balanced approach taken by the opposition, the strategy of ‘firm but fair’, created an atmosphere where positive-sum results were attainable. Acknowledging and balancing both economic and environmental concerns gave the Cities Initiative instant credibility in the region and, through that credibility, political entrée. To repeat an earlier statement by Mayor Dave Ross of Superior, Wisconsin,

There are organizations that get up and just scream, and they tell tales of disaster and impending calamity without coming to the table with science, reasoning, for their opposition. The credibility of the Great Lakes mayors happens because we came to the table with real science. We came to the table with another unique perspective. We didn’t just flat out oppose the Whiting expansion. We simply asked that the expansion include the best available technology (GLSLCI, interview with Ross, June 18, 2009).

In turn, according to a senior member of the Alliance for the Great Lakes, by voluntarily agreeing to operate below the pollution limits of its new permit, British Petroleum was acknowledging that “there is room for collaboration and not just working through a combative process” (Alliance for the Great Lakes, interview, September 29, 2009).

This measured, collaborative approach was also adopted by other public officials in the region. In mid-July, the Chairman and President of British Petroleum, Bob Malone, met with Illinois Representative Judy Biggert and a delegation from Illinois to discuss the permit. In a statement that reflects the balanced position taken by the Cities Initiative, Biggert argued that a trade-off between economic and environmental security should be narrowed as much as possible, stating,

There's no question that America needs to expand domestic energy production, but we must find long-term solutions that protect the environment in the process...early indications suggest that the permit and the refinery are compliant with the law...But with emerging technology, it shouldn't be necessary to permit more ammonia and mercury to be dumped into the lake. That means going beyond just determining what's legal and what isn't, and finding ways to do even better (quoted in Augustine 2008, 7).

In a sense, it is going beyond the formal mechanisms of government.

Local governments, and the Cities Initiative, utilized the 'weapons of the weak' (Cram 1, 2007) such as dissemination of information, referencing values, and public shaming in order to *persuade*, rather than force, the IDEM and Governor Daniels to voluntarily introduce improvements to the policy result and the policy process. For example, Mayor Daley himself took every opportunity to acknowledge that he was not opposed to the expansion of the refinery itself, but to the fact that IDEM and British Petroleum did not practice due diligence in seeking out alternatives to the increased pollution, did not justify why such pollution was necessary, nor did they attempt to incorporate other environmental measures or projects that could offset the initiative environmental costs of the expansion. A verbal salvo that typified this approach came from the executive director of the Cities Initiative, David Ullrich, who stated that, "I find it very difficult to believe that a company such as British Petroleum, which has earned more than \$62 billion in profits over the past three years, is the third most profitable company on the planet, and bills itself as a 'green' petroleum company, does not have the technical and financial resources to solve this problem" (GLSLCI, Ullrich testimony in front of Chicago City Council, 2007). Recourse to reasoned argument, to persuasion rather than intimidation and force, on the part of the opposition meant that British Petroleum and IDEM not only

recognized the inadequacy of conducting policy through purely formal venues but, as Congresswoman Biggert's aforementioned statement suggests, they were willing to move *beyond what was legal*, and that meant opening up, and operating from within, more informal, Type II governance structures that were accommodating of a greater array of actors and viewpoints.

The opposition to the British Petroleum permit was not only an important watershed moment in terms of the external relations of the Great Lakes and St. Lawrence Cities Initiative and the role local government assumes in water quality governance in the Great Lakes basin, but it also represented an important test for the internal governance of a young transnational municipal network. As discussed earlier, maintaining cohesion and consistency within transnational municipal networks is a primary concern and the British Petroleum case forced the Cities Initiative to wade into a dispute with economic consequences for many of their key members that could have exposed new fault lines. Blatter (2001) observes that cross-border coalitions in North America "have not been able...to overcome territorial identities and loyalties in policy disputes which are characterized by high material interdependencies" (201) and that cross-border institutions "are not strong enough to play a significant role in policy conflicts with distributive consequences across the national border" (202).

The dispute over British Petroleum does not quite fit into the category of a dispute across national borders, since it was not framed in terms of Canadian versus American interests. For such an analysis, it would be better to analyze the response of the Cities Initiative and its membership to the 'Buy American' provisions in the

American Recovery and Reinvestment Act (2009), the so-called ‘Stimulus Bill’, which has strained relations to the degree that, on June 6, 2009, the Federation of Canadian Municipalities passed a resolution which threatened to shut American companies out of the bidding process from Canadian municipal contracts. However, the British Petroleum case definitely contained distributive consequences and demonstrates high material interdependencies that had the potential to fragment the organization across state lines, across national identities, and between those cities whose economies are tied to the refining industry and those who are not.

In this last context, the fact that Mayor Ross, whose own city will soon break ground on a multi-billion dollar refinery expansion linked to the Canadian oil sands, stated that he was “not only opposing, but vehemently spoke out against the permit in Indiana” (GLSLCI, interview with Ross, June 18, 2009), illustrates how membership in the Great Lakes and St. Lawrence Cities Initiative may well allow local governments to overcome their localized territorial identities and loyalties in favor of a basin-wide consciousness. Mayor Ross is the mayor of Superior, Wisconsin, where Murphy Oil has unveiled plans to undertake a massive \$6 billion expansion of its refinery. Mayor Ross could have easily ‘sat out’ this dispute for fear that his involvement could destabilize or jeopardize such a major investment in his city. Ross states,

We had strong discussions in my own administration. Should I get involved in BP and would it come back and bite me when it came to advocating the Murphy Oil expansion. We had a long conversation about that. I knew down the road I was going to be standing in front of the microphones and be asked about the BP question (GLSLCI, interview with Ross, June 18, 2009).

Despite these concerns, Mayor Ross was one of the signatories of the letter to Commissioner Easterly vigorously protesting the British Petroleum permit.

Mayor Ross argues, what helped him decide to actively oppose the permit was the fact that the plans for the Murphy Oil expansion in his city set a higher environmental standard which exposed the inadequate measures undertaken by British Petroleum in its own expansion. Ross states,

We didn't just blindly sign onto the Cities Initiative's effort to exact changes in the Indiana permit. We thought, let's scorecard this thing and see how does Murphy Oil in Superior measure up to BP Whiting, Indiana, and there was such a stark contrast in what Indiana was allowing that if the BP expansion was going to be happening in Superior under that permit I would have vehemently opposed it, because in all of our conversations with Murphy Oil about this proposed expansion we exacted promises from the company that they would use best available technology. They have put in place over \$80 million in pollution enhancements. What really put us over the top, I think they [British Petroleum] only had to invest \$150 million to bring water quality standards to permissible levels so that their discharges into the lake would be as good as Murphy's are into our lake. When you compare those dollars to the overall cost of the expansion it was miniscule. So, based on that, I found it easy to get involved in the BP case (GLSLCI, interview with Ross, June 18, 2009).

This statement reflects a search for positive-sum results and a concern for balancing economic and environmental concerns which demonstrates an understanding of the role local government can play around the basin. To repeat Mayor Anderson's statement, "the vision is to eventually be known as a positive and constructive resource for provincial, federal, and state governing bodies as well as industry, so that they are looking at us as a balance" (GLSLCI, interview with Anderson, June 18, 2009).

Mayor Ross is able to strike a middle ground by pushing for higher environmental standards to be included in refinery expansion projects while

simultaneously stating that he is a proponent of the oil sands industry and refinery expansion. One can make the argument, of course, that the British Petroleum refinery was not expanding in his own backyard but hundreds of miles to the south and thus had no immediate economic impact on his community. Yet, what is significant, however, is that this statement illustrates the mayor's deep engagement in an issue despite that distance, one that crossed state lines, demonstrating that his concerns radiated beyond the local to the regional, to a constituency defined not by his city limits but by the perimeter of the Great Lakes basin.

Finally, the British Petroleum case served as a kind of 'coming out' party for the Great Lakes and St. Lawrence Cities Initiative, which served to further embed the network within the governance structures around the basin. Mayor Ross argues, "it put us at the table when it comes to visibility. You couldn't pick up a newspaper anywhere in the United States referencing the BP permit and not see one of our members being quoted" (GLSLCI, interview with Ross, June 18, 2009).

As the Great Lakes states inevitably move forward with the next wave of refinery expansions, the Cities Initiative appears to have committed itself to playing an oversight role with regards to the pollution permit process which precedes such expansions. Ross argues,

if the Murphy Oil plant expands, it is incumbent upon this organization, the Great Lakes mayors, to scrutinize this expansion with all its energy, because I think its healthy that our organization has begun to question a number of water issues, air quality issues, concerning industry within the Great Lakes basin. We have encouraged Murphy Oil that in the future...they would fully engage not only with the founders of our organization but with the mayors (GLSLCI, interview with Ross, June 18, 2009).

Organized local governments have injected themselves into the center of a regional, national, and continental debate that is slowly beginning to gather public attention by offering industry a valuable service. As Mayor Anderson stated, “we can help them [industry] make choices where they’re not going to end up on the front page” like British Petroleum (GLSLCI, interview with Anderson, June 18, 2009), but that is possible only if the cities are included in the decision-making process and their concerns given serious consideration. More importantly, it is no longer the case that a negotiation over refinery expansions is a localized matter between one oil company and one city. The Great Lakes and St. Lawrence Cities Initiative has demonstrated its potential to mobilize thirteen million pairs of eyes to scrutinize whether a proper balance between economic and environmental concerns has been met in the basin.

CHAPTER VII

CONCLUSION

In his address to the Canadian Parliament on May 17, 1961, United States President John F. Kennedy famously said, “Geography has made us neighbors. History has made us friends. Economics has made us partners. And necessity has made us allies”. Yet, it is the environment, and the necessity of governing the common geography of shared watersheds and other ecosystems, which may finally bring the two countries together as *equals*. This leveling of the historically asymmetrical bilateral relations between Canada and the United States is already evident at the level of local government, particularly in the relationship between American and Canadian local governments interacting on equal terms within the Great Lakes and St. Lawrence Cities Initiative towards a common goal of balancing the economic-environmental nexus.

Cross-border environmental cooperation between local governments is increasingly becoming a vital instrument for managing the waters of the Great Lakes basin and a vital component in managing the bilateral environmental relations between Canada and the United States which were once the exclusive domain of federal governments. Their growing involvement in the Regional Collaboration, the Canada-Ontario Agreement (COA), the International Joint Commission (IJC) and through a recently established and heretofore non-existent trilateral intergovernmental

forum are but a few examples that testify to the democratization of bilateral environmental relations around the Great Lakes basin.

The opening up of the decision-making process to local government has been the result of both ‘top-down’ and ‘bottom-up’ processes that have led to the emergence and expansion of a multilevel governance approach in the management of shared ecosystems. The re-balancing of federal-sub-national relations and the adoption of a collaborative approach to intergovernmental relations has opened up political space for informal Type-II governance structures to emerge within the basin alongside traditional, long-standing, formal, Type-I governance mechanisms. These complementary, informal Type-II governance structures have given local governments more access points through which to influence the decision-making process. At the same time, local governments have not been mere passive beneficiaries of the re-balancing of intergovernmental relations, but have actively sought to extend their policy capacity through savvy political entrepreneurialism and pluck. Nowhere is this more evident than in the establishment of the Great Lakes and St. Lawrence Cities Initiative which has become the main vehicle for the increased participation of local government in decision-making forums in the basin.

The emergence of the Great Lakes and St. Lawrence Cities Initiative is remarkable for the simple fact that the institutionalization of cross-border cooperation between American and Canadian local governments was deemed improbable under the ‘competitive-city paradigm’ proposed by Brunet-Jailly (2004). It was argued that non-central state actors in North America were incapable of transcending severe market forces (Blatter 2001; Brunet-Jailly 2004) or institutional barriers to cross-

border cooperation (Norman 2009) particularly in the absence of mediating supranational structures. The fundamental shortcoming of these and other previous studies into cross-border relations is an overestimation of the effect of supranational institutions and market forces combined with an underestimation of the capacity of non-central state actors such as local governments to mobilize in the face of severe market pressures and in the absence of supranational support.

The Great Lakes and St. Lawrence Cities Initiative is the first and only transnational municipal network operating across the shared border between Canada and the United States. Hence, this dissertation represents the ‘first-cut’ in our examination of North American transnational municipal networks. It also provides the first comparative analysis between European and North American transnational municipal networks. The comparative analysis of the Vasco da Gama Bridge in Portugal and the British Petroleum refinery in Indiana has been particularly illuminating, yielding three preliminary findings.

First, the institutionalization of multilevel governance and local government in formal, Type-I governance structures goes deeper in Europe than in North America, while the development of supranational level institutions also goes farther in Europe, thereby creating a more favorable political climate for European non-central state actors such as local governments by providing them with greater political opportunities and resources to institutionalize their cooperation and influence decision-making. In particular, the strength of the supranational-local nexus is positively correlated with the policy capacity of non-central state actors such as local

governments to expand their administrative capacity and influence the policymaking process.

Second, although the support of supranational actors is important for the formative stages of transnational municipal networks, such support is not necessary for their initial emergence. This finding challenges the hypothesis proposed by Duina (2006) and Brunet-Jailly (2004), which states that robust supranational structures are necessary preconditions for the institutionalization of cross-border cooperation by non-central state actors. The Cities Initiative demonstrates that the only condition necessary for the emergence of transnational municipal networks is the lack of opposition from higher tiers of government and a desire on the part of local government to organize.

Third, the persistent existential uncertainty stemming from a combined lack of formal constitutional authority in external environmental relations, their exclusion from formal Type-I governance structures, and the lack of supranational allies and resources, predisposes North American transnational municipal networks to behave as bridge-builders, eschewing conflict, and seeking positive-sum gains in its relations with other actors. Even when disputes with higher tiers of government materialize, as in the British Petroleum case, local governments are careful to balance the interests of competing actors rather than challenge them outright, they utilize persuasion over power and other weapons of the weak, and avoid a strident posture that could provoke the higher tiers of government from eliminating access points by closing Type-II channels.

However, despite these limitations, the British Petroleum case also demonstrates that local governments can overcome the ‘dark side’ of network governance (Peterson and O’Toole, 2001) and improve the democratic quality of both the policy result and the policymaking process, thereby answering the challenge by Peters and Pierre (2004) to demonstrate whether multilevel governance means something more than multilevel participation. The cross-case analysis of the refinery and the bridge did, however, demonstrate that non-central state actors are more effective under conditions where the supranational infrastructure is well developed and where the supranational-local nexus is well established.

This dissertation confirms the observations by Peterson and O’Toole (2001) and Peters and Pierre (2004) about the ‘dark side’ of the shift towards network governance. The retrenchment on the part of the United States federal government from environmental management, the devolution of authority for environmental policymaking to the provinces and the states, and the move towards multilevel governance around the Great Lakes basin has opened up an accountability gap that has undermined water management and water quality in the basin. This development makes the mobilization of the Great Lakes and St. Lawrence Cities Initiative as a *potential* oversight agent, as demonstrated in the British Petroleum refinery case, that much more significant. The word *potential* is stressed, however, pointing to the fact that the Cities Initiative successfully mobilized opposition to one refinery expansion while ignoring others. By recognizing this selective strategic behavior on the part of the Cities Initiative we reject the notion that the characteristics of a given scale can be assumed a priori and thus we avoid the *local trap* (Brown and Purcell 2005). At the

same time, we invite future studies to examine this strategic behavior on the part of the Cities Initiative further.

Apart from its practical application to public policy, the study of transnational municipal networks as *sui generis* contributes to our theoretical understanding of transnational actors by challenging our conceptual division between state and non-state actors. The unique fundamental duality of transnational municipal networks, which are constituted as non-state actors and govern their internal and external relations as non-state actors, yet as a constellation of individual local governments are moored to the hierarchical federal structure and thus governed by the inherent hierarchical intergovernmental power relations of the federal state, undermines our traditional understanding of a civil society organized versus the state. Furthermore, the claim that within network governance “the boundary between organizations and public and private sectors has become permeable” (Stoker 1998, 38) is no longer what is novel about network governance. What is novel about network governance, at least in the form of transnational municipal networks, is that this boundary between the public and the private is effaced.

The emerging literature on North American transnational municipal networks will undoubtedly benefit from more sustained comparative analyses with their European counterpart. Specifically, studies into the ability of transnational municipal networks to successfully influence the policymaking decision of higher tiers of government are non-existent within the European context. This gap is the basis for a major limitation of the cross-case comparison utilized in this dissertation, in that whereas the case of the environmental opposition to the bridge in Portugal focused on

local environmental groups as the unit of analysis, the case of the environmental opposition to the refinery in Indiana focused specifically on a transnational municipal network. Future studies should be able to identify, and compare, the behavior and fortunes of European and North American transnational municipal networks in similar circumstances.

At the same time, it would be worthwhile to examine the other cross-border regions in North America in order to determine why transnational municipal networks have emerged in some places and not in others. There is also a need for a more systematic quantitative analysis of how participation in the network has changed the perceptions, interests and strategies of member cities in order to determine whether and how they are able to break the bounds of the competitive-city paradigm and overcome their constitutional constraints.

Ironically, perhaps, constitutional changes or even greater formal institutionalization of local policy capacity is not called for, since, it is argued, it is exactly their sense of vulnerability stemming from their weak formal powers which drives local governments to seek positive-sum solutions within the basin and to constantly act as bridges between other actors over which water policy agreements and strategies are forged. However, it is argued that local governments must be made full partners alongside federal, state and provincial counterparts in all forums related to environmental management in the basin, and that resources in the form of political legitimacy and financial support for local cross-border cooperation be extended and enhanced. This can be achieved immediately and most notably by strengthening cooperation between transnational municipal networks and supranational actors—in

other words, between the Great Lakes and St. Lawrence Cities Initiative and NAFTA's Commission for Environmental Cooperation (CEC)—thereby strengthening the supranational-local nexus. In this way the political legitimacy and policy capacity of both the supranational and local level will be increased, the accountability within the environmental governance system around the Great Lakes stands a better chance of improving, and the economic-environmental nexus at the heart of bilateral relations between Canada and the United States may find a better balance.

Finally, that local governments possess a new voice, new platforms and new instruments is itself a significant development, and although it can be said that local governments around the Great Lakes speak softly and carry a small stick, in the final calculation, within a multilevel governance setting where authority is shared, that may very well be their greatest strength and the clearest justification for an even greater inclusion of local government within the governing structure.

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